

18:07:2023.

IN THE HIGH COURT OF JUSTICE HELD AT SOGAKOPE ON TUESDAY 18TH
JULY, 2023 BEFORE HER LADYSHIP JUSTICE DOREEN G. BOAKYE – AGYEI
(MRS.) ESQ., JUSTICE OF THE HIGH COURT.

SUIT NO. E13/08/2023

THE REPUBLIC

-VRS-

- | | | |
|---------------------------|----|-------------|
| 1. JONN DZAKPATA | -- | RESPONDENTS |
| 2. JONATHAN TORDZRO | | |
| 3. FRANKO TORDZRO | | |
| 4. CORNELIUS TORDZRO | | |
| 5. SITSOFE DZAKPATA | | |
| 6. STEPHEN YAO TORDZRO | | |
| 7. BENEDICT BUBUNE TORNIE | | |
| 8. BEN DZAKPATA | | |
| 9. ISAAC ATSU NYEKU | | |
| 10. HAWKINS TORNIE | | |

EX-PARTE:

- | | | |
|------------------------------|---|------------|
| 1. PHILIP KOFI MOKLI – ADEWU | - | APPLICANTS |
| 2. ERNEST ADJANI | | |

PARTIES: -

PARTIES PRESENT EXCEPT 7TH RESPONDENT.

COUNSEL: - MR. ALFRED K. AGBESI FOR RESPONDENT PRESENT.

MR. NELSON M. KPORHA FOR APPLICANTS ABSENT.

JUDGMENT

INTRODUCTION

The Applicant's case is praying this Honourable Court to commit the Respondents herein for Contempt of Court. Applicants through the 1st Plaintiff filed an Affidavit in support as well as a supplementary affidavit in support. All the Respondents also filed individual Affidavits in opposition and one supplementary affidavit in opposition as well.

THE FACTS

The facts of this case are that the Applicants caused a Writ of Summons to be issued against the Defendants herein at this Court on 31st August 2021 for the following reliefs.

- i. Declaration of Title to all that piece of land situate and lying at Mafi-Avakpedome known as Aklidekpo family farm land bound as follows:
 - On one side with the Nyiwu Stream,
 - On another side with the Votroevoe Stream,
 - On yet another side with the Atiemoe Stream; and
 - On the last side with the Akoto tribal land.
- ii. Perpetual Injunction restraining the Defendants, their privies, assigns, agents, workmen etc from dealing with the land.
- iii. General damages
- iv. Costs including legal fees.

Subsequent to the filling of the Writ of Summons, the Applicants herein brought an application on notice on the 7th day of September 2021 praying the Honourable Court for an order for Interlocutory Injunction restraining the Defendants as Respondents whether by themselves, friends, allies, workmen, privies, assigns and any person(s) claiming title through them from claiming the land in dispute and also from carrying out any project of any nature on the said land until the final determination of the suit. Upon hearing the submission of the Counsel for the Applicants, the Court granted the application restraining both parties. The Court further ordered that “both parties herein, their agents, workmen, assigns and privies and anyone claiming through them are restrained from any new development on the land. No permanent structures are to be put on the land pending the final determination of the suit”.

According to the Applicants, they being law abiding citizens resolved not to deal with the land in any manner even though they had foodstuffs on same, ready for harvesting. That the 2nd Respondent, not giving any credence to the Orders of the Court, went ahead to engage the services of labour men to engage in the mining of oyster shells on the disputed land. They make a case that the Respondents, their assigns, workmen and privies also in willful disregard to the Orders of the Court are carrying out construction work on the land in dispute. That the Respondents have disregarded all warnings even though they are aware of the restraining orders but will not budge, hence the instant application to commit the Respondents for contempt of the orders of a court of contempt jurisdiction.

For their part all ten Respondents denied that they had disobeyed the orders of the Court or engaged in any conduct that was contemptuous or had brought the administration of justice into disrepute. 1st Respondent deposed that he had respected the Court’s Order dated 23rd day of November, 2021 and not done any of the acts leveled in this application. His case was that he had not done any acts contrary to the Court’s restraining order and that the land is the property of the

Defendants/Respondents which they inherited from their forefather. He concluded that he had not put up any new developments on the land.

