

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

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SUIT NO: CR/0441/2022

THE REPUBLIC

VRS

KWASI SARFO	}	RESPONDENT
EX-PARTE		
LUCY DANSO	}	APPLICANT

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PARTIES: APPLICANT REPRESENTED BY DORA AMPADU

RESPONDENT PRESENT

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### JUDGMENT

On the 8<sup>th</sup> April 2022, the Applicant herein filed as application for committal for contempt of Court against the Respondent. The gravamen of the Applicant's case is captured in paragraphs 4 through to 10 of the Affidavit in Support which I reproduce hereunder for their full effects;-

"4. That the High Court Coram Comfort Kwasiwor Tasiame J. settled House No. OFC.142 located at Ofankor Accra on the Applicant. Simply put, the High Court adjudged that House No. OFC.142 as property of the

Applicant. Annexed herewith is a copy of the judgment and marked as Exhibit 1.

5. That indeed, the High Court proceeded to restrain the Defendant who was the husband of the Applicant and all people claiming through the said Defendant at page 13 of the said Judgment as follows

*"It is hereby ordered that, the Defnedant, his agents, servants, workmen, privies, assigns and anyone claiming through him are hereby restrained from entering and dealing in any manner with House No. OFC142 located at Ofankor"*

6. That after the said judgment the Applicant took control of same.
7. That thereafter the Applicant engaged workmen to renovate her said house.
8. That whilst the renovation work was ongoing, the Respondent who knew of the said judgment and order for perpetual injunction restraining the Defendant in the said judgment as well anyone claiming through the Defendant, cause policemen to disrupt the renovation work.
9. That the conduct of the Respondent is willful and calculated to undermine the adjudicative authority of this Honourable Court
10. That the conduct of the Respondent is a deliberate move and attempt to bring the administration of justice the sole preserve of this Honourable Court into disrepute".

Upon service of the application, the Respondent also filed a 17 paragraph Affidavit in Opposition and attached to it Exhibits in support of his case. I reproduce especially paragraphs 4 through 13 in support of the Respondent's case;-

- "4. That unless expressly admitted, I deny every material allegation of fact contained in the Affidavit in Support as if same have been set out in extensor and denied seriatim

5. That I am the legal and equitable owner of the subject matter land
6. That the judgment that the Applicant has referred to in paragraph 5 of his Affidavit in Support does not in any way related to the subject matter land of which I am the legal and equitable owner of.
7. That the subject matter land forms part of a larger parcel of land which was owned by my uncle the late David Danso, who until his death on the 31<sup>st</sup> December, 2020 was the ex-husband of the Applicant herein.
8. That during the lifetime of the late David Danso, he constructed the place of abode on a part of the land then reserved another portion which remained bare and undeveloped.
9. That during the lifetime of my grantor, he devised to me, the undeveloped portion of the land by a Deed of Gift dated 1<sup>st</sup> day of March 2016. Attached herewith is a copy of the Deed of Gift marked as 'Exhibit KS1'
10. That after my grantor had devised the subject matter land to me, he supervised my workers to construct a fence wall to demarcate my land from the portion on which he had constructed his place of abode. Attached herewith is a picture of the fence showing the demarcation between the two properties marked as 'Exhibit KS2'
11. That immediately after my acquisition in 2016, I moved into possession and constructed residential and commercial apartments on the land which are all presently on the land till date. Attached herewith are pictures on the buildings marked as 'Exhibit KS3A and KS3B'
12. That the construction of my building was done during the lifetime of my grantor and to the knowledge of the whole world including the Applicant

herein. Attached herewith are receipts showing the purchase of building materials for the building as Exhibits KS4 series (K4-K20)

13. That the Applicant is fully aware of my acquisition of the property during the lifetime of my grantor (her ex-husband) because my grantor even died before the Applicant obtained judgment in the suit referred to in paragraph 4 of the Applicant's Affidavit in support"

