IN THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON MONDAY THE 14TH DAY OF NOVEMBER, 2022 BEFORE HER LADYSHIP JUSTICE DOREEN G. BOAKYE-AGYEI (MRS.) JUSTICE OF THE HIGH COURT

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SUIT NO: F22/08/2022

THE REPUBLIC - APPLICANT

VS

1. LEGBAVI SORKPOR
2. AGBOTADUA KUMASAH - RESPONDENTS

EX – PARTE
JOHNSON YEVUGAH

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PARTIES: - PRESENT

COUNSEL:

MR. GODWIN AKPADIE, ESQ., COUNSEL FOR APPLICANT - PRESENT.

MR. MARSHALL K. PENU, ESQ., COUNSEL FOR RESPONDENTS – PRESENT.

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JUDGMENT

Applicants bring this instant application seeking to have the Respondents committed to prison or punished for contempt of Court. The genesis of the matter is that the Plaintiff/Applicant issued out his Writ of Summons together with an Application for Interlocutory Injunction in this Court on 15/03/2022 against the Defendants/Respondents. The Defendants/Respondents filed a Conditional Appearance to the Writ of Summons and all the processes founded upon it. The named motion, Exhibit A, was served on the Respondents herein which is labeled Exhibit B.

It is the case of Applicants herein that notwithstanding the pendency of the motion Exhibit A, the Respondents continued the named interference with the subject matter land disdainfully and in total disregard and or disrespect to the authority of the Court. The Applicant has exhibited Exhibit C as proof thereof. The Court in the interim granted the Application restraining both parties in effect. It is also the case of Applicants that even after the restraint order was placed on both parties and served on the Respondents, they have continued with the construction disdainfully and in total disregard of the restraint order on them and that the proof thereof are Exhibits D & D1.

Applicants submit that the Respondents committed acts contemptuous of the High Court which constituted the disobedience of the Court. It is the further case of the Applicant that the pictorial exhibits in Exhibit A are in sharp contrast with same in Exhibit C which shows a remarkable progression of the construction which Exhibit A sought to injunct. Further, that Exhibit C is also in sharp contrast with Exhibit D1 which is evidence of the continued construction. Applicants thus submit that the combined effect of Exhibits C and D1 is that the Respondent cares not to obey the Orders of the Court and deserve severe punishment by the Court. The Applicants are of the view that the Respondents have demonstrated that they have no modicum of respect for the sanctity of authority of the Court and have accordingly arrogated unto themselves powers greater than that of the Court. Applicants contend that Respondents conduct is contemptuous and deserving severe punishment because their conduct has brought the administration of justice into disrepute and or disrespect. Finally the Applicant prays that the conduct of the Respondent is willful and deserves to be punished severely by convicting and committing them to prison to serve as a deterrent to others.

In response, Respondent submits that the facts alleged by the Applicant on which he is urging upon the Court to commit the Respondents to prison are contained in Exhibits C, D and D 1 attached to their Affidavit in support. They contend that they have denied and

rebutted all the allegations contained in the said Exhibits that they did not do it. They say they have rather offered factual cogent evidence in their Exhibits 1, 2, 3, 4, 5, 6, 7, attached to their Affidavit in opposition showing a contrary state of affairs at the time of the instant motion and clearly demonstrating the non-existence of the allegations contained in Exhibits C, D and D1. They also contend that their Exhibits 1 to 7 stand unchallenged and raise serious reasonable doubt to the facts alleged. Their case is that the standard of proof required of an accused person is that of reasonable doubt which they submit they have discharged.

They thus contend that their denial of the Applicants Exhibits C, D and D1 has not been even remotely denied or rebutted by any cogent proof beyond reasonable doubt as required by the law on burden of proof. Therefore they submit that Exhibits 1 to 7 denying Exhibits C, D, and D1 which stands unchallenged and has raised serious reasonable doubts must inure to the benefit of the Respondents.

The Respondent in the Written Submissions raised preliminary points of law which will be examined first before the substantive application will be dealt with. The first ground of the preliminary point of law is to the extent that the Application is seriously flawed in law and contrary to Article 107 of The 1992 Constitution of Ghana and decided cases. Their second ground is that the Application is also unmeritorious and substantially flawed in the facts alleged and does not meet the required standard of proof in accordance with Section 13 of the EVIDENCE ACT 323 and decided cases on when a crime is alleged in a civil proceeding, which is proof beyond reasonable doubt.