The 2nd Respondent repeated what was said by 1st Respondent and he added that the Exhibit attached and marked as 7b showed him in the picture but nothing showed that he was mining Oyster Shells and he was just making a call on the road. He admitted that he visits the land which is their family farming land where he used to go to do farming, but this was not a violation of the Court Order. For the 3rd Respondent, he echoed 1st Respondent and added that the Court restrained both parties in this case from putting up any new development on the land with no permanent structures to be put up on the land pending the final determination of the suit. That he had obeyed the Court Order as contained in the restraining order.

4th Respondent contended that he had obeyed the Order of this Court restraining all parties in this case from carrying on any new development project on the land and also that no permanent structures are to be put up on the land pending the final determination of the suit. He said it was true that he brought caterpillar to clear his farm land which he had been farming for the past sixteen (16) years and also built a house on which he fenced the whole land in which his kraal is located. His case is that recently he cleared his land to lay pipelines for watering his onion project, but the machine shown in the picture – Exhibit 5a is not his, but for the Spring Aglow Company Ltd. which is into rice/vegetable production in the area. That even though Exhibit 5b shows him in the picture cultivating onion/maize, but he was not engaged in any development project on the land as was prohibited in the interlocutory injunction order. He contends that this Court never restrained the parties from farming on the land thus he has not disobeyed the Court's Order. On the part of 5th Respondent, he claimed that he had not done anything contrary to what this Honourable Court ordered in the restraining order. That though the land the subject-matter is their family land, he had not gone to the land to carry on any new development on the land. That all the

allegations leveled against him in the affidavit in support by the Applicants are not true and not applicable to him and he urged on the Court to discharge him.

6th Respondent initially filed an affidavit in opposition on behalf of all the Respondents and also filed the supplementary affidavit in opposition for himself and on behalf of the other Respondents as well. His case was that it was true that the Plaintiffs/Applicants filed a Writ of Summons in this Court and upon his application this Honourable Court on 23rd November, 2021 granted an Interlocutory Injunction and restrained both parties from “any new development on the land, no permanent structures are to be put on the land pending the final determination of the suit”. That contrary to the deposition of the Applicants, they had not violated the Order of this Court and were not putting up new development on the land as permanent structure. He contended that the photographs of the ‘building under construction and marked as Exhibits 6 series had no reference to them whatsoever, as it was not their work/building. That such a project/building is not for any of them and it might be for any other person from the Mafi- Avakpedome Community which is made up of about 100 different families.

He asserted that it is untrue that this Court granted any Interim Injunction order against both parties from having anything to do with the affected land and such an Order was never granted against subsistence farmers who have cultivated food crops on the land. That contrary to the Applicant’s deposition in paragraph 12, the Respondents have harvested their own cassava and that if the Respondents had harvested Applicants’ cassava as alleged, they would have reported them to police for stealing. That the 2nd Respondent had not hired labourers to mine Oyster Shells on commercial quantities on the disputed land and Exhibits PKMA 4 had no relevance/reference to him. Also that Exhibit PKMA 5 series had no reference to the 4th Respondent, but it rather showed the farm and machinery of a white man in the area as the 4th Respondent’s farm is far away from the farm shown in the pictures in paragraph 14 of the affidavit in support.

The Respondents denied that their conduct was reported to Togbe Kwaoinyi V or that Togbe's emissaries sent to Respondents were ever chased out with a cutlass by the 6th Respondent who prayed for Applicant to prove this. His case was also that the Respondents know nothing about Exhibit PKMA 6 series in view of the Order of the Court and the Respondents could not undertake any building project or any new development. According to him, their food crops for their daily use are on the farm in the disputed land and they go to the land to harvest their own crops, but not to undertake any development project. He contended that they have abided strictly by the terms of the Interim Injunction Order and they will continue to obey same and they have not committed Contempt of Court by which they should be punished.

In both the affidavit and supplementary affidavit in opposition, 6th Respondent contended that the Applicants are aware that this Honourable Court never restrained all parties from carrying on any agricultural activities on the land and so Applicant himself had gone on the land with machines on 30-01-2023 Monday to plough the land. He attached pictures herein and marked them as SYT1. 9 contending that the Applicants despite the pendency of this contempt application have been farming on the land as can be seen from the picture and the video attached to this supplementary affidavit in support. That the Applicants like the Respondents have also gone to the land to harvest crops like cassava , corn etc. to the knowledge of the Respondents since the Interim Injunction Order did not prohibit the parties from entering the land to carry on any farming activities. He also asserted that the Respondents have respect for the administration of justice and pray that this application be dismissed.