Subsequent to the Affidavit in Opposition, the Applicant again, albeit, without the leave of the Court, filed a supplementary Affidavit in Support to traverse the depositions of the Respondent in his Affidavit in Opposition. In this supplementary Affidavit, the Applicant denied any interest of the Respondent in the land in issue and further challenged the legality of the devise, assuming it was true of her late divorced husband in alienating portions of their matrimonial home property to the Respondent. In paragraphs 6 to 9 of the said supplementary affidavit, the Applicant deposed to as follows:-

- "6. I deny paragraph 5 of Respondent's Affidavit in Opposition and in further denial, I state that Respondent has absolutely no right or interest in the subject property and that he is only laying false claims following the demise of the applicant's ex-husband.
7. That I vehemently deny paragraph 6 of the Respondent's Affidavit in Opposition. In further denial, I say that the portion of the property being forcefully trespassed by the Respondent forms part of the larger property which has been justifiably settled in favour of the Plaintiff/Applicant herein by the learned Judge Her Ladyship Justice Comfort Kwasivor Tasiame J, High Court, Accra. Annexed herewith is a copy of the said judgment and marked as 'Exhibit A'
8. That I deny paragraph 7 of Respondent's Affidavit in Opposition. In further denial, I say that the subject land being trespassed upon by the Respondent

forms part of the larger plot of land jointly acquired by the Applicant and her ex-husband, who is now deceased. Annexed herewith is a copy of the Deed of Lease indicating their joint ownership and pictures of the property and marked as 'Exhibit B & B1

9. Paragraph 8 of the Respondent's Affidavit in Opposition is denied. Further, Applicant says that she, together with her ex-husband constructed their matrimonial home on a portion of their jointly acquired parcel of land and they erected fence wall around the entire parcel of land".

Now, in addition to the averments in the various Affidavits and Exhibits, both Counsel were given the opportunity to expand by way of viva voce arguments their respective positions as deposed to in their Affidavits. To me, the ultimate summary of the Applicants case before the Court is as canvassed on the 29<sup>th</sup> November, 2022 which I quote hereunder in details thus;-

"My Lord, the particular reliefs was as a result of the activities that I earlier spoke about and the presence of some family members who were not at the time constructing anything on the property. After the judgment was delivered, we discovered that the Respondent in this case started constructing on the compound of the house with speed and he was warned but he paid no heed. And when the Applicant decided to renovate the house which was given to her by the court of competent jurisdiction, the Respondent reported her to the Police, hence this application."

In responding to the viva voce arguments, learned Counsel for the Respondent dealt very much on the perceived procedural flaws in the Applicant's application which to him makes the application first and foremost incompetent. I will return to analyze these pretty soon if it is clear that the Respondent must be called upon to offer a defence. This is so because contempt, is a quasi-criminal action and the Applicant should be able to make out a prima facie case for the Respondent to be called upon to offer a defence.

On the substantive case, the Respondent submitted through his Lawyer that he has never trespassed on the Applicant's land and that whatever he is involved in on the land is as of right, having been granted the land by his uncle, the deceased husband of the Applicant to the knowledge of the Applicant. The Respondent denies the trespassory acts levelled against him and further contends that assuming without admitting that he did in fact trespass or committed the acts attributed to him, he did so without notice or knowledge of the injunction order since he was not a party to the suit giving rise to the injunction nor was he ever served with the supposed Order. The Respondent reiterate his prayer as disposed to in paragraph 16 of the Affidavit in Opposition thus;

"16. That I am further informed by my Lawyer and I verily believe same to be true that if indeed the Applicant is seeking to assert ownership of my land, then the Rules of this Court require her to issue a Writ and not to institute a contempt application" and so pray the Court to dismiss the application and award punitive cost against the Applicant".

