

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
WINNEBA, HELD ON TUESDAY THE 20<sup>TH</sup> DAY OF MARCH, 2023, BEFORE HIS  
LORDSHIP, JUSTICE ABOAGYE TANDOH, HIGH COURT JUDGE.

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SUIT NO. E12/033/2020

THE REPUBLIC

VS.

DR. STEPHEN YEBOAH                      ...                      RESPONDENT

EX PARTE: VIDA YEBOAH                      ...                      APPLICANT

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### JUDGMENT

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On the 17<sup>th</sup> day of January, 2020, the Applicant filed a Motion on Notice by way of application for an order for Committal for of the Respondent, Dr. Stephen Yeboah to prison for Contempt of this Honourable Court pursuant to Order 50 Rule 1 of C.I. 47 and same duly served on the Respondent.

According to the Applicant, she caused to be issued from the Registry of this court a petition for divorce against the Respondent. The Applicant, on the same day proceeded to file an application for maintenance and an application for preservation of all matrimonial properties, which properties were listed therein pending the final determination of the divorce petition. Attached herewith and marked as Exhibit 'B' series are copies of the petition, application for interim preservation of matrimonial properties, and application for maintenance pending the determination of this suit.

The Applicant contends that the Respondent filed his respective response to both the application for maintenance and preservation of matrimonial properties on the 20<sup>th</sup> May 2019. The application for Maintenance pending the final determination of the suit was heard by the High Court Agona Swedru a ruling was delivered on 20<sup>th</sup> June, 2019 where the Court ordered certain payment to the Applicant by the Respondent herein in lieu of maintenance until the final determination of the divorce petition. Attached herewith and marked as **Exhibit 'B1'** is a copy of the response or affidavit in opposition to the application for interim preservation of matrimonial properties filed by the Respondent.

The Applicant states that the application for the interim preservation of matrimonial properties which was to be heard on the same day was adjourned because Counsel for the Respondent therein sent a letter and an excuse duty form requesting for adjournment to enable him respond to the application appropriately and to which this court ceded to the request and adjourned the matter to the 11<sup>th</sup> day of July 2019 for the application for preservation to be moved. Attached herewith and marked as **Exhibit B2'** series are copies of the letter for adjournment and the excuse duty.

According to the Applicant, a search result dated 23<sup>rd</sup> May, 2019 of search conducted at the Registrar General's Departed on Lucky Herbal Clinic by the Solicitor for the Applicant showed that the Lucky Herbal Clinic was registered on the 20<sup>th</sup> of July 2011 as a sole proprietorship under the name of Stephen Yeboah. Attached herewith and marked as **Exhibit B3'** is a photocopy of the search result dated on the May, 2019.

The Applicant contends that, on the 10<sup>th</sup> day of July 2019, an application was filed by a newly incorporated company, Lucky Yeb Group of Companies to join the divorce

petition. This prompted the Applicant to cause her lawyer to file another search on Lucky Herbal Hospital.

That the search result from the Registrar General's Department dated 15<sup>th</sup> July, 2019 showed that Lucky Herbal Clinic has been incorporated as a company limited by shares on the 11<sup>th</sup> of July 2019 with its commencement date as the 11<sup>th</sup> of July 2019 attached herewith and marked as **Exhibit B4'** is a photocopy of the search results dated on the 15<sup>th</sup> July, 2019.

The Applicant further contends that the directors of the newly incorporated company , Lucky Herbal Clinic Ltd are Stephen Yeboah the Respondent, Nana Andoh. The applicants says that the sole shareholder of the new company, Lucky Herbal Clinic Ltd with registration number CS152562019 is Stephen Yeboah( Respondent). According to the Applicant, Lucky Herbal Clinic Ltd was incorporated at a time when an application for the preservation of properties acquired during the subsistence of the marriage which included Lucky Herbal Clinic.

The Applicant further states that the conduct of the Respondent is one which is likely to bring the administration of Justice into disrepute and thus threaten or prevents the discharge of the court's functions and has therefore committed criminal contempt.

The Respondent opposed the motion and in admitting paragraph 6 of the Applicant's affidavit in support stated that all the averment as contained in the said paragraph were subject matter before the High Court, Agona Swedru and not this very Court as the Applicant want this Court to believe.

According to the Respondent, whilst the Applicant's petition for divorce as well as the application for maintenance and preservation of properties was pending before the

High Court, Agona Swedru , an Application for Joinder was filed for and behalf of Lucky Yeb Group of Companies as per Exhibit 1.

The Respondent says that, the Respondent acquired in his name and hold in trust Lucky Yeb Group of Companies all the properties acquired under the sole proprietorship. And further, that the promoters agreed with the Respondent herein to acquire in his name and hold in trust pending the incorporation of Lucky Yeb Group Of Companies. The Respondent says that the promoters of the incorporated company agreed with the Respondent to acquire in his name and also hold in trust pending the incorporation of Lucky Yeb Group Of Companies.

The Respondent contends that the conversion of the sole proprietorship under the name of Stephen Yeboah, i.e the Respondent herein into a Company Limited by shares was based on earlier agreement between the promoters and the Respondent. That prior to the Applicant filing her petition on 26<sup>th</sup> April 2019, the promoters had already converted some of the sole proprietorship businesses under the name of the Respondent into an incorporated Company as per **Exhibit 2**.

The Respondent further contends that, the conversion of sole proprietorship businesses under the name of the Respondent was an ongoing process with the Registrar General Department. The Respondent says that although he is a director and a shareholder of the newly incorporated Company Limited by shares, by operation of law, he Respondent is a distinct and separate legal personality from the newly incorporated Company.

According to the Respondent, the properties claimed by the Petitioner are not jointly acquires matrimonial properties which can be settled on the Respondent. And further contends that the newly incorporated Company upon realizing the application for preservation of properties filed a motion for joinder claiming that the properties are not jointly acquired matrimonial properties which can be settled on the Respondent.

That prior to the Applicant's application for preservation of properties which was filed on 26<sup>th</sup> April, 2019 sister companies has been incorporated already per **Exhibit 2**. That no application for preservation of properties is pending before this Court for which same had been ruled upon by this court as the said Application was before the High Court, Agona Swedru for which same had been ruled upon.

The Respondent says that the Newly incorporated Company i.e Lucky Yeb Group of Companies dissatisfied with the Ruling of the Court when the incorporated Company applied to be joined to the suit claiming that the said property is not a matrimonial property but of the incorporated Company, filed appeal against the said ruling as per **Exhibit 3 and Exhibit 4**.

The Respondent further says that the Court Appeal in affirming the Ruling of the High Court, Agona Swedru, did indicate per paragraph 23 of the Ruling copy of which is attached as **Exhibit 5** said:

*"in our view, there is no better person capable of proffering cogent evidence to aid the trial Court in deciding matters concerning the Applicant Company than the Respondent by virtue of the positions he holds in the Applicant Company, as is evident from the record, the Respondent has not failed to defend the matter including the claim by the Petitioner for the distribution of the properties including Yeb Guest House and Yeb Oil. In fact the Respondent is actively participating in the proceedings. Apart from entering appearance to the Petition, the Respondent has also filed an answer disputing that the Petitioner has any interest in those properties."*

That in all these circumstances both the High Court and the Appeal Court did not see the conduct of the newly incorporated company as contemptuous neither did the Courts find any contemptuous act against the Respondent herein as per **Exhibit 4 and 5 supra.**

The Respondent says that the incorporation of Lucky Yeb Group of Company was done in good faith without any motive to overreach the decision of the Court on the substantive matter pending before Swedru High Court.

The Respondent contends that this very Court has not given any Ruling, Order for which same has been disrespected by the Respondent. According to the Respondent, the Applicant knowing very well that the Respondent has not done anything contemptuous before the High Court, Agona Swedru, that is why the Applicant clandestinely filed this application before this court and not the High Court, Agona Swedru, to create the impression that the Respondent has disrespected this court.

In his supplementary affidavit in opposition, the Respondent stated that the issue of illegality or legality of the alleged conversion of the Lucky Herbal Clinic to a company limited by shares has been set down for trial and determination per **Exhibit SY.**

In the case of **REPUBLIC V SITO I; EX-PARTE: FORDJOUR (2001-2002) SCGLR 322** the Supreme established that in an application for contempt, the burden of proof is beyond reasonable doubt just as in a criminal discourse. The party can only be shown to be guilty if there is an order or judgment of which he is aware that requires him to do or abstain from doing a particular thing or acted to obstruct justice.

In deciding this application one way or the other, it is important to examine the alleged conduct of the Respondent being complained of within the perspective of the law of contempt. The law is trite that any conduct that constitutes disobedience to an order of court or the Court's processes amounts to contempt of court.

Oswald on "CONTEMPT OF COURT" 2<sup>ND</sup> EDITION page 6 states of contempt of court in the following words:

*"...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 litigation"*

In his recent academic work on the "LAW OF CHIEFTAINCY IN GHANA INCORPORATING CUSTOMARY ARBITRATION, CONTEMPT OF COURT AND JUDICIAL REVIEW" S. A. Brobbey (JSC) at page 460 stated as follows:

*"An act or omission will amount to contempt of court if it tends to lower the authority of the court or to pre - empt or forestall the outcome and thus undermine the power of the court to determine the case as it deems fit".*

The rationale for relief when contempt is brought to the attention of the Court by an Applicant is to ensure that orders of the Court are enforced and the sanctity of its processes is not unlawfully abused. ALDRIDGE, EADY & SMITH ON CONTEMPT 2<sup>ND</sup> EDITION states at paragraphs 12 to 15 at page 736 as follows:

*"It is obvious that any civilized society depends upon the authority and effectiveness of orders made in its court. There is thus a public interest in seeing that orders are enforced. Civil Contempt cannot be considered therefore merely as a means by which individual litigants can enforce orders in their favour. The court has an interest on behalf of the community at large in ensuring that orders are not disobeyed...."*

Further Lord Diplock in AG VRS. TIMES NEWSPAPER LTD. (1973) 3AERpage 54 said as follows:

*"The provision of such a system for the administration of justice by the courts of law and the maintenance of public confidence in it are essential, if citizens are to live together in peaceful association with one another".*

It is always the duty of the Applicant to prove her case in a quasi-criminal action such as Contempt beyond reasonable doubt because a mere allegation without concrete prove is insufficient.

In the Supreme Court case of IN RE EFFIDUASE STOOL AFFAIRS (NO. 2) REPUBLIC VRS. NUMAPAU PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS; EX-PARTE: AMEYAW III (NO. 2) (1998 – 99) SCGLR 639 Holding 2) held thus:

*"Since contempt of court was quasi criminal and the punishment for it might include a fine or imprisonment, the standard of proof required was beyond reasonable doubt. An Applicant must therefore first make out a prima facie case*



*of contempt before the court could consider the defences put up by the Respondents”.*

At page 666 of the report, the Supreme Court in elaborating the principle further stated that:

*“...in this regard, an admission or proof of the factual allegation does not imply an admission of liability in contempt, as it would still be the burden of the Applicant to establish that the said actual allegations constitute contempt”.*

The Supreme Court per the case of IN RE EFFIDUASE STOOL AFFAIRS (NO. 2) REPUBLIC VRS. NUMAPAU PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS; EX-PARTE: AMEYAW III ( SUPRA) buttresses the provisions of SECTION 13(1) OF THE EVIDENCE ACT, 1975 (NRCD 323) which provides that:

*“In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt”*

In the instant case, it would have been prudent on the Respondent and the promoters to have hastened slowly in carrying out the terms of the agreement and not readily carry it through the manner it was done.

*I have examined the affidavit evidence adduced by the respective parties, the respective legal submission filed for and on behalf of the Applicant and the Respondent and the law, and hold the candid view that much as the conduct of the Respondent is replenished same does not meet the standard in a criminal discourse per SECTION 13(1) OF THE EVIDENCE ACT NRCD 343.*

Also, the issues raised are all subject to judicial pronouncement in the court, Agona Swedru for which reason will hasten slowly in order not to prejudiced the matter before the High Court, Agona Swedru.

Accordingly, the application to commit the Respondent to prison for contempt of court is refused.

No order as to cost.

(SGD)

JUSTICE ABOAGYE TANDOH

HIGH COURT JUDGE

COUNSEL

ABENA ANKOMAA ASOMANING ESQ, HOLDING BRIEF FOR CHARLES QUANSAH ESQ, FOR THE APPLICANT.

CHARLES OSWI DONKOR ESQ, HOLDING BRIEF FOR ISAAC AGGREY-FYNN ESQ, FOR THE RESPONDENT.