7th Respondent contends that he has never flouted the Court's order and has no intent of doing so. That the Court never ordered him and others not to carry on any farming activities on the land and that he had not carried on any development project on the land as alleged. That the land the subject matter of the suit is their family property and it contained farm produce before the Court's Order was made. That since the Court's

order was made, he had not set foot on the land and thus he was not in Contempt of this Honourable Court's Order. 8th Respondent in similar vein stated that he had respected the Court's Order dated 23rd day of November, 2021 and had not done any acts leveled in the application. That the land is the property of the Defendants/Respondent which they inherited from their forefathers. That he had not done any acts contrary to the Court's restraining order and had not put up any new development project on the land since the Order was made. 9th Respondent denies that he had engaged the 1st Applicant's daughter in a physical brawl when the said daughter of the Applicant attempted taking photographs of the Respondents contemptuous acts. The 9th Respondents says that he only objected to the lady taking a video of him when he was on his bicycle whilst returning from his farm and the lady could not explain the purpose of taking a video of him. That as per the Order of this Court dated 23rd day of November, 2021, he and others have been restrained from carrying on "any new development on the land". No permanent structures are to be put up on the land pending the final determination of the suit". That he had obeyed the Court Order and has not put up any building on the land.

The Respondents put the Applicants to strict proof of all the allegations of violation of the Interim Injunction Order of this Court.

THE APPLICABLE LAWS

Contempt of court has been defined as a conduct that interferes with or undermines the administration of justice. The conduct must be such as to undermine the authority of the rule of law generally.

Oswald on Contempt (3rd edition) at page 6 contains what is often cited as the locus classicus on contempt of court which is: "*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"

The Supreme Court defined contempt of court as follows; **In REPUBLIC VS. HIGH COURT, ACCRA EX-PARTE LARYEA MENSAH [1998- 99] SCGLR 360 at page 368**

"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 abstain from some act; and the act sought to be enforced should be unambiguous and must be clearly understood by the parties concerned"

The burden of proof in contempt proceedings is that of proof beyond reasonable doubt. In the case of **REPUBLIC VRS NII ACHIA II; EX- PARTE JOSHUA NMAI ADDO [2015] 83 G.M.J 13** it was held as follows; *"Without doubt, a contempt application is a quasi-criminal relief. Section 13(1) of NRCD 323 provides that, in any civil or criminal action the burden of persuasion as to commission by a party of crime which is directly in issue requires proof beyond reasonable doubt"*

The various elements or ingredients of contempt of court that an applicant must establish or prove has been laid down in the case of **REPUBLIC VRS SITO 1, EX-PARTE FORDJOUR [2001-2002] 322** as follows;

- *There must be a judgment or order requiring the contemnor to do or abstain from doing something;*
- *It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing;*
- *It must be shown that he failed to comply with the terms of the judgment or order and that his obedience was willful.*

See also REPUBLIC V MICHAEL CONDUAH EX PARTE SUPI GEORGE ASMAH, CIVIL APPEAL NO. J4/28/2012, 15TH AUGUST, 2013 (SC)

The conduct of the Respondents will be measured against the 3- tier test laid down in the Sito 1 case stated Supra. The first issue for consideration is whether or not there is a judgment or an order from a court of competent jurisdiction requiring the parties herein from abstaining from doing something or not.

From the Applicant's affidavit in support, it is evidenced that subsequent to an application for interlocutory injunction brought by the Plaintiffs/Applicants, this Honourable Court granted the application restraining both parties. The court further ordered that the parties, their workmen, assigns and privies and anyone claiming through them be restrained from any new development on the land. The court also stated that, no permanent structure is to be put on the land pending the final determination of the suit.

From the fore-going it is obvious that there is a valid judgment/order of a court of competent jurisdiction being this Honourable Court, which was to restrain the parties and their allies.