As alluded to in the early part of this judgment, contempt is a quasi-criminal action and the standard of proof required of an Applicant to gain conviction of the Respondent is that akin to proof in criminal matters and that is to say; proof beyond reasonable doubt. This is so because a Respondent convicted of contempt is likely to suffer penal consequences including at worst imprisonment. Thus in the case of COMET PRODUCTS V. HAWKEX PLASTICS LTD [1971] 1 ALL ER 1141 at 1143-1144 (CA), the Court held thus:-

*"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".*

So also in the case of AKELE V. COFFIE & ANOR and AKELE V. OKINE & ANOR (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, there must be proof beyond reasonable doubt that a contempt has indeed been committed”.*

In a more recent case by the Supreme court in the REPUBLIC V. BOATENG & ODURO EX-PARTE AGYENIM BOATENG [2007] SCGLR 157 at 162 per Dotse JSC thus;-

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

Now, it is trite that contempt generally is constituted by any act or conduct that tends to bring the authority and administration of the law into disrepute as to disregard or to interfere with or prejudice parties, litigants and or their witnesses (See Oswald’s book on contempt of Court (3<sup>rd</sup> Edition) at page 6. Also the case of IN RE EFFIDUASE STOOL AFFAIRS (NO 2) REUBLIC V. NUMAPAU, PRESIDENT OF NATIONAL HOUSE OF CHIEFS & ORS; EX-PARTE AMEYAW (NO.2) [1998-99] SCGLR 639.

Quite apart from this general and variety of conduct that may constitute contempt, there is the other such as this, which in fact relates to the wilful disobedience of a Judgment or Order of a competent Court of jurisdiction. This type of contempt is spoken of in the case of the REPUBLIC V. HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99] 360 where the Supreme Court speaking through Bamford-Addo JSC rendered the principle thus;-

*“By definition, a person commits contempt and may be committed to prison for willfully disobeying an Order of Court requiring him to do any act other 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 for contempt a wilful breach of a clear order requiring therefore obedience to its performance which is found not to be wilful cannot be punished."* (Emphasis mine)

Again, the Supreme Court reiterated this very principle in the case cited by both Counsel to wit; the REPUBLIC V. SITO I ;EX-PARTE FORDJOUR [2001-2002] SCGLR 322 where it distilled the elements that constitute contempt of a Court Order thus;-

- "(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 had failed to comply with the terms of the Judgment or Order and that the disobedience is wilful"*

These are the applicable principles in this case where the Applicant is alleging the disobedience of the judgment and injunction Order of the High Court which Judgment is attached as Exhibit A to the Supplementary Affidavit filed on the 13<sup>th</sup> June, 2022. It is obvious from the records that no formal Order of Injunction was drawn up and served on the Respondent since from the face of the records, Kwasi Sarfo, the Respondent was never a party to the original case which has Lucy Danso v. David Nana Danso as the Parties. From the said Exhibit A, one can deduce that the instant contempt application is premised on a paragraph at page 13 of the Judgment which I quote hereunder in details for their full effect;-

*"It is hereby ordered that the Defendant, his agents, servants, workmen, privies, and anyone claiming through him are hereby restrained from entering and dealing in any manner with House No. OFC 143 C located at Ofankor".*



To put this Order into perspective, I will one more time set down paragraph 4 of the Affidavit in Support of the motion filed on 8<sup>th</sup> June, 2022 thus:-

“4. That the High Court Coram Comfort Kwasiwor Tasiame J. settled House No. OFC 142 located at Ofankor Accra on the Applicant. Simply put, the High Court adjudged that House No. OFC142 as property of the Applicant. Annexed herewith is a copy of the Judgment and marked as ‘Exhibit 1’”

Now, two questions arise out of the Applicant’s case. One is what property was settled on the Applicant by the Judgment in Exhibit A and (2) what is the complain of the applicant. Is it interference with the house or trespass onto the land. The second question becomes relevant since in the application itself, the complaint of the Applicant seems to be the interference in the renovation work of the applicant of the House No. OFC 142 Ofankor (See paragraph 8 of the Affidavit in Support) but in both the Supplementary Affidavit and its Exhibits as well as the viva voce submissions, the Applicant seems to have shifted her complaint to that of trespass into her lands.

Let me return to the first question of what was actually settled on the Applicant and this brings me to the reliefs sought at the trial. At page 2 of the Exhibit A where the learned trial Judge recounted the reliefs sought by the Plaintiff/applicant herein, she stated as item 2 “an Order that House No. OFC 142 –C located at Ofankor be settled on the Plaintiff”.

The Learned trial Judge listed this very request as part of the paragraph 15 of the Plaintiff’s Statement of Claim and under (a) of the said paragraph 15, we have ‘a six (6) bedroom house No. OFC 142-C Ofankor”

Again at page 9 of the Judgment Exhibit A, the learned trial Judge had this as her findings in the first paragraph, last sentence

*“It is therefore my holding that the Ofankor property was acquired during the subsistence of the marriage between the Parties”*

Without prejudice to the learned trial Judge's findings, this is an inconclusive finding when juxtaposed with the reliefs of the Plaintiff/Applicant. There was no prayer for any Ofankor property except the house identified as House No OFC 142-C, Ofankor Accra. This relief is definitely different from the property described in Exhibit B which is a lease between the Amlemona family of Ofankor and Mr.& Mrs. David Nana Danso dated 15<sup>th</sup> July, 2004. What to me that was settled on the Applicant by virtue of Exhibit A, the Judgment, is the House No. OCF 142-C Ofankor, Accra and not land. This deduction is in tandem with her wording in the Injunction Order where the property was identified as House No OFC 142-C located at Ofankor.

Having arrived at this decision, what is the evidence provided in support of the allegation that the Respondent did interfere or flouted the Plaintiff/Applicant's use of the House that was settled on her? I am afraid there is no evidence in support of that apart from the mere say so of the Applicant as deposed to in the paragraphs 7 and 8 of the Affidavit in Support of the motion. The Exhibit 'C' series which the Applicant attached to her supplementary Affidavit are of no probative value in as far as the interference with the quiet enjoyment of her property is concerned. They are pictures of alleged trespassory acts on the adjoining land of the settled property. In the meantime, I find as a fact that no property apart from the house was settled on the Applicant.

Perhaps, I will go along with the Respondent in saying that if the Applicant can hold the Respondent guilty or liable for trespass and for that matter in contempt, then she must first establish that the Judgment settled the whole of Exhibit B in her favour and that by virtue of that, she is the bona fide owner of the said property. And to me, this calls for a new suit seeking a declaration of title. For now and until then, I find and hold that the Applicant has failed to establish a prima facie case of contempt or interference with her property House No. OFC142-C Ofankor against the Respondent. Having thus failed the first hurdle, there is no need to engage the Respondent in any

defence. I will therefore refuse to consider the other elements of knowledge and the willfulness of the acts as they are rendered redundant with my earlier conclusion.

In conclusion, I find the charge of contempt not established and proved against the Respondent.

He is accordingly, acquitted and discharged.

I award cost of GH¢2, 000.00 against the Applicant in favour of the Respondent.

**(SGD)**

**JUSTICE JUSTIN KOFI DORGU**

**(JUSTICE OF THE HIGH COURT)**

#### **LEGAL REPRESENTATION**

IRENE ABORCHIE-NYAHE FOR THE APPLICANT

GEORGE ANKOMA MENSAH FOR THE RESPONDENT

#### **CITED CASES**

COMET PRODUCTS V. HAWKEX PLASTICS LTD [1971] 1 ALL ER 1141 at 1143-1144

(CA)

AKELE V. COFFIE & ANOR and AKELE V. OKINE & ANOR (CONSOLIDATED)

1979 GLR 84-90

REPUBLIC V. BOATENG & ODURO EX-PARTE AGYENIM BOATENG [2007]

SCGLR 157

IN RE EFFIDUASE STOOL AFFAIRS (NO 2) REUBLIC V. NUMAPAU, PRESIDENT  
OF NATIONAL HOUSE OF CHIEFS & ORS; EX-PARTE AMEYAW (NO.2) [1998-99]  
SCGLR 639.

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

REPUBLIC V. SITO I;EX-PARTE FORD]OUR [2001-2002] SCGLR 322