

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 10TH DAY OF JULY , 2023 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI DORGU

SUIT NO: CR/0331/2022

THE REPUBLIC

VRS

LOIUS MACAIAH } RESPONDENT

EX-PARTE

SAMIRA MACAIAH (aka NEE NORSHIE) } APPLICANT

PARTIES: PRESENT

JUDGMENT

The Applicant herein, the divorced wife of the Respondent filed the instant application under Order 50 Rule 1 of the C.I 47 praying the Court to commit the Respondent afore-named for contempt of Court and punish him accordingly. The application is supported by a 17 paragraph Affidavit. To put the prayer into context, I quote and reproduce hereunder paragraphs 7 through 12 of the Affidavit in Support thus;-

“7. The Court made the following Orders:

- (a) The Applicant herein was granted custody of the children with reasonable access to the Respondent herein.
 - (b) The Respondent herein was to pay sustenance fee of GH¢1, 200 for the children a month and
 - (c) The Respondent herein was to secure a suitable accommodation and pay rent until the last child attains maturity or the applicant herein remarries.
- A copy of the Judgment is hereby attached and marked as Exhibit SM3
8. That the Entry of Judgment was filed on 12th December, 2019 and was served on the Respondent. A copy of the Entry of Judgment is hereby attached and marked as Exhibit SM4
 9. That the Respondent has knowingly consistently failed to comply with the Orders of the court, causing Applicant and the issues of their marriage great inconvenience
 10. The Respondent, in clear violation of the Judgment of the Court, has taken custody of three of the children of the marriage, namely Queenleo Esther Macaiah aged 18 years, King Louis Macaiah Jnr. Aged 17 and Princess Eastwood Anaba Macaiah aged 15 years. The respondent has denied me access to the children and has even refused to tell me where he lives with the children
 11. The Respondent has also refused to pay rent for notwithstanding the fact that the youngest child, Prince Enoch Hemans-Cobbinah Macaiah who lives with me is only 11 years. My Landlady sent me an eviction notice indicating that the Respondent had informed her that he would no longer pay the rent. A copy of the letter from the landlady is hereby attached and marked as Exhibit SM5
 12. The Respondent has also refused to pay the GH¢1, 200 a month as ordered by the Court and has unilaterally be paying only GH¢600 a month for the children. A copy of the notifications from the bank is attached and marked as Exhibit SM6 series”.

I must also indicate that in addition to the depositions in the Affidavit, the Applicant also annexed Seven (7) Exhibits but of material importance are Exhibits SM3, a copy of the judgment, SM4, the Entry of Judgment and SM5, a copy of the letter from the Landlady. It is the case of the Applicant that, the acts and omissions of the Respondent in their totality show the clear intention of the Respondent to overreach and outwit the Court and so is in clear contempt of the Orders of the Court as contained in Exhibit SM3 attached to the application.

In response and in defence to the charge of contempt, the Respondent herein also filed a 39 paragraph Affidavit in Opposition. The totality of the evidence as contained in the depositions is that the Respondent denied all the allegations and charges. I must state however that the majority of the Affidavit dwelt heavily on the divorce trial and the alleged conduct of the Applicant towards both Respondent and the children. These matters are strenuous and of little probative value in the defence of the contempt charges but I will refer to specific paragraphs in course of the analysis where it is necessary.

There is no gain-saying that the standard of proof in contempt cases is that akin to the standard in criminal trials and that is to say proof beyond reasonable doubt. This is so because the sanctions if convicted can be grave and penal in nature to the extent that one could also be imprisoned. In the Supreme Court case of BOAMAH ANSAH SIKATUO V. AMPONSAH (CIVIL APPEAL NO. J4/3/2011) reported in the [2012] SCGLR 58 @59 per Anin Yeboah JSC (as he then was). The Supreme Court rendered the standard thus:-

“The basic principle regarding the standard of proof for the offence of contempt of Court was well-settled. Since contempt of Court was quasi-criminal and the punishment for it might take various forms, including a fine or imprisonment, the standard of proof required was that of proof beyond reasonable doubt...”

The question then arises as to what needed to be proved to the standard aforementioned. To me, since this is contempt based on the alleged disobedience to a Court Order or Judgment, then the ingredients to be established and proved are as stated in the case of THE REPUBLIC VS. SITO 1; EX-PARTE FORDJOUR [2001-2002] SCGLR 322 where the Court laid down the ingredients as follows;-

“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 and

iii. It must be shown that he had failed to comply with the terms of the judgment or order and that the disobedience is wilful”

Now, I do not think there are any qualms about the existence of a Judgment with its consequential Orders upon which this application was based. Indeed, the Judgment was attached to the application as Exhibit SM3 and the Entry of Judgment also attached as Exhibit SM4. Paragraph 7 of the Affidavit in support of the application summarized the Orders made by the Divorce Court and entered as the Entry of Judgment as follows;-

- (a). The Applicant herein was granted custody of the children with reasonable access to the Respondent herein
- (b). The Respondent herein was to pay subsistence fee of GH¢1, 200 for the children a month and
- (c). The Respondent herein was to secure a suitable accommodation and pay rent until the last child attains maturity or the Applicant herein remarries”

These were the Orders the Respondent is alleged to have flouted, disobeyed or disregarded.