ARTICLE 107 OF THE 1992 CONSTITUTION OF GHANA PROVIDES:

"Parliament shall have no power to pass any law

(a) to alter the decision or judgment of any court as between the parties subject to that decision or judgment or

(b) which operates retrospectively to impose any limitations on or adversely affect the personal liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under Articles 178 and 182 "

On 28/07/2022, the Court dismissed the Writ of Summons in a Ruling on an application by Respondents. It is Respondent's case that what the Applicant is seeking to do is that he is inviting the Court to apply the law retrospectively irrespective of the new order brought about by the Ruling dated 28/07/2022.

That the further pursuit of the instant Application by the Applicant sins against not only the constitutional enactment on retrospective laws but also decided cases on the application of the laws retrospectively.

The Defendants/Respondents submit that having filed a Conditional Appearance within time to the Writ of Summons and all the processes founded upon it, the legal effect and consequence of the Conditional Appearance in substance meant that the Defendants/Respondents have issues with the issue or service of the Plaintiffs/Respondents Writ of Summons and all the processes founded upon it albeit capacity and the Court's jurisdiction to hear or entertain the matter. That this also meant that they have not submitted themselves to the jurisdiction of the Court to hear or entertain the matter, even the interlocutory applications until that matter of non-submission to the Court's jurisdiction had been cleared.

The Respondent further submits that the Court in the circumstances by the entrenched rules of practice, statute and case law is enjoined to first and foremost deal with the attendant matters that would be raised pursuant to the Conditional Appearance before proceeding to hear the matter, interlocutory applications included.

It is Respondent's case that contrary to the principles laid down in cases, on the 06/04/2022, the Court in-spite of the pending Conditional Appearance without undertaking the needful by satisfying itself that the Writ is not a nullity and that it had jurisdiction to hear the matter, went ahead to entertain and determine the Application for interlocutory injunction. That the Court went ahead and made an Order restraining both parties even though there was no affidavit in opposition from the Defendants/Respondents because if they did file one they will be deemed to have taken a fresh step in the matter.

Respondents submit that they were thus not heard at all when the Order was made thus rendering the said Order void ab initio for breach of the natural justice principle of audi alteram partem rule. They submit further that pursuant to the Conditional Appearance filed to the Plaintiffs Writ of Summons and all the processes founded upon it, the Defendants/Respondents herein on 08/04/2022 filed a Motion on Notice to Dismiss the Plaintiffs/Applicants Writ of Summons and all processes, proceedings and Orders founded upon it. The Court granted the motion in a judgment dated 28/07/2022 in the mother case (which judgment is a public record in the Registry of this Court) dismissing the Plaintiffs/Applicants Writ of Summons and all processes, proceedings and Orders founded upon it as nullities ab initio in consequence.

Respondent contends that by the Ruling of the Court dismissing the Plaintiffs/Applicants Writ of Summons and all the processes, proceedings, and Orders founded upon it, further pursuit of the repealed Contempt action upon the dismissed Writ of Summons together with all the processes, proceedings and orders founded upon it are ab initio incompetent and a nullity as if it never existed.

Respondents submit that they concede that even if the Interlocutory Injunction Order made without first dealing with the issue of capacity and jurisdiction and also without hearing the Defendants/Respondents is wrong and void, it must be obeyed until it is set

aside. They however contend here that they took the necessary steps to have the said null and void Writ of Summons, with all the processes, proceedings and Orders founded upon it to be set aside by virtue of the Ruling dated 28/07/2022 on their Application for the sole purpose of dismissing the entire Writ of Summons and all processes, proceedings and Orders founded upon it as a nullity which was upheld by the Court.

