

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE, HELD AT KASOA-OFAAKOR  
ON MONDAY THE 31<sup>ST</sup> DAY OF JULY, 2023 BEFORE HER LADYSHIP JUSTICE  
DOREEN GENEVIEVE BOAKYE-AGYEI, (MRS.) JUSTICE OF THE HIGH  
COURT '2'

SUIT NO. E1/OHC/180/2023

THE REPUBLIC

*VERSUS*

CHARLES KWESI GRAHAM                   ...                   RESPONDENT

EX-PARTE: AYITEY KOKU DOVI           ...                   APPLICANT

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**PARTIES**

Respondent Present

Applicant Present

**COUNSEL**

Mr. Noah Amedome Gaikpah Esq. for the Applicant – Present

Mr. S. K. Amoah Esq. for Respondent - Present

## JUDGMENT

Before the Court is a Motion by Applicant to Commit for Contempt of Court the Respondent. In this case, an Interim Order was granted against Respondent restraining him together with his assigns and agents from developing, entering upon, dealing with, alienating or interfering with the land in dispute for a limited period of 10 days on 21<sup>st</sup> June, 2023. Applicant attached exhibits showing the date on which the interim order of this Court and an Application on Notice for Interlocutory injunction was also served on Respondent, through his Lawyer (also through the Lawyer's secretary). Applicant also attached a Statement of Case in support which upon an objection from Respondent's Counsel being overruled, same stayed as part of the record.

Applicant also attached photographs with works carried on by the Respondent after the service of the Court processes. The said contumacious behavior or works carried out were particularized in paragraphs 23 and 24 of the affidavit in support. The search conducted indicates that the processes were served on the Secretary of the Lawyer who had entered appearance. It is the case of Applicant that Respondent aware of the pending application as the Lawyer entered appearance for him with proof of service therefore, Respondent cannot pretend that he is not aware of the Orders of the Court and the processes filed.

Counsel also submitted that Notice of the action pending before the honourable Court and the application for interlocutory injunction yet to be determined, as per Order 25 Rule 1 of C. I 47, Respondent by working on the land in dispute while this application is pending, Applicant contends that Respondent deliberately flouted the Orders of this Court as it is prevalent in this jurisdiction. Counsel prays that the Court stamps its authority to bring respect and dignity of the Judiciary into this community to curtail the prevalence and the several cases of Contempt of Court as this is the only way to maintain law and order in society.

Respondent per Counsel was opposed to the Application as per the Affidavit in Opposition filed. Counsel submitted that as shown by the Search Report attached to the Application as Exhibit WD0, the Order for Interim Injunction and the Motion for Interlocutory Injunction were all served not personally on him, but through his secretary on 23<sup>rd</sup> June, 2023 and that the said secretary upon receipt put the processes on the file. That as soon as he got notice of the processes which is the Order for Interim Injunction and the Application for Interlocutory Injunction, he informed the Respondent about that and advised him to ensure that no work is done on the land in dispute pending the determination of the Application for Injunction.

Counsel did not disclose to the Court when exactly he became aware of said processes however. Counsel further submitted that Respondent told him that he informed a gentleman who was molding blocks on the land to stop work and the gentleman stopped work immediately. That the Respondent is therefore saying that he has not done anything to show disrespect to this Honourable Court for which he has the greatest respect.

It was the further submission of Counsel that in Contempt Applications, the Applicant must demonstrate that the Respondent had actual notice of the processes he is being alleged to have ignored. That in so far as the Applicant has not been able to demonstrate that the Respondent had actual knowledge and notice of the processes and yet ignored them, it cannot be said that the case of Contempt has been proved against the Respondent beyond reasonable doubt. Counsel contends that it was clear from the photographs attached to the instant Application that they are the same photographs that the Applicant attached to his Application for Injunction.

Their contention is also that the photographs do not demonstrate that the Respondent has done anything new on the land in disregard of the order for Interim Injunction as well as the Motion on Notice for Interlocutory Injunction.

Their further case is that if indeed the Applicant was desirous to ensure that the motion for interlocutory injunction as well as the order for interim injunction took their desired effect to be enforced on the Respondent immediately, the practice was to have served the Respondent personally not through the lawyer. Counsel urged on this Court to refuse the application as the notice should not be imputed but actual and that Contempt requires proof beyond reasonable doubt.

I have read all the processes filed and also heard from both Counsel for Applicant and Respondent herein as well as had due regard to the Law. The law is quite tritely known that Contempt is quasi criminal and requires the following elements which must be proved beyond reasonable doubt to succeed against an alleged contemnor;

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

(See the case of **REPUBLIC V. SITO I EX PARTE FORDJOUR (2001-2002) SCGLR 322**)

In the case of **REPUBLIC V. HIGH COURT, ACCRA; EX PARTE LARYEA MENSAH (1998-99) SCGLR 360** at page 368, the court explained contempt of court as follows: "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 doing some act; and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned:.

There is yet another form of contempt of court which has to do with the alleged contemnor attempting to or actually overreaching the court in such a manner as to

prejudice the outcome of a case which is pending before a court, or generally scandalizing the court or doing anything to bring it into disrepute.

Thus in the case of **REPUBLIC V. MENSA-BONSU & OTHERS; EX PARTE ATTORNEY-GENREAL (1995-96) 1 GLR 377 @ 403**, the learned Adade JSC stated;

“There are different forms of contempt. Underlying all of them, however, is one basic notion, that the roadways and highways of public justice should at all times be free from obstruction. Conduct which tends to create such an obstruction constitutes contempt. Thus interfering with witnesses or jurors; frightening off parties to litigation; refusing to answer questions in court; commenting on pending proceedings in such a manner as to prejudice the outcome; running down the courts and the judges; refusing to obey an order of a court, any of these, if calculated to, or tends to impede or obstruct the course of justice will constitute contempt. And conduct complained of therefore must be viewed and assessed against the backdrop of this basic principle.”

It is for our guidance that a reproduction of part of an observation made by His Lordship Justice Kpegah JSC in the case of **OSEI KWADWO II V. THE REPUBLIC (2007-2008) 1148 at page 1172; is important;**

“...This court cannot be oblivious to the social problems confronting this country now. It is in one word, indiscipline and in a few words disrespect for the law from the top of the pyramid to its base. I think the courts must step in now to save this country from the fate of the biblical Sodom and Gomorra and send a clear message to the citizenry that the law may be an ass but certainly is a respecter of none....”

In the case of the **DEEPSEA DIVISION OF THE NATIONAL UNION OF SEAMEN AND OTHERS V. TRADES UNION CONGRESS OF GHANA AND OTHERS (1982-83) GLR 941**, it was held that the court would only punish as contempt a breach of injunction if it was satisfied that the terms of the injunction were clear and unambiguous, that the defendant had proper notice of the terms and that the breach

of the injunction had been proved beyond reasonable doubt. Where the disobedience was unintentional or accidental, the court would not issue a writ for attachment.

See also **THE REPUBLIC V. BEKOE AND OTHERS; EX PARTE ADJEI (1982-83) GLR 91**, where it was also held that it was a legitimate defence to a charge of contempt that the person charged had had no notice of the order; a person could not be guilty of an order of the court of which he had had no notice. The applicant had failed to satisfy the court that all the respondents had notice of the order of the Judicial Committee prior to the date of the alleged contempt, either because they were present in court when the interim orders were made or that they were subsequently served on them. **Although, on the evidence, the respondents were represented by counsel before the committee, in matters of contempt, which would deprive the liberty of a subject, actual, but not imputed, notice of the specific terms of the orders must be proved.**

In that case the dictum of Lord Denning M. R. in CHURCHMAN V JOINT SHOP TEWARD COMMITTEE OF WORKERS OF THE PORT OF LONDON (1972) 1 WLR 1094 C. A. was cited.

In this case, the main issue to be considered would be the effect of interim orders and the application for the order for injunction on the instant application for contempt? There is no requirement of the law that if the Respondent had notice of the order, he could not be held to have breached same. However, from the Affidavit in opposition to the Motion, Respondent indicates nothing was served on him by way of Court Order and the Motion but was served on his Lawyer through the Secretary and the proof of service confirms this. If he continued development of the project after it actually came to his notice that would in effect overreach the Court.

Thus in the case **REPUBLIC V. MICHAEL CONDUAH; EX PARTE SUPI GEORGE ASMAH; Civil Appeal No. J4/28/2012** date 15<sup>th</sup> August 2013, unreported, the Supreme Court held that “the High Court had acted without jurisdiction in the first

place and accordingly vacated the order it had made over ten years earlier. However, the court held that as long as that decision had not been set aside the applicant had no reason to disobey it and so allowed the conviction for contempt to stand.

However, the standard of proof in contempt proceeding is well settled. Contempt of Court is a quasi-criminal process which requires proof beyond reasonable doubt. This is so whether the act complained of is Criminal contempt or Civil Contempt as was rightly stated in **COMET PRODUCTS UK LTD V. HAWKEX PLASTICS LTD [1971] 1 E R 1141** at page **1143, CA**. The Court in that case held as follows: “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.

The view that contempt of Court requires proof beyond reasonable doubt was rehashed in the case of **AKELE V COFFIE AND ANOTHER AND AKELE V OKINE AND ANOTHER (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 contempt, there must be proof beyond reasonable doubt that a contempt of Court had indeed been committed.

In **REPUBLIC VRS BOATENG & ODURO; EX PARTE AGYENIM-BOATENG & ORS [2009] SCGLR 154**, it was held that the court will not punish a person for contempt of court in the absence of a wilful breach of an order to do or abstain from doing something.

Also in **KANGAH V KYERE [1979] GLR 458**, the court held as follows; “ to obtain a committal order for contempt, the applicant must prove strictly beyond all reasonable doubt that the respondents had wilfully disobeyed and violated the court’s

order.....and in the absence of such evidence, the respondents could not be guilty of contempt”

In this case, in the Order for Interim Injunction granted by the Court on 21<sup>st</sup> June, 2023, the Court directed Plaintiff as follows: “Suit is adjourned to 10<sup>th</sup> July, 2023. The Writ of Summons, Statement of Claim, Application on notice for Interlocutory Injunction as well as a Hearing Notice are to be served on Defendants to be aware of the case and the pending application”.

Plaintiff chose to deviate from the Court order and to serve Defendant’s Counsel on record, he also not personally but through his secretary.

Because contempt of court is personal in that personal liberty is at stake thus notice is crucial, the Court requires actual notice on the alleged contemptnor and will not impute notice. Applicant ought to have served Respondent personally and not through his Lawyer on record who brought it to his notice later. The lawyer was not even served personally but through his secretary. Thus, regardless of the lapse in their office set-up, the Court will not hold it against Respondent who says he immediately ceased any further works once he got actual notice. This burden, however, the Applicant failed to discharge and on that score, the application is dismissed for want of proof of the Applicant’s claim beyond reasonable doubt. Respondent accordingly discharged. No order as to cost.

**(SGD)**

**DOREEN GENEVIEVE BOAKYE-AGYEI J. (MRS)**

**(JUSTICE OF THE HIGH COURT)**



CASES CITED

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

REPUBLIC V. MENSA-BONSU & OTHERS; EX PARTE ATTORNEY-GENREAL  
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DEEPSEA DIVISION OF THE NATIONAL UNION OF SEAMEN AND OTHERS  
V. TRADES UNION CONGRESS OF GHANA AND OTHERS (1982-83) GLR 941

THE REPUBLIC V. BEKOE AND OTHERS; EX PARTE ADJEI (1982-83) GLR 91,  
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