IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT JUSTICE, (COMMERCIAL DIVISION), HELD AT ACCRA, ON MONDAY, 2ND FEBRUARY 2023, BEFORE HIS LORDSHIP JUSTICE CONSTANT K. HOMETOWU

SUIT NUMBER: CR/0243/2022

THE REPUBLIC

VRS

1.ASAFOATSE TETTEH HUADJI VI

2.SUPT ERNEST ACHEAMPONG RESPONDENT

EX PARTE

1. **ASAFOATSE AGYEMAN OKOFOROBOUR IV**
2. **NENE AZIZAH III APPLICANTS**
3. **NENE TEYE NARH-GBEEKU**

JUDGMENT

INTRODUCTION

The matter before the Court is a motion on notice for an Order of Committal for Contempt of Court, filed at the Registry of this Court on 21st January 2022, pursuant to Order 50 Rule 1 of the High Court [Civil Procedure] Rules, (2004) CI 47.

In the case of the **Republic v. Mensa-Bonsu & Others; Ex Parte Attorney-General [1995-96] 1 GLR 377@403**, the learned Adade JSC (*as he then was*) stated as follows:

"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 tend 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".

Thus, the first type of contempt is where there is a pending motion, seeking to restrain the parties from interfering with the *status quo*;

And the second scenario deals with the willful disobedience of a pending order or judgment of the court.

Parties' Submissions

APPLICANT'S CASE

In a 20-paragraph affidavit in support of the motion, 3rd Applicant, Nene Teye Narh-Gbeeku, on his own behalf and on behalf of the other **Applicants, deposed that 1st and 2nd Respondents willfully disobeyed an**

order of the Court (*differently constituted*) in Suit number E1/097/2021 entitled *Asafoatse Agyeman Okoforobour IV and 2 ors vrs Asafoatse Tetteh Huadji VI*. He deposed that on 5th November 2021, the High Court, Tema, presided over by Her Ladyship Justice Elizabeth Ankumah, granted an Order for Interlocutory Injunction and directed that "… *the Defendant, whether by himself, his servants, agents, assigns, workmen, privies or otherwise howsoever are restrained from carrying out any acts of trespass on their ancestral lands pending the final determination of the suit*".

He deposed further that 1st Respondent had notice of the said order by reason of the fact that he had notice of the pending motion for Interlocutory Injunction as well as the grant of same.

Similarly, 2nd Respondent also knew of the said Order because it was served on the Police Stations of Ayikuma and Doryumu, which are all under the command of the 2nd Respondent.

It is his further deposition that despite the fact that the order of Interlocutory Injunction was brought to the notice of 2nd Respondent, he went onto the land with heavily built armed Policemen with an excavator and demolished the ground floor pillars of the 3rd Applicant's house. He attached to the affidavit as Exhibit C, photographs showing the demolished house, allegedly caused by 2nd Respondent.

He was also alleged to have ordered his men to take away or steal an amount of GHC 250,000.00 seven heavy duty batteries, among others, belonging to 3rd Applicant. The photographs of the vehicles from which the batteries were stolen were also attached as Exhibit G.

Again, 2nd Respondent was alleged to have, with other Policemen, brutally assaulted 2nd and 3rd Applicant and his family members on their ancestral land at Asebi, arrested them, inflicted head injuries on them, and detained them at EMEFS Police station, under inhumane conditions. Photographs of the head injuries sustained by the suspects were attached as Exhibit D series.

He said "… the conduct[s] of the Respondents are willfully intended to obstruct justice to the Applicants … and must not go unpunished", as they constitute a clear violation of the Court Order.

RESPONDENT'S CASE:

In an affidavit in opposition filed on 12th July 2022, 2nd Respondent, then Chief Superintendent Ernest Acheampong, (No P02756), averred that he is the District Commander of the Dodowa District Police Headquarters, with the Ayekuma and Dodowa Police Stations under his command. He said Doryumu Police Station is not under his Command.

He deposed further that as Commander of these Police Stations, his duty was to maintain peace and security, protect life and property, in the areas under his jurisdiction, by taking orders from his Divisional Commander and other Superiors.