They refer to the case of **MOSI VRS BAGYINA 1963 GLR HOL 4** where it was held that: "**Where a judgment or an order is void either because it is given or made without jurisdiction or because it is not warranted by any law or rule or procedure, the party affected is entitled ex debito justitiae to have it set aside, and the court or a judge is under a legal obligation to set it aside, either suo motu or on the application of the party affected. No judicial discretion arises here. The power of the court or a judge to set aside any such judgment or order is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a judge; and the constitution of the court is for this purpose immaterial. Further, there is no time limit in which the party affected by a void order or judgment may apply to have it set aside**"

They thus contend that per the Ruling dated 28/07/2022, the instant motion has been overtaken by the subsequent events which has created a new order declaring the Writ of Summons, the processes, the proceedings and the Order founded upon it as a nullity hence there is no legal basis for the vexatious, ill-conceived pursuit of an action which foundation or legal basis has been declared non-existent. Respondent submits that the Court has made a declaration in the Ruling dated 26/07/2022 declaring the Applicants Writ of Summons, and all other processes and Orders founded upon it to have ceased to exist and nullified.

Counsel referred to the case of **MCFOY VRS U.A.C 1962 AC 150,** where it was held tha**t -You cannot put something on nothing and expect it to stand, it will collapse.**

In the **Nigerian case of OKETADE V ADEWUNMI 2010 2-3 S.(PT1) AT 140 S. C it was held "...am in entire agreement with counsel for the respondent that as the process which brought the Appeals are incompetent, the Appeals itself are incompetent.**

The Court rejects part of the submissions of Respondent relating to the Conditional Appearance as it has to do with timelines within which a party must operate. It is trite that Conditional Appearance when entered does not operate in perpetuity as the subsequent process has to be brought otherwise it crystallizes into a regular appearance. In this case, the Application of Respondents was brought outside the stipulated period and only after the Injunction Application was granted. The Injunction application was served on Respondents who after the expiration of the conditional appearance which then made it a regular appearance making the Defendants submit to the jurisdiction of the Court, they failed to file any process in opposition thus they cannot say that they were not heard in breach of the audi alterem partem rule.

The Rules of Court are not for decorational purposes to be obeyed as and when Counsel chooses. Once an application is served on a party with proof of service and a conditional appearance becomes a regular appearance, the Court can go ahead and determine such application whether there is filed an Affidavit in opposition or not. The issue of jurisdiction without more is misplaced as the fact that a party fails to file an affidavit in opposition to a motion cannot and would not amount to any infraction for which Counsel for the Respondent can state that Respondents were not given a hearing before the Order was made. In any case,

granted Respondents were not heard, they ought to have returned to the Court to have it set aside in the absence of which the Order continued to bind them.

In all the decided cases as a general proposition all laws are prospective and not retrospective in their operation recognized by the Courts. In the case of **PATU-STYLES V AMOO-LAMPTEY 1984-86 GLR 138** it was held that: "**Prima facie enactments**

repealing or revoking other enactments are prospective and not retrospective in their operation and thus embraces only prospective rights''……

Respondent's Counsel referred to the case of **IN RE BALOGUN VRS EDUSEI 1958 3 WALR 517.** In this case Krobo Edusei then the Minister of Interior issued a Deportation Order against Wahabi Balogun and 3 others. The four men were arrested on Saturday October 18, 1958. On Monday October 20 at 8.15 am Counsel for the relatives of the four men filed to the Court an Ex-parte motion for Habeas Corpus on the grounds that the four men were Ghanaians and therefore not subject to deportation and for an Order of Certiorari to be moved that same morning. On the hearing that morning the Court directed that the Minister for Interior, the Commissioner of Police and the Director of Prisons be given notice of the motion and adjourned the case to October 30, 1958. Even though the Minister of Interior had notice of the pending motion, the four men were deported from Ghana on the same 20th of October 1958.

On November 11, 1958 Counsel for the deportees filed an Application for Contempt and the Minister for Interior, the Commissioner for Police and the Director for Prisons were found liable but the execution of the Order to send them to prison was stayed on the 24th day of December 1958 by the Court. On the same day that they were convicted awaiting sentence, Parliament convened an emergency session and passed a law, ie Deportation Indemnity Act NO 47 of 1958 which provides" "The Honorable K. Edusei, the Minister of Interior and Ransford Tawiah Madjitey Commissioner of Police shall be indemnified from all penalties for contempt of court and exonerated from all other liabilities in respect of any action taken by them in carrying out the deportation order". The passing of the new law during the pendency of the sentence for contempt and the retrospective application of the law thus nullified the pending court process and that ended the case without the sentence.

