IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) SITTING AT MANKESSIM ON FRIDAY, THE 17TH DAY OF FEBRUARY, 2023 BEFORE HER LADYSHIP, MRS. JUSTICE CECILIA N.S. DAVIS

SUIT NO. E13/02/2023

THE REPUBLIC

V.

EBUSUAPANYIN KWESI ANDZIE **RESPONDENT**

EX PARTE:

NANA NKUM V **APPLICANTS**

EBUSUAPANYIN BINEY

JUDGMENT

This is the judgment on an application for committal for contempt of the Respondents herein.

Per the affidavit in support of their application, the Applicants, who are the first and sixth Defendants in the substantive suit, stated that in 2017, the Respondent herein, who

is the Plaintiff in the substantive suit, had issued a writ of summons against them together with other Defendants, claiming a declaration of title to the land in dispute among other reliefs and that the trial in the matter has commenced.

They also stated that on 17th November, 2022, upon application, the Court granted them an order restraining the Respondent from entering onto the land in dispute or winning sand on same until the final determination of the suit on the merits. They tendered a copy of the injunction order as exhibit D and that a copy of the said order was served on the Respondent, as indicated in their exhibit E, a search report. They pointed out that apart from the fact that the order was served on the Respondent, the Respondent was personally present in Court when the order of the Court was read in open Court.

They claimed that in spite of the injunctive restraining order on the Respondent, he had gone ahead to instruct his agents to continue with their sand winning activities on the land in dispute before the Court and this time, at a faster rate. They stated that they reported the matter to the Police on 8th December, 2022 after which the Police went onto the land and took pictures of the sand winning activities on that very day. They tendered the Police statement as exhibit F and the photographs the Police took as the exhibit G series.

The Applicants pointed out that the behaviour of the Respondent is not only deliberate but also an attempt to undermine the administration of justice and to bring the duties of the Court into mockery.

The Respondent denied the claims of the Applicants and stated that he does not know anything about the sand winning activities on the land in dispute. He pointed out that granted that anybody is winning sand on the land, he/she is not his agent and he has not instructed anybody to do sand winning on the land. He pointed out that the exhibit G series came to his knowledge for the first time when he was served with same. He

stressed that he does not know the persons in the photographs wining sand and he cannot identify the specific area forming part of the land in dispute before the Court.

According to the Respondent, granted that sand winning is on-going on the land in dispute, he believes that it is being carried out by the other Defendants in the substantive suit or their cronies authorised by them.

He also claimed that the Applicants herein and/or the other Defendants in the substantive suit who have, after the injunctive orders of the Court, gone ahead to roof a building under construction and constructed the foundation of another building on the land in dispute. He tendered photographs to support his claim, marked as exhibits 1 and 1(a) respectively.

He pointed out that the Applicants have brought this instant action in utmost bad faith.

Counsel for the Applicants, in his oral submissions before the Court, contended that it is not true that the Respondent saw the exhibit G series for the first time when he was served with the application for contempt and its annexures as contained in paragraphs 4 and 5 of his affidavit in opposition and that he was served with similar photographs, the exhibit 2 series, in support of the motion for interlocutory injunction. He referred to such cases as The Republic v. Sito; Ex Parte Fordwor (2001-2002) SCGLR 322 and The Republic v. Brew (1992) 1 GLR 14 to support his arguments.

Counsel for the Respondent disagreed to the reference to the exhibit 2 series because they were not filed together with the instant application and therefore not properly before this Court for consideration of this application. He also reminded the Court that the Respondent does not have to prove anything and therefore the onus is on the Applicants to make out prima facie case by proving the guilt of the Respondent beyond reasonable doubt. He supported his arguments with such cases as the In Re Effiduase

Stool Affairs (No. 2) (1998-99) SCGLR 639 and also Kanga v. Kyere (1979) GLR 458. Counsel also pointed out that the title of the case was procedurally wrong without offering any reasons.

Counsel for the Applicants, in response, pointed out that documents in the substantive case can be referred to even if they have not been filed with the application for contempt, especially in the face of the recent directive by the Honourable Chief Justice that all contempt applications must be place before the substantive Judge for consideration.