The second-tier question to ask taking inspiration from the Sito 1 case is whether the said judgment is known to the Respondents herein. From the records, it is evident that the Respondents herein are the Defendants/Respondents therein. The records show that they were represented by a Counsel as well and that they were in court when the ruling on the application was delivered by the Honourable Court. Even if they were not in court, they are all represented by the same Counsel and it is presumed that the decision of the court will be made known and explained to the Respondents by their Counsel.

In the case of **CLEVELAND V ALEXANDRA (1966) GLR 758**, the Court held that

actual service of a court order on the party alleged to have disobeyed it was not essential if it was shown that he might have known or knew of the order.

The third tier question to ask with regards to the Sito 1 case is whether the Respondents failed to comply with the terms of the Order and also whether the disobedience if any was willful. On 23rd November, 2021, the Court restrained both parties in this case from putting up any new development on the land with no permanent structures to be put up pending the final determination of the suit.

From the affidavit evidence, the Applicant deposed to facts and attached exhibits that the Respondents still went on the land in dispute, harvested the plants (cassava) cultivated on the land by the Applicants. That 2nd Respondents again weaned oyster shells on the land, some of which is capable of altering the nature and character of the land per the Exhibit **PMKA 1 series**. 2nd Respondent admitted being the one in the picture but asserted he was only making a call on the road but not harvesting Oyster Shells.

Applicant contends that Respondents not giving credence to the orders of the court willfully continued with the construction work on the disputed land as shown in **EXHIBIT PMKA 2A and PMKA 2B**. That the Respondents' acts evince clearly that their failure to comply with the orders of a court of competent jurisdiction is willful. 4th Respondent said it was true that he brought caterpillar to clear his farm land which he had been farming for the past sixteen (16) years and also built a house on which he fenced the whole land in which his kraal is. That recently he cleared his land to lay pipe line for watering his onion project, but the machine shown in the picture – Exhibit 5a is not his, but for the Spring Aglow Company Ltd. into rice/vegetable production in the area. That even though Exhibit 5b shows him in the picture cultivating onion/maize, he was not engaged in any development project on the land as was prohibited in the interlocutory injunction order. He contends that this Court never restrained the parties

from farming on the land thus he has not disobeyed the Court's Order.

6th Respondent had also said that the Honourable Court on 23rd November, 2021 granted an Interlocutory Injunction and restrained both parties from "any new development on the land, no permanent structures are to be put on the land pending the final determination of the suit". That the photographs of the 'building under construction and marked as Exhibits 6 series had no reference to them whatsoever, as it was not their work/building but might be for any other person from the Mafi-Avakpedome Community which is made up of about 100 different families. He asserted that it is untrue that this Court granted any Interim Injunction order against both parties from having anything to do with the affected land and such an Order was never granted against subsistence farmers who have cultivated food crops on the land as such the Respondents harvested their own cassava. All the Respondents stated that they had respected the Court's Order dated 23rd day of November, 2021 and had not done any acts leveled in the application. Their further contention was that the land is the property of the Defendants/Respondent which they inherited from their forefathers. That they had not done any acts contrary to the Court's restraining order and had not put up any new development project on the land since the Order was made.

Applicants urge on the Court that pending the determination of the contempt application, the Respondents are still carrying out their contemptuous activities on the land and were the Applicants also to carry out this very acts that are being done by the Respondents, there will be serious chaos and insecurity issues in the community, hence the Applicants who are law abiding citizens' quest for justice.

In the considered opinion of the Court, contempt which is a quasi- criminal offence has to be proved beyond reasonable doubt by the Applicants. The Court is concerned about the impunity with which the courts and its processes are treated with utter disrespect and disdain. This Injunction Order stated as follows:

".....and upon hearing Nelson Mawutor Kporha Esq. Counsel for the Plaintiffs/Applicants herein, and also hearing Alfred Kwame Agbesi, Esq. Counsel for the Defendants/Respondents herein the application is granted restraining both parties.

IT IS HEREBY ORDERED that both parties herein their Agents, Workmen, Assigns and Privies and anyone claiming through them are restrained from any new development on the land. No permanent structures are to be put on the land pending the final determination of the suit".

The Applicants attached several pictures to their application and alleged that those pictures are in reference to the Respondents' activities on the land after the grant of the restraining order. Such an order cannot be understood by parties that they are not to harvest foodstuffs like cassava already planted on the land. This Application is brought on disobedience of the Court Order Exhibit PKMA 2.