He denied all the allegations levelled against him by the Applicants, deposing that on 29th December 2021, he was instructed by his Divisional Commander to go and arrest some offenders, based upon a report made to him on 28th December 2021, by one Prince Sarpong.

He continued to narrate the part he played in the arrest of the said suspects. He said they arrested 12 suspects in total and sent them to Dodowa Police Station. He said further that all the complaints received and arrests made thereupon were entered into the Station Diary of the Dodowa Police Station. He attached a copy of the entries made in the Station Diary as Exhibit GPS 1. He also attached copies of the caution statements made by the suspects and witnesses as Exhibit GPS 2.

He denied the allegation of assault made against him; he also denied ordering his subordinates to make away with an amount of GHC 250,000.00 allegedly belonging to 3rd Applicant. He denied all other allegations made against him, including sighting the Order for Interlocutory Injunction.

At paragraph 24 of his affidavit in opposition, he deposed that "… although Ayikuma Police Station is under my command, I did not become aware of the Order as it is being alleged...."

He opposed the application on grounds that he has "… not done anything to prevent the Order of the Court from being carried out nor encouraged anyone to act in any way that will affect the effectiveness of the Court Order".

He prayed the Court to dismiss the application for an Order of committal for Contempt filed by the Applicants as without merit whatsoever.

The Court did not sight any affidavit in opposition filed by the 1st Respondent, even though it was referred to in the written submission filed by Learned Counsel for the 1st Respondent.

SUBMISSIONS OF THE PARTIES

APPLICANT'S SUBMISSION

In his written submission filed on 3rd October 2022 pursuant to the order of the Court, Learned Counsel for the Applicant, referring to case law, submitted that Applicants satisfied all conditions necessary for the Court to convict Respondents and sentence them to imprisonment – that is to say despite the pendency of the Order for Interlocutory Injunction, Respondents trespassed onto the land, caused injury to the occupants and made away with cash belonging to 3rd Applicant, among others.

On the standard of proof in contempt cases, he referred the Court to the case of **Comet Products UK Ltd v Hawkex Plastic Ltd**, where the Court held that

> *"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 case"*.

He was also emphatic in declaring that the Order was served on them and they willfully disregarded or disobeyed the said Order. This contumacious act on the part of Respondents, he alleged, calls for punishment by an order committing them for contempt of court.

He submitted further that it is clear that the acts of the Respondents by forcefully entering the ancestral land of the applicants and beating, destroying and taking away properties belonging to the Applicants

without any lawful authority amounts to contempt of the Honourable Court and that the Respondents must be punished.

Preliminary Objection

Counsel for the Applicants also raised 2 preliminary objections in his written submission relating to the processes filed by the Respondents.

1. First is that the exhibits attached to the processes filed by the Respondents were not exhibited with certificates of Exhibits, contrary to Order 16 Rule 14 of CI 47;

2. Secondly, the Lawyers for the Respondents failed to file their appointments as solicitors.

The Court has thoroughly considered the two preliminary objections filed by Counsel for the Applicants. In the humble opinion of the Court, Counsel for the Applicants raised these objections too late in the day to warrant setting aside the proceedings for irregularity.

I therefore dismiss the two preliminary legal objections and declare, pursuant to Order 81 of CI 47, that the failure on the part of Counsel for the Respondents to attach certificates of exhibits and also file their notices of appointment shall not be treated as an irregularity and thereby nullify the proceedings.

RESPONDENTS' SUBMISSIONS

Learned Counsel for the **1st Respondent** filed his written submission on 1st September 2022. He submitted that 1st Respondent had no notice of the

Order for Interlocutory Injunction until 15th February 2022, one clear month after Applicant filed the instant motion for Contempt of Court.

He said Applicants have also not proved that 1st Respondent was responsible for the stealing of the money or the demolishing of the building in question. He said "… the Applicants have not adduced a scintilla of evidence to prove that the listed items were stolen and that they were stolen by the 1st Respondent or upon his instruction".

He prayed the Court to hold that Applicants have failed to make out a *prima facie* case against the alleged contemnor and/or prove their case beyond reasonable doubt. He submitted that the motion should be dismissed as unmeritorious.