Black's Law Dictionary, 7th edition at page 313 defines contempt as:

"1. The act or state of despising; condition of being despised and (2) conduct that defies the authority or dignity of a Court or Parliament."

It is the second definition and precisely the conduct that defies the authority or dignity of a Court that we are interested in.

In **Agbleta v. The Republic (1971) 1 GLR** 445, the Supreme Court cited with approval, the definition of contempt as stated in Oswald's book, titled "Contempt of Court", third edition at page 6, as follows:

"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 disrepute or to disregard or to interfere with or prejudice parties, litigants or their witnesses during litigation."

The objective of the law of contempt is to uphold the effective administration of justice. In **Dr. Patricio and Eileen Youri v. Justina Aboagye (2013) 67 GMJ 49,** the Court of Appeal stated the aim and purpose of the law of contempt as follows:

"The aim and purpose of the law of contempt is to protect the integrity of the justice system and the right of an individual litigant to have justice effectively administered."

At common law and in Ghana, the law of contempt of court has been classified in different ways.

In Ghana in particular, in the case of **In Re Effiduase Stool Affairs (N0. 2); Republic v. Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No. 2)(1998-99) SCGLR 639**, the Supreme Court authoritatively classified contempt of court into direct and indirect contempt on the one hand and civil and criminal contempt on the other hand. However, in Ghana, the basic distinction is between civil and criminal contempt.

In the **In Re Effiduase Stool Affairs** case, cited above, the Supreme Court stated that criminal contempt consists of acts, such as, those committed in the immediate view and presence of the court, such as insulting language or acts of violence or acts so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. Most of the acts which constitute criminal contempt can be found in the Criminal Offences Act, 1960 (Act 29).

Civil contempt, on the other hand, is the act arising from matters not occurring in or near the presence of the court but which tended to obstruct or defeat the administration of justice, such as, (1) conduct of a party which tends to bring the administration of justice into disrepute or (2) the failure or refusal of a party to obey the lawful orders, injunction or decree of the court laying upon him a duty of action or forbearance, in other words, failure to do something which that party was ordered by the court to do for the benefit or advantage of another party to pending proceedings.

It is the second type of civil contempt, i.e., the failure or refusal of a party to obey the lawful orders, injunction or decree of the court, laying upon him a duty of action or forbearance, in other words, failure to do something which that party was ordered by the courts to do for the benefit or advantage of another party to pending proceedings, which is in issue in this instant case.

Per the provisions of the 1992 Constitution, it is only the superior courts which have the power to try contempt of court cases. The power and authority of the High Court to commit a person for contempt of court is guaranteed by article 126(2) of the 1992 Constitution, section 36 of the Courts Act, 1993 (Act 459) and Order 50 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47).

It is trite that per the principles of the law of evidence and case law, civil contempt, i.e. disobedience of an order of the court, is a quasi-criminal matter because the punishment for it might include a fine or a term of imprisonment and therefore the standard of proof required is proof beyond reasonable doubt. In **Republic v. Bekoe & Others; ex parte Adjei (1982-83) GLR 91**, the Court held that:

"a civil contempt partook of the nature of a criminal charge because conviction might entail imprisonment. Consequently, the principle of law was quite clear that where a person was charged with contempt of court, his guilt should be proved with the same strictness as required in a criminal trial, i.e. proof beyond reasonable doubt."

This principle was also stated forcefully in the case of **Re Effiduase Stool Affairs (No. 2)** case cited above.

Again, section 13(1) of the Evidence Act, 1975 (NRCD 323) provides that;

"in any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue, requires proof beyond reasonable doubt."

In **Republic v. Boateng & Oduro; Ex Parte Agyenim-Boateng**, cited above, Dotse JSC had this to say:

"It is therefore clear that just as in criminal cases, in which an alleged contemnor is presumed innocent until proven guilty, so it is with civil contempt applications. 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."

Again, **in Agyenim Boateng & 27 Others v. S.K. Boateng (2009) MLRG 34**, the Supreme Court added that an applicant must therefore first make out a prima facie case of contempt before the court considers the defence put up by the respondents.