In the case of **YOUHANA VRS ABBOUD 1973 GLR 258-267 HOL 2** it was held "**Where the authority of a person to sue in a representative capacity had been challenged the onus was upon him to prove that he has been duly authorized. He could not succeed on the merits without first satisfying the court on this important preliminary point**"

In the case of **EDUSEI VRS DINNERS CLUB 1982-83 GLR 809 AT 815** it was held that; "**It is obvious that a court must be satisfied that the parties appearing as suitors before it did exist as legal personae whether human in form or artificially created. In the latter class of cases the court must see whether the legal indices that constitute the clothing really adorn a legally acceptable fictional character permitting it access to our courts.**

In the candid and considered opinion of the Court, there is nothing retrospective in this instance. However bad and or void an Order is, the Respondents are required to obey it until same is set aside and the law is trite on void orders which ought to be obeyed.

On the second ground for the dismissal of the instant Application, Respondent contends that the Application is flawed on the facts alleged and does not meet the higher standard of proof required, ie proof beyond reasonable doubt when crime is alleged in civil proceedings. The presumption of innocence inures to the non-guilt of the Respondents.

It is Respondents case that all the Applicants allegations have been denied and serious reasonable doubts raised in their Exhibits 1 to 7 which are unchallenged and irrefutable presumptions in favor of the Respondents as against the Applicants. Respondents submit that on the totality of the evidence adduced and the required standard and burden of proof beyond reasonable doubt placed on the Applicant, he has woefully failed to discharge the burden hence the Respondents pray that they must be discharged.

The Philosophical principle underlying the term known to Judges and Lawyers "as proof beyond reasonable doubt is that "it is better to let one hundred suspects go scot free than to throw one innocent person into jail"

In the case of **COMET PRODUCTS UK LTD V HAWKEX PLASTICS 1971 1 ALL ER 1141 AT PAGE 1143 -1144, it was held that; "Although this is a civil contempt, it partakes of the nature of a criminal charge. The defendant is liable to be punished for it, he may be sent to prison. The rules as to criminal charges have always been applied to such proceedings. It must be proved with the same degree of satisfaction as in a criminal charge.**

In the case of COFFIE AND ANO AND AKELE V OKINE AND ANO (CONSOLIDATED) 1979 GLR 84-90 it was held that; "In order to establish contempt of court even when it was not criminal contempt but civil contempt there must be proof beyond reasonable doubt that a contempt of court had indeed been committed"

Sections 21 and 22 of NRCD 323 contain provisions on the standard of proof required when a presumption has been established. The general principle is that when the presumption has been established, the onus shifts to the party against whom the presumption operates to adduce further evidence to rebut the presumption. This principle has been codified in Section 20 thereof which provides: "**A rebuttable presumption imposes upon a party against whom it operates the burden of producing evidence and the burden of persuasion as to the nonexistence of the presumed facts**"

Article 19 (2) C of the 1992 Constitution of Ghana provides:

A person charged with a criminal offence shall be presumed to be innocent until he is proved or he has pleaded guilty.

Section 11 of the Evidence Act 323 1975 provides;

"**For the purpose of this Decree the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him**"

In the case of **THE REPUBLIC VRS OPANIN KWAME BOAMAH & 3 ORS EXPARTE KWAKU AMPONSAH, CIVIL APPEAL NO J4/3/2011 27TH JULY 2011** unreported the Supreme Court held at page 2 and 3 of its judgment as follows; "**We would like to say at once that the basic principle that is discernible from collection of cases regarding the standard of proof in contempt matters is settled and free from conflict opinion**"

Order 50 rule 1 of C. I. 47 provides as follows: **The power of the Court to punish for contempt of court may be exercised by an order of committal.**'

In Oswald's Contempt of Court (3rd ed.) at p. 6 it is stated:

"To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation.

It is again stated at page 102 of the same book that "An order must be implicitly observed; every diligence must be exercised to obey it to the letter, and any proceedings resulting in a breach are tantamount to an actual breach.

In the case of **REPUBLIC v. MOFFAT AND OTHERS; EX PARTE ALLOTEY [1971] 2 GLR 391-403,** contempt of court has been explained as 'any conduct which tends to bring the authority and administration of the law into disrespect or to interfere with any pending litigation is contempt of court.'

For an application of contempt to succeed the Applicant must demonstrate satisfactorily meeting the litmus test required of him and to establish same beyond reasonable doubt the offence of contempt against the Respondents.

