

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/0329/2022

THE REPUBLIC

VRS

LOVELY NORKOR ARMAH } RESPONDENT

EX-PARTE

GEORGE KWABENA ADJEI } APPLICANT

PARTIES: PRESENT

JUDGMENT

In the course of a pending case at the High Court involving the Parties herein for reliefs which include declaration of title to a piece of land and order for perpetual injunction, the High Court, differently constituted granted an order of interim injunction against the Parties on the 23rd day of November, 2020.

Then on or about the 18th February, 2022, the Applicant herein George Kwabena Adjei took out the instant application under Order 50 rule 1(1) of the High Court (Civil Procedure) Rules, 2004 (C.I 47) praying the Honourable Court to convict and commit to prison the Respondent for contempt of Court. The Applicant supported his application with a 22 paragraph Affidavit in Support to which he attached several

Exhibits and a supplementary Affidavit filed with the leave of the Court on the 26th January, 2021.

The gravamen of the Applicant's case is as deposed to in the following paragraphs which I set down hereunder for their full effects. They are paragraphs 12 through to 20 of the Affidavit in Support to wit;-

- “12. That the Honourable Court on 23rd November, 2020 heard and granted the Applicant's motion for Interim Injunction
13. That the Respondent was in Court when the Motion for Interim Injunction was argued and granted
14. That the Court drew up the following Order restraining the Parties, their assigns, workmen etc. from building on the Land in dispute until the final determination of the suit
15. That attached herein and marked as Exhibit “GKA3” is a copy of the Order of the Court
16. That the aforementioned Order was served personally on the Respondent on 16th February, 2021
17. That attached herein and marked as Exhibit ‘GKA4’ is copy of the Affidavit of Service of the Order for Interim Injunction
18. That despite the fact that the Respondent was present in Court when the Orders were made and has been served with the aforementioned Order, the Respondent is still continuing with her trespassory acts over the plot of land and the half plot of land
19. That attached herein and marked as Exhibit ‘GKA5’ are pictures showing the Respondent developing the half plot of the Land despite the Order injuncting the Parties to maintain the status quo
20. That I am advised by my Lawyer and verily believe same to be true that the illegal entry, demolition and loss of property are illegal and an attempt by the Respondent to overreach the Honourable Court and disturb the status quo

21. That the Respondent's conduct is subversive of the authority of the Honourable Court and brazen affront to the rule of law for which the Respondent must not escape punishment".

I must also state that the Supplementary Affidavit also contains some depositions in paragraphs 20 to 23 which I will be referring to subsequently in this judgment.

The Respondent also upon service and as usual denied all the allegations that form the basis of the charges in a 17 paragraph Affidavit in Opposition. I will again be referring to the pertinent paragraphs in due course in this judgment for their full effect.

In the case of REPUBLIC V. HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99] SCGLR 360, the supreme Court speaking through Bamford-Addo JSC explained the concept of Contempt of Court as follows;-

"By definition, a person commits contempt and may be committed to prison for wilfully disobeying an Order of Court requiring him to do any act other than payment of money or 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 for contempt 'a willful breach of a clear order requiring obedience to its performance. Therefore disobedience which is found not to be wilful cannot be punished"

Flowing from the above definition, it is always necessary to make injunction orders with specifics so that the Court can be able to monitor any breach and to punish the party that offends the Order. In this particular case, the Order was without specification as to where exactly the Parties were prohibited from entering. Closely linked to that is which portion of the disputed land is being developed. This is so because by the Applicant's own showing per Exhibit GKA1, the Applicant herein who is the Plaintiff in the mother suit is now seeking a declaration of title to the land. Reliefs A and B of the endorsement reads;-

"a. A declaration that the Plaintiff is the owner of 1 (plot) of land situate at Oduman, near Amasam in the Greater Accra Region of the Republic of Ghana which the Defendant sold to the Plaintiff

- b. A declaration that the Plaintiff is the owner of the half plot of land situate at Oduman near Amasaman in the Greater Accra Region of the Republic of Ghana which the Defendant sold to the Plaintiff”

It must be noted that these declarations are yet to be made since the case is still pending. In the meantime, relief E of the same endorsement reads;-

- “E. Perpetual injunction restraining the Defendant, whether by herself, servants, agents, privies, whomsoever from entering on and/or encroaching upon the subject matter of this suit or interfering in any manner with the Plaintiff’s ownership of the said piece/parcel of land”

Now, it is instructive to note that the application for the interim injunction attached as Exhibit GKA2 also speaks of the half plot of land in terms of the endorsement. It is based upon these reliefs and depositions that the Court granted the interim injunction order attached as Exhibit ‘GKA3’ in the following terms;-

“It is hereby ordered that Parties in this suit are restrained from the further development of the land in dispute.

IT IS FURTHER ALSO ORDERED that Parties in this Suit, their privies, agents, assigns also are hereby restrained from doing anything which shall be prejudicial to the final outcome of the case.”

Since there is no description of the land, I take it that the land alluded to or referred to in the Interim Injunction Order is the half plot of land the Applicant is referring to. In paragraphs 18 and 19 of the Affidavit in Support which I reproduce hereunder, the Applicant deposed to as follows;-

- “18. That despite the fact that Respondent was present in Court when the Orders were made and has been served with the aforementioned Order, the Respondent is still continuing with her trespassory acts over the plot of land and half plot of land

19. That attached herein and marked as Exhibit 'GKA5' are pictures showing the Respondent developing the half plot of the land despite the Order injunctiong the Parties to maintain the status quo."