In the case of **Republic v. Sito I; ex parte Fordjour (2001-2002) SCGLR 322,** the Supreme Court laid down the following, as the essential elements that the Applicant must prove in order to succeed in an action for contempt of court:

"(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 precisely what he is expected to do or abstain from doing; and (iii) it must be shown that he failed to comply with the terms of the judgment or order and that (iv) the disobedience was willful."

In this instant case, the charge against the Respondent is that he has willfully disobeyed the lawful restraining or injunctive orders of this Court.

The Applicants' exhibit D is the order of interlocutory injunction, dated 29th November, 2022, against the Respondent herein, restraining the Respondent, *"whether by himself, his agents, privies, representatives, etc., from entering onto the land at all or carrying out any sand winning or doing anything that will interfere with the subject land before this Court, until the final determination of the suit on the merits."*

Applying the conditions to be satisfied for a successful contempt proceeding against an alleged contemnor as stated in the **Republic v. Sito case**, already cited above, it is my considered view that the above quotation was a clear, lawful and unambiguous order of the Court, expressly made, requiring the Respondent herein and his agents, to refrain from entering onto the land in dispute at all or winning sand on the said land or doing anything that will interfere with the subject land in dispute before this Court until the final determination of the substantive suit on the merits.

From the record before me, the Respondent was personally present in Court when the restraining order against him and his agents, etc., was read out in open Court by the Judge. Same was explained to him by the Court Interpreter. He was represented by Counsel and it was expected that his Lawyer would have explained the Court order and its import or implications to him and to ensure that he abides by the order.

According to the Applicants, even after the restraining orders, the agents of the Applicant continue their sand winning activities on the land at a faster rate. They said they reported the matter to the Police and they, together with the Police, went onto the land that same day, met the sand winning activities and took photographs of same, exhibited herein as the exhibit G series. The photographs show an excavator and a tipper truck on a vast land, claimed by the Applicants to be part of the land in dispute before this Court.

It is trite and this Court has taken judicial notice of the destructive effects of sand winning on any parcel of land. From the exhibit G series, it is my view that what is going on is illegal and indiscriminate sand winning on the land. Generally, such activity causes land degradation, air pollution and destruction of the ecosystem. Most farmlands have been lost to sand winning activities because it destroys the soil profile, damages the soil surface configuration and changes the topography of the land.

Manholes which are created by sand winners in most cases are not reclaimed, resulting in the land losing its value.

This also means, in my view that such an activity would seriously interfere with the subject land before the Court so that if such an activity on the land is not checked, it would destroy the nature and character of the land to the detriment of the party who would be declared as having a better title to same, after the substantive suit has been determined on the merits to its logical conclusion. That was why the Court granted the restraining order against the Respondent and his agents, etc., to protect the land until the substantive case is concluded to its logical conclusion.

The Respondent has denied that he knows anything about the sand winning activities on the land in dispute. He said that he has not authorised anybody to win sand on the land and he does not know those who are doing so and that the sand winning activity came to his attention for the first time when he was served with the application for contempt and its annexures.

Now it is the responsibility of the Applicants to prove the guilt of the Respondent beyond reasonable doubt, as it is done in criminal trials, in order to secure the conviction of the Respondent.

However, it is the principle of case law that proof beyond reasonable doubt does not mean proof to the hilt. In **Osei v. The Republic (2009) 24 MLRG 203**, the Court of Appeal held that the degree is not to reach a mathematical certainty in a criminal matter and that proof beyond reasonable doubt does not mean proof beyond the shadow of doubt.

Per the principles of criminal law and the law of evidence, there are various types of evidence that the prosecution may use in order to prove the guilt of an accused person

beyond reasonable doubt. These include documentary evidence, oral or testimonial evidence, demonstrative evidence, made up of information contained in pictures, maps, building and site plans, etc., as well as circumstantial evidence.

Now the evidence that the Applicants have put before this Court are mainly photographs showing people in an excavator and a tipper truck on the land, implying that there is sand winning on the land in dispute.