S. KWAMI TETTEH in his book CIVIL PROCEDURE A Practical Approach, page 612 stated the law as follows:

"There must be judgment or order requiring the contemnor to do or abstain from doing something..... it must be shown that the contemnor knows precisely what he is expected to do or abstain from; and it must be shown that he failed to comply with the terms of the judgment or order and that his disobedience is willful.."

"The Court must be satisfied the Order is clear and ambiguous, and the breach is proved beyond reasonable doubt; an unintentional or accidental act will not ground committal..."

The Applicants have annexed a picture of a new structure on the land but what they have not succeeded in doing is to link any of the Respondents to the alleged new structures or

developments on the land. It is indeed instructive to note that the Respondents have denied ever harvesting cassava and Oyster shells belonging to the Applicants and the alleged new structure is not for any of the Respondents. This has not been proved beyond reasonable doubt. The Applicants have not proved to this Court beyond reasonable doubt that the Respondents have carried on any new development on the land or put any permanent structures on the land. The Order of the Court is clear and it never prohibited the harvesting of cassava or Oyster shells.

The Supreme Court in the case of: **RE: EFFIDUASE STOOL AFFAIRS (NO.2) EX-PARTE AMEYAW II (1998- 1999) SCGLR 639** per Acquah J S C stated:

In brief, contempt is any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the Court and respect for its authority.

See **REPUBLIC VRS BOATENG AND ODURO: EX-PARTE AGYENIM-BOATENG & OTHERS (2009) SCGLR 154, REPUBLIC VRS NII ACHAI II, EX-PARTE JOSHUA NMAI ADDO (2015) 83 GMJ 13 and REP V HIGH COURT ACCRA, EX-PARTE LARYEA MENSAH (1998- 1999) SCGLR 360.** This states that the order sought to be enforced should be unambiguous.

In this case under consideration, it is the candid and considered opinion of this Court that the Order of the Court sought to be enforced was clear that no new development and/or structures were to be put on the land pending final determination of the suit. This Court never ordered the parties not to enter the land to harvest already planted cassava. Indeed the Respondents filed supplementary affidavit in opposition to the motion on 22-02-2023 seeking to show that the 1st Applicant Philip Kofi Morkli-Adewu himself with machines was cultivating the land - Exhibit SYT-1. Surprisingly, 1st Applicant did not seek leave to react to and or deny this assertion.

Proof in Contempt Proceeding is one beyond reasonable doubt. Have the Applicants proved beyond reasonable doubt that any of the Respondents flouted the Orders of this Court? The Applicants have woefully failed to do so and they have not discharged the burden of persuasion envisaged under the Evidence Act Section 13. The Court will therefore dismiss the application and discharge all the Respondents accordingly.

(SGD.)

**DOREEN G. BOAKYE-AGYEI MRS. ESQ.
JUSTICE OF THE HIGH COURT**

CASES CITED

**REPUBLIC VS. HIGH COURT, ACCRA EX-PARTE LARYEA MENSAH [1998- 99]
SCGLR 360 at page 368**

**REPUBLIC VRS NII ACHIA II; EX- PARTE JOSHUA NMAI ADDO [2015]83 G.M.J
13**

**REPUBLIC VRS SITO 1, EX-PARTE FORDJOUR [2001-2002] 322 *REPUBLIC V
MICHAEL CONDUAH EX PARTE SUPI GEORGE ASMAH, CIVIL APPEAL NO.
J4/28/2012, 15TH AUGUST, 2013 (SC)***

CLEVELAND V ALEXANDRA (1966) GLR 758,

**RE: EFFIDUASE STOOL AFFAIRS (NO.2) EX-PARTE AMEYAW II (1998- 1999) SCGLR
639**

**REPUBLIC VRS BOATENG AND ODURO: EX-PARTE AGYENIM-BOATENG &
OTHERS (2009) SCGLR 154, REPUBLIC VRS NII ACHAI II, EX-PARTE JOSHUA
NMAI ADDO (2015) 83 GMJ 13**

REP V HIGH COURT ACCRA, EX-PARTE LARYEA MENSAH (1998- 1999) SCGLR

360.