These elements have been provided in the case of **REPUBLIC VRS. SITO 1 EX PARTE FORDJOUR (2001-2002] SCGLR 322:**

(i) There must be a judgment or order requiring the contemnor to do or abstain from doing something;

(ii) It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing

(iii) It must be shown that he failed to comply with the terms of the judgment or order

(iv) And that the disobedience is willful.

In the case **of REPUBLIC V NUMAPAU; EX PARTE AMEYAW II and Others [1999-2000] 1 GLR 283 – 323 i**t was held that 'contempt of court was constituted by any act or omission tending to obstruct or interfere with the orderly administration of justice or impair the dignity of the court or respect for its authority. However, since contempt was quasi-criminal and the punishment for it might take various forms including a fine or imprisonment, the standard of proof required to sustain liability was proof beyond reasonable doubt.'

In **KANGAH v. KYEREH AND OTHERS [1979] GLR 458-468** the Court established the standard required of the Applicant to succeed where the Court held that "to obtain a committal order for contempt, the applicant must strictly prove beyond all reasonable doubt that the respondents had willfully disobeyed and violated the court's order."

The Supreme Court has established the standard of proof required to succeed in a contempt application. In the case of **IN RE EFFIDUASI STOOL AFFAIRS (NO. 2) [1998-99] SCGLR 639** it was held that: "Since contempt of court was quasi-criminal and the punishment for it might include a fine or imprisonment, the standard of proof required was proof beyond reasonable doubt. An applicant must therefore first make out a prima

facie case of contempt before the Court considers the defences put upon by the respondents'

As it is further stated in Oswald's Contempt of Court (supra) at pp. 102 to 103: '"But disobedience, if it is to be punishable as contempt, must be willful. Where the disobedience is not willful in the first instance, the order which is to be obeyed may be suspended for a time or the order for attachment or committal may be directed to lie in the office."

In the case of **AGBLETA VRS. THE REPUBLIC (1977) 1 GLR @447** the Court of Appeal per Azu Crabbe C. J. held as follows: "It seems to follow from the authorities that willful disobedience of the order of the court must be established before a person can be held to be guilty of contempt. **But to be punishable, there must be a contempt which implies an intentional or willful defiance of the powers of the court".**

It is the case of the Applicants that by the date the suit was struck out for want of capacity the Respondents had already disobeyed the clear Orders of the Court and as a result, the subsequent striking out of the suit did not and could not exonerate the Respondents from the disdainful disregard and disrespect for the sanctity of the Order of a Court of competent jurisdiction. The Court agrees with this submission to the extent that if it is found that Respondents truly disobeyed the Order they cannot be let off the hook.

The Courts have established that after satisfying the elements constituting contempt of court it must be shown that the disobedience was willful. Once the Respondents have denied the allegations leveled against them, the Applicant is enjoined to prove his case beyond the affidavits. I have looked at all the Exhibits before me and cannot find a nexus or link of Respondents to Applicant's exhibits. Not having done so the Court was faced with an assertion and a denial that by the operation of the rules and the laws placed the

burden of dislodging the effect of the denial on the Applicant in order to sustain his application for contempt. This burden however, the Applicant has failed to discharge and on that score the Application must fail for want of proof of the Applicant's allegations beyond reasonable doubt.

In any case, in the candid and considered opinion of the Court, the continued pursuit of this Application is not warranted by the law as the substantive case which birth the Application for Injunction has been dismissed. This instant Application is therefore unmeritorious and same is hereby dismissed in-limine. Respondents acquitted and discharged accordingly. Cost of GHC1000 for each Respondent.

[SGD]

H/L JUSTICE DOREEN G. BOAKYE-AGYEI MRS. ESQ.

JUSTICE OF THE HIGH COURT

CASES CITED

MOSI VRS BAGYINA 1963 GLR

MCFOY VRS U.A.C 1962 AC 150

OKETADE V ADEWUNMI 2010 2-3 S. (PT1) AT 140 S. C

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REPUBLIC VRS. SITO 1 EX PARTE FORDJOUR (2001-2002] SCGLR 322:

REPUBLIC V NUMAPAU; EX PARTE AMEYAW II and Others [1999-2000] 1 GLR 283 – 323

KANGAH v. KYEREH AND OTHERS [1979] GLR 458-468

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