On his part, Learned Counsel for the **2nd Respondent** also submitted that his client only went onto the disputed land to cause the arrest of some suspects, in the performance of his duties, in order to conduct investigations into complaints made at the Dodowa Police Station.

Again, he denied the allegations of causing harm to 3rd Applicant and his family members as well as ordering his subordinates to steal monies belonging to 3rd Applicant.

He submitted further that the claims made against 2nd Respondent are vexatious and a fallacy, as he was only performing his duties, in his capacity as Commander of the Dodowa District Police Station, as mandated by the Constitution.

He prayed the Court to dismiss the application for committal for Contempt with punitive cost.

THE LAW ON CONTEMPT OF COURT

Contempt of Court is defined in the case of **the Republic v Moffat and Others, Ex Parte Allotey [1971] 2 GLR 391 – 340**, as follows: "… any conduct which tends to bring the authority and administration of the law into disrepute or to interfere with any pending litigation ... Once the respondent became aware of the pendency of the motion before the High Court, any conduct on their part which was likely to prejudice a fair hearing of that motion or interfere with the due administration of justice amounted to contempt of court".

In the same case, the court observed further that "… lack of intention to commit contempt is no defence, and I am satisfied beyond every reasonable doubt that all the respondents are guilty of contempt of court. Their conduct did not only prevent the court from discharging its judicial function but also brought the authority and the administration of the law into disrespect…"

For an application to succeed on a charge of contempt of court, it must be clearly established that

(i) there is a judgment or order requiring the contemnor to do or abstain from doing something;

(ii) the contemnor knows exactly what he is expected to do or abstain from doing;

(iii) that the contemnor failed to comply with the terms of the judgment or order and his disobedience is willful.

In the case of the **Republic v Moffat and Others Ex Parte Allotey**, the Court considered the second scenario in which contempt of court is committed where there is a pending motion seeking to restrain the parties from interfering with the subject matter of the motion, whether or not the Court has made a determination thereon.

This is the position of the law on contempt as clearly spelt out in **Ex Parte Fordjour and Moffat**.

Thus, the true litmus test for a court to convict for contempt of court is to ascertain whether or not the conduct complained of is one that willfully tends to bring the authority and the administration of the law into disrepute or disregard or to interfere with or prejudice parties.

In the case of **Heaton Transport (St. Hellen) Ltd vrs Transport General Workers Union (1972) 2 AER 1214 at 1247**, CA, Lord Denning stated the principle of willful disobedience in the following words:

"Being of a criminal character, the offence must be proved with the same degree of satisfaction as any criminal offence; it is not an absolute offence such as to be punishable without a guilty mind. It requires a guilty mind".

Again, the standard of proof required is proof beyond reasonable doubt.

In the Supreme Court case of **The Republic v Edward Acquaye aka Nana Abor Yamoah II, Ex Parte Kweku Essel and Others, Dotse, JSC, referring to the Supreme Court case of Effiduase Stool Affairs (No 2) the Republic v Numapau, President of the National House of Chiefs and Others, Ex Parte Ameyaw II (No 2) [1998-99] SCGLR 639**, said as follows:

"Since contempt of court was quasi-criminal and punishment for it might include a fine or imprisonment, the standard of proof required was proof beyond reasonable doubt. An applicant must therefore, first make out a *prima facie* case of contempt before the court could consider the defence put upon by the Respondent".

The issue for determination by the Court, in my humble opinion, is whether or not evidence of the alleged contemptuous conduct of the Respondents as contained in the affidavit in support of the motion as well as the exhibits attached meet the required standard of proof – proof beyond reasonable doubt - for the Applicants to secure conviction.

According to sections 10(2), 11(2) and (3) and 22 of the **Evidence Act, 1975 (NRCD 323)**, the only burden placed on the Respondent is for him to raise a reasonable doubt to avoid conviction.

It is pertinent to note that Respondents denied stealing or ordering someone else to steal the money; they also denied all other allegations levelled against them, including the service of the Order for Interlocutory Injunction on them, as being alleged by the Applicants.

With all due respect, the Court subscribes to the submission that it cannot be said that the Order for Interlocutory Injunction was served on the Respondents. It is true that the Order was posted on the walls of the Police Stations. Yet, it cannot be said that it was personally served on the Respondents. No evidence was provided by Learned Counsel for the Applicants to prove this fact.

On the contrary, evidence on the record, by way of entries into the Station Diary of the Dodowa Police Station, sufficiently proves that a complaint was made to the Police, which calls for investigation; besides, the caution statements made by persons arrested did not speak to the alleged contumacious conduct of the Respondents.

The denial by the Respondents of the alleged conduct raises a reasonable doubt and thus required Applicants to substantiate their allegation with additional evidence. In other words, the denial places a burden on the Applicants to discharge if their application is to succeed, for the Court to make a favourable finding in their favour. This categorical denial enjoins the Applicant to lead further evidence or point to other evidence already deposed to that would lead to a conclusion in their favour beyond reasonable doubt.

The scenario in the current application, referred to as "assertion and denial situation", falls on all fours with that described in the case of **Boamah & Ansah Sikatuo v Amponsah [2012] 1 SCGLR 60**, where the Supreme Court delivered itself as follows:

> *"In the face of the denial by the applicants, the respondents to the contempt application ought to have called further evidence in the matter or by seeking leave to have deponents cross-examined on their deposition which in such cases has the effect of evidence-in-chief, and not having done so, then the court was faced with an assertion and a denial situation that by the operation of the rules placed the burden of dislodging the effect of the denial on the applicant in order to sustain his application for contempt of court. His failure to do so, signaled the*

failure of his application for contempt of court as the appellants, the respondents to the application for contempt of court, were entitled in the circumstances to have the benefit of the doubt…"

Thus, the Court expected Counsel for the Applicants, as held in the Sikatou case, to call further evidence or to cross-examine the deponent of the affidavit so as to convince the Court enough to conclude that indeed the Respondents entered onto, stole monies belonging to one of the Applicants, or continued with construction work on the disputed land.

No such evidence was led, no further documentary proof was tendered into evidence to inextricably link Respondents to the alleged contumacious conduct. Having so concluded, it is needless to examine the conduct in the light of the other conditions stated in **Ex Parte Allotey**.

Even though Applicants attached photographs of the vehicles from which the batteries were stolen, photographs of the head injury caused, property being developed, among others, that alone does not suffice to secure conviction. Reasonable doubts have been created by the denial of the allegations and they still exist and must be cleared. The Court must be fully and totally convinced that indeed the Respondents were responsible for the alleged contumacious conduct.

In the case of **Faisal Mohammed Akilu v The Republic [Criminal Appeal No J3/8/2013**, delivered on 5th July 2017, Appau JSC (*as he then was*) observed as follows:

"We want to lay emphasis on the principle in criminal trials that: all reasonable doubts that make the mind of the court uncertain about

the guilt of the accused are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of "should I convict"', or "should I acquit" takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do, in such a situation, is to acquit, as required by law".

With all due respect, Applicants failed to meet the standard of proof required by law, which is proof beyond reasonable doubt, to secure conviction. Respondents cannot be said to be guilty of contempt of court, since Applicants woefully failed to discharge the burden of proving beyond reasonable doubt that Respondents entered the disputed land or continued to develop same. As a result, the Court is compelled to give Respondents the benefit of the doubt.

CONCLUSION

The Court is of the considered opinion that Applicants failed to convince the Court that indeed the Respondents disobeyed the Order of the Tema High Court (Land Division). The Court will fail in its duty of doing justice if it proceeded to convict the Respondents. It is said that justice must be done and must be manifestly seen to have been done. There is no room for conjecture.

Under the circumstances, the motion for an order for contempt of court is hereby dismissed as unmeritorious.

I make no orders as to costs.

(SGD)

Constant K. Hometowu

(Justice of the High Court)

Parties:

Ben Sevor, Esq. – Counsel for the Applicants;

Stephen Obeng Darko, Esq, - Counsel for the 1st Respondent.

Nancynetta T Asiamah, Esq, - Counsel for the 2nd Respondent.