Per the exhibit G series, it is my considered opinion that there is no dispute about the fact that there is sand winning activity actually taking place on the land in dispute as claimed by the Applicants. From the response of the Respondent, in his affidavit in opposition, he has not denied that there is sand winning activity taking place on the land in dispute at all. His claim is that he did not know that there was anything like that going on on the land and that he became aware of such an activity on the land for the very first time when the application for contempt and the photographs annexed thereto were served on him. From the record before me, these processes were served on him personally on 29th December, 2022.

The people seen on the excavator and the tipper truck in the exhibit G series are definitely not the Respondent. The claim of the Applicants is that these people are agents of the Respondent and that he authorised them to win sand on the land in dispute. However, the Respondent insists that he does not even know them, let alone authorize them to do so. He also stated that he does not even know which portion of the land he is claiming in this Court which is being affected by the sand winning activities.

From the totality of the evidence before me, it is my considered opinion that it is not true at all that the Respondent got to know about the sand winning activities on the land for the first time when the application for contempt was served on him on 29th December, 2022.

From the record, in the course of proceedings in the substantive case, the Applicants filed a motion for interlocutory injunction with similar photographs, like the exhibit G series, which were duly served on the Respondent. Even though he had ample time to file an affidavit in opposition, he failed or refused to do so. Instead, he filed a document titled "Supplementary Affidavit" which from the contents of it was additional to a motion for interlocutory injunction he had filed since 2019 but which he had failed to move but which was not before me for consideration. There was even nothing in the "Supplementary Affidavit" making reference to the motion which had been filed by the Applicants herein against him. At the hearing of the Applicants' motion for interlocutory injunction, I rejected the "Supplementary Affidavit".

The failure or refusal of the Respondent to file an affidavit in opposition meant or implied that he had admitted to the claims of the Applicants as contained in their affidavit in support of the motion for interlocutory injunction. It is the principle of case law that a party who fails to file an affidavit in opposition is deemed to have admitted the facts as contained in the affidavit in support of the motion. See **Republic v. Court of Appeal; Ex Parte Tsatsu Tsikata (2005-2006) SCGLR 614.** The Court then considered the motion on its merits and made the order restraining the Respondents, his agents, etc., from winning sand on the land in dispute.

Counsel for the Respondent contended that because those photographs annexed to the motion for interlocutory injunction, the exhibit 2 series, were not filed with this application for contempt, then they are not properly before this Court and therefore cannot be considered for determination in this matter of contempt. I disagree because the exhibit 2 series were material processes which the Court considered in arriving at the decision to restrain the Respondent and others when it granted the order for interlocutory injunction.

It is my considered opinion that all applications for contempt always emanate from a substantive case before the court. Therefore, in the consideration of the application for contempt, the Court can consider all processes filed in the substantive case, especially those that have already come up for consideration and determination, based upon which certain decisions have been made by the Court. The fact that the application for contempt is contained in another docket different from the docket in which the substantive case has been filed does not make the information in the substantive docket not contained in the docket for the contempt application alien to the issues to be considered in the contempt application. It is ideal that all processes expected to be considered in the contempt application must be filed with it but if that did not happen, it does not bar or prevent the Court from making reference to any process or information contained in the substantive suit.

In any case, in his affidavit in opposition to this instant Application, the Respondent did not deny the fact that the motion for interlocutory injunction, which includes the exhibit 2 series were served on him as indicated at paragraph 5 of the Applicants' affidavit in support. He only denied paragraphs 10 to 20 of the Applicants' affidavit in support. Again, assuming without admitting that the Applicants' exhibit 2 series are not to be considered because it is not part of the processes filed in this instant case, the Applicants had filed the motion for interlocutory injunction itself with its supporting affidavit which clearly stated in bold at paragraph 9 that the Respondent and his agents are carrying on sand winning activities on the land in dispute.

From the record before me, the Applicants' motion for interlocutory injunction, exhibit C herein, to which the exhibit 2 series, which the Applicants claimed are photographs of sand winning activities on the land in dispute, was served on the Respondent before the order of injunction was made by the Court on 29th November, 2022, restraining him and his agents, etc. from winning sand on the land in dispute.

This leads me to the undisputable fact and conclusion that the Respondent knew or, at least, learnt about the sand winning activities on the land in dispute before 29th November, 2022, when the interlocutory injunction order was