Now, in a supplementary Affidavit filed with the leave of the Court on 26th January, 2023, the Applicant further deposed to in paragraphs 22 and 23 as follows:-

"22. That on one occasion I approached one of the Respondent's agents in the person of Nana Yaw Ansah who confirmed to me that indeed it is the Respondent who authorized the construction

23. That attached herein is Exhibit 'GKA8' to 'GKA17' are pictures showing the Respondent's unlawful acts in the half plot of land"

Now, the Respondent in answering the allegations denied same and set up the denial in the following paragraphs of the Affidavit in Opposition thus:-

"10. The Respondent vehemently denies paragraph 18 of the Applicant's Affidavit in Support and says she has not trespassed on the said one plot of land which she admits belongs to the Applicant, neither has she entered on the half plot of land which is the subject of dispute before the Court

11. That the Respondent says rather it is the Applicant who had constructed a fence wall around the said half plot of land despite the injunction Order granted by the Court which restrained all Parties from dealing with the said land in issue (attached is a picture of the wall constructed and marked as Exhibit E

12. The Respondent denies paragraph 18 of Applicant's Affidavit in Support and says she is not the one in Applicant's Exhibit 'GKA5', neither are the individuals in the said picture her workmen or agents working on the disputed land

13. The Respondent in further response to paragraph 19 says the claim by Applicant as per Exhibit GKA5 that she is the one developing the said half plot of land is absolutely false and same should be disregarded"

I have accepted the fact that even though the injunction Order was ambiguous, there is an existing Order that prohibited both Parties from doing anything on the land. Both

Parties have acknowledged the existence of the said Order and the law is that, irrespective of the view one holds on the validity or otherwise of an Order of the Court, it ought to be obeyed until set aside and it is no defence in a charge of contempt to say that the Order was not valid.

Now that the existence of the order is acknowledged by both Parties, I accept that that element has been established and proved. This is the first ingredient in the case of REPUBLIC V. SITO 1; EX-PARTE FORDJOUR [2002-2002] SCGLR 322 where the Court laid down the ingredients to be proved as;-

- “(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 and
- (iii). It must be shown that he has failed to comply with the terms of the Judgment or Order and that the disobedience is wilful”

Having established the existence of the Judgment and Order, it is now incumbent on the applicant to, in this case, establish and prove that the person perpetuating the illegality is the Respondent or her agent, assigns, privies or workmen etc. and at her instigation or directions. This is crucial because the Respondent in this case has denied the allegation and rather shifted the activities to be that of the Applicant. (See the quoted paragraphs of the Affidavit in Opposition).

In the meantime, it is trite that this case being quasi-criminal with penal consequences if convicted, has its standard of proof akin to that of the standard in criminal trials and that is to say ‘proof beyond reasonable doubts’. The jurisprudence on this standard is well-settled and our case law is replete with them. For example in the case of BOAMAH ANSAH SIKATUO V. AMPONSAH (CIVIL APPEAL NO J4/3/2011 reported in the [2012] SCGLR 58 @ 59. The Supreme Court per Anin Yeboah JSC (as he then was) 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 is quasi-criminal and the punishment for it might

take various forms, including a fine or imprisonment, the standard required was that of proof beyond reasonable doubt”.

So also in the earlier case of REPUBLIC V. BOATENG & ODURO; EX-PARTE AGYENIM BOATENG [2007] SCGLR 151 @ 162 per Dotse JSC, the same principle was restated thus;-

“It is therefore clear that just as in criminal cases, an alleged contemnor is presumed innocent until proven guilty, so it is with contempt application”.

An Applicant must therefore adduce sufficient evidence, documentary or oral to establish the essential elements of the offence of contempt. An Applicant who fails to meet the required standard of proof beyond reasonable doubt must fail in his quest to have a contemnor convicted of contempt.

It is therefore settled that the burden in all contempt cases being criminal or civil is always on the Applicant and this burden is to prove beyond reasonable doubt the charges. There is absolutely no burden on the Respondent who as in criminal trials is only expected to raise a reasonable doubt in the case of the Applicant to gain an acquittal.

In this particular case, apart from depicting some development at an unidentified place, there is nothing in the said pictures showing the Respondent as the person who is engaged in the said developments. Similarly, the Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 has no person there as the Respondent and the unidentifiable workers on site in some of the pictures cannot be linked to the Respondent as there is no basis for that. At best, the Exhibit GKA17 is rather showing a man and the son who I presume is the Applicant at the site.

Now, the Applicant has also failed to call the Nana Yaw Ansah who allegedly told him that it was the Respondent who had authorized the construction as deposed to in the paragraph 22 of the Supplementary Affidavit nor procure Affidavit from him to substantiate this allegation. What this means to me is that in the light of the denial by the Respondent, the whole evidence turned on what is normally referred to as “oath against oath”. This of course means the applicant had not or could not discharge the

onus of proof placed on him to warrant a conviction since it is trite that where the evidence turns upon oath against oath, the benefit of the doubt inures to the accused and in this matter the Respondent.

In conclusion, I hold the view that the Applicant has failed to prove that the alleged developments are on the land in dispute and have failed further to prove that the said developments are being carried out by the Respondent cited and or his assigns, privies, agents etc. I find the Respondent not guilty of the charge of contempt of Court and hereby acquit and discharge her accordingly.

(SGD)

**JUSTICE JUSTIN KOFI DORGU
(JUSTICE OF THE HIGH COURT)**

LEGAL REPRESENTATION

HANS AWUDEY FOR THE APPLICANT

ALEXANDER QUARTEY FOR THE RESPONDENT

CITED CASES

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

REPUBLIC V. SITO 1; EX-PARTE FORDJOUR [2002-2002] SCGLR 322

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

REPUBLIC V. BOATENG & ODURO; EX-PARTE AGYENIM BOATENG [2007]
SCGLR 151 @ 162 per Dotse JSC,