Again, I have combed through the whole of the Affidavits of the Respondent and nowhere do I find any indication that the Respondent disputes the existence of any Judgment and Orders. Indeed, the Affidavit in Opposition is a denial of the alleged charge or 'disobedience' and a justification of all the actions of the Respondent post-judgment which to him are in line with the demands of the Judgment. The existence of the judgment having been admitted, there is no need for any further evidence in proof and so I hold that the Applicant has been able to establish and prove the first ingredient of the existence of the judgment and its Orders. This is also the principle established in the SAMUEL OKUDZETO ABLAKWA & ANOR V. JAKE OBETSEBI LAMPTEY & ANOR'S CASE [2013-2014] 1 SCGLR 16 where the Supreme Court opined thus;-

"Where a matter is admitted, proof is dispersed with"

Now, again, from the Affidavit in Opposition, the Respondent knew what exactly was required of him by the Judgment and this is evidenced by the depositions of paragraph 7 through 10 of the Affidavit in Opposition thus;-

"7. That at the time of the Judgment, the two older children, Queenleo Esther Macaiah then aged 16 years but now aged 18 years and King Louis Macaiah, then aged 15 years but now aged 17 years were with me whilst the younger children were with the Applicant

8. That in compliance with the judgment of the Circuit Court, I sent the two older children to join the two younger children to live with the Applicant so the children were with her

9. That by the terms of the Judgment, the children were to visit and live with me during holidays

10. That not long after they moved from me to live with the Applicant, she started getting into disagreements and physical fights, blows with the children so the

two elder children moved out of the Applicant's house and I could not allow them to be on the streets homeless"

On the issue of accommodation also, the Respondent deposed to in paragraph 30 and 31 of the Affidavit in Opposition as follows:-

"30. That on the question of accommodation, after the divorce, when her tenancy was about to expire, I negotiated with the Landlord of the premises where the Applicant lives for a short extension whilst I looked for another apartment for the Petitioner and the children

31. That I got another apartment, a fine one for them which is close to the school of the children at the time in Tantra Hills but the Applicant turned it down, and whilst I was trying to find a replacement accommodation for them she filed an application before the Family Tribunal that I had refused to provide accommodation for them."

I therefore find this second ingredient also established and proved.

The final issue to establish is that, the Respondent knowing what was expected of him in terms of the Judgment failed, refused or neglected to obey same in total disrespect to the authority of the Court.

Now, on the issue of the Respondent taking custody of the Children without regard to the Orders of the Court, the Respondent denied flatly the allegation. I have also not seen the Applicant denying the deposition that after the Circuit Court Judgment, he voluntarily relinquished custody of the two elderly children who were with him to the Applicant. What came out clearly however is that, at the time of the application, the children, the three elderly ones were with the Respondent, on the face of it, in violation of the Court's Order. In view of the strong denial by the Respondent that he forcefully or tacitly took custody of the children from their biological mother the Applicant, the Court invited two of the children to testify to the events of their relocation. They are Queenleo Esther Macaiah aged 18 at the time of the testimony

and King Louis Macaiah, now aged 17. There is no point restating their respective evidence in toto. What is clear however is that, they left their mother's place (i.e the Applicant) as a result of frequent misunderstanding and hostile attitude displayed against them by the Applicant, to the extent of even physical abuse. I am thus satisfied with the testimony of the Respondent that he had no hand in the children relocating from their mother's place to the Respondent's place. Indeed, in Court, they have both disagreed on any suggestion of them going back to the Applicant's place.

Again, the Respondent's deposition as to the issue of the accommodation was not discredited. To me, the inability of the Respondent to provide the alternative accommodation is as a result of impediments put in his way by the very Applicant. The Applicant should not be allowed to in one breadth frustrate the Respondent and in another breadth accuse him of non-performance.

In the case of THE REPUBLIC V. BOATENG ODURO EX-PARTE AGYENIM BOATENG [2009] SCGLR 153 @ 161, the Supreme Court held as follows;-

"A person commits contempt and may be committed to prison for wilfully disobeying an Order of a court requiring him to do any act than the payment of money or to abstain from doing some act, and the order sought to be enforced should be unambiguous and must be clearly understood by the Parties concerned. The reason is that a Court will only punish as contempt a wilful breach of a clear Order requiring obedience to its performance, therefore disobedience which is found not wilful cannot be punished."

(See also the REPUBLIC. HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99] SCGLR 360

Indeed, going through all the evidence before me, I hold the view that the Applicant has failed to prove to the required standard all the charges levelled against the Respondent. To me, even in situations that the Respondent has fallen short of the full discharge of his obligations, they were at the instigation or due to the non-corporative

behavior of the Applicant. They cannot be wilful and the Applicant has fallen short of proving that they were indeed willful.

From the totality of the evidence before me, I find the charges of contempt not proved against the Respondent and I acquit and discharge him accordingly.

(SGD)

JUSTICE JUSTIN KOFI DORGU

(JUSTICE OF THE HIGH COURT)

LEGAL REPRESENTATION

MR. AKWAKWA HOLDING BRIEF FOR MR. EKOW EGYIR DADSON FOR THE APPLICANT

MR. J. OPOKU AGYEI FOR THE RESPONDENT

CITED CASES

BOAMAH ANSAH SIKATUO V. AMPONSAH (CIVIL APPEAL NO. J4/3/2011)
reported in the [2012] SCGLR 58 @59

THE REPUBLIC VS. SITO 1; EX-PARTE FORDJOUR [2001-2002] SCGLR 322

SAMUEL OKUDZETO ABLAKWA & ANOR V. JAKE OBETSEBI LAMPTEY &
ANOR'S CASE [2013-2014] 1 SCGLR 16

THE REPUBLIC V. BOATENG ODURO EX;PARTE AGYENIM BOATENG [2009]
SCGLR 153 @ 161

REPUBLI C. HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99]
SCGLR 360