

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE, HELD AT KASOA-OFAAKOR
ON WEDNESDAY THE 26TH DAY OF JULY, 2023 BEFORE HER LADYSHIP
JUSTICE DOREEN GENEVIEVE BOAKYE-AGYEI, (MRS.) JUSTICE OF THE
HIGH COURT '2'

SUIT NO. E12/OHC/024/2023

THE REPUBLIC

VERSUS

ALHAJI IBRAHIM

RESPONDENT

EX-PARTE:

ANTWI BOSIAKO SENIOR

... APPLICANT

PARTIES

Respondent - Present

Applicant - Present

COUNSEL

Ms. Freda Osei-Darko Acquah Esq. for Applicant – Present

Mr. Robert Ishmael Aggrey-Fynn Amissah Esq. for Respondent – Present

JUDGMENT

Before me is a motion on notice praying the honourable Court to commit the Respondent to prison custody for contempt of court. From the record per the Exhibits, the Applicant caused a Writ of Summons to be issued against the Respondent on 22nd September 2022. The Respondent filed his Defence on the 18th of October 2022. On 20th February 2023, a motion for injunction was served on the Respondent and on 14th day of April 2023, the application was granted and the

Order was served on the Respondent for which a search at the Registry indicated that the Order was duly served on the Respondent.

It is the case of Counsel for Applicant that in spite of the Order, the Respondent is still working on the disputed land and that they have attached various evidence being Exhibits H and H1. Exhibits H and H1 shows a worker for the Respondent completing the foundation beam. Exhibits H2 and H3 is the construction of the Respondent at the foundation level. Exhibits H4 and H5 shows a tipper truck off-loading sand unto the disputed land to continue the project. Applicant's Counsel contends that from Exhibit D, the injunction application, there is a clear difference between the exhibits, i.e. when the Respondent was served with the injunction order and Exhibit H3. There has been an additional development, there is a piece of wood attached to the foundation and Exhibits H3, H4 and H5 where the Respondent is off-loading the sand on the same disputed property. Counsel asserts that Respondent only denied the existence of their claim but failed to show evidence that the disputed property is still the same after he was served with the Order.

On the part of Respondent per his Counsel who are opposed to the instant application, their basis is that the Respondent has not been wilful or acted disrespectfully to the Orders of the District Court. Counsel submits that when the application was served on the Respondent, it had an irregularity, specifically, it stated "application for perpetual injunction" and save for that they were not opposed to an interim injunction. That the Respondent has dutifully stayed off the subject property till date and they had seen the attachment by the Applicant, specifically Exhibit H series. It is Counsel's submission that it appears the dates have been superimposed on the images as they appear inconsistent on each exhibit which clearly shows that the dates are not contemporaneous with when the images were taken.

Respondent conceded that Exhibits H4 and H5 were by his orders however, it happened in January 2023 at which time no application nor order had been brought to his notice, thus it was quite surprising to him therefore to find 30th May 2023 on the face of the exhibit. The Respondent asserted that he is the bona-fide owner of the subject matter and will eventually be declared the owner and therefore he will not overreach and disobey the Court's Orders. He prays that this application fails.

As it is well known, 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. Contempt of Court may be committed intentionally or unintentionally. It is no defense to a charge of Contempt for a party to prove that he did not intend to commit contempt of Court.

Also in **REPUBLIC V MOFFAT; EX PARTE ALLOTEY [1971] 2 GLR 391**, it was held that it was no defense for a party facing attachment for contempt to swear to an affidavit deposing that he did not intend to commit contempt of Court.

Intentional contempt may arise in two ways:

- a. where a party willfully disobeys an order or judgment of a Court, and
- b. where a party knowing a case is sub judice, engages in an act or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an Order of the Court.

In cases of willful disobedience of an Order or judgment of the Court, the following elements have to be established:

- a. That there is a judgment or order requiring the contemnor to do or abstain from doing something;
- b. That the contemnor knows what precisely he is expected to do or abstain from doing and
- c. 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 1; EXPARTE FORDJOUR (2001) SCGLR 322**. In that case, His Lordship T.K. ADZOE stated as follows: “The type of contempt charged against the Appellant involves wilful disobedience to the judge or order, or other processes of a Court; it must import a demand to do or abstain from doing something. A refusal to comply with that demand of the Court is what constitutes the offence of contempt which the Courts consider as an obstruction to the fair administration of justice and also an affront to the dignity of the Court. The offence interferes with the administration of justice because it in effect denies a party his right to enjoy the benefits of the judgment or Order; it is an affront to the dignity of the Court in this sense that it is viewed as an act deliberately contrived to undermine the authority of, and respect for, the Court. And the law treats it as a quasi – criminal offence to vindicate the cause of justice. Some degree of fault or misconduct must be established against the contemnor to show that his disobedience was willful.

Also in **REPUBLIC V HIGH COURT ACCRA; EX PARTE LARYEA MENSAH [1998/99] SCGLR 360**, the Supreme Court held that for an act of a party to amount to contempt of Court, it must be established that he has been guilty of a willful disobedience or to have violated a specific order of a Court.

In the instant case, there was an order of the Court which was duly brought to the attention of the Respondent. Respondent agrees that this state of affairs is correct and that the acts complained of in the application and attached exhibits were sanctioned by him. His defense though is that those activities were undertaken before the application was put before the lower court where same was granted. That the pictures taken were superimposed with dates which were later in time and not contemporaneous with events so as to fix him with an act liable to amount to contempt.

The Court notes that the pictures in Exhibit B and C series before the District Court had the dates also put on the face of the photographs in the same manner as the Exhibit H series before this Court and the stages of development are clearly different. Respondent admits that the development carried out were upon his orders but denies the date they were undertaken as per the exhibits attached.

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

In the candid and considered opinion of the court, the Respondent is grasping at straws trying to make a big deal of how the dates appear on the pictures to say that those developments took place in January 2023 and not May 2023 because he was served with the Application for Injunction which culminated in Exhibit E, the interlocutory Injunction Order dated 14th April, 2023. This is not a compelling defence to this court and Respondent has been caught in conduct calculated to

dishonour and overreach the Court below so as to bring the administration of justice into disrepute.

Applicant has been able to prove the case against the Respondent beyond reasonable doubt and Respondent has admitted his actions save for the feeble and unacceptable defence of the timing. The Court accordingly convicts Respondent of contempt of Court and sentences him to a fine of GHC3000 in default 3 months in prison custody so he learns to respect the processes of the Court.

(SGD)

**DOREEN GENEVIEVE BOAKYE-AGYEI J. (MRS)
(JUSTICE OF THE HIGH COURT)**

CASES CITED

COMET PRODUCTS UK LTD V. HAWKEX PLASTICS LTD [1971] 1 E R 1141.

**AKELE V COFFIE AND ANOTHER AND AKELE V OKINE AND ANOTHER
(CONSOLIDATED [1979] GLR 84-90.**

REPUBLIC V MOFFAT; EX PARTE ALLOTEY [1971] 2 GLR 391.

REPUBLIC V SITO 1; EXPARTE FORDJOUR (2001) SCGLR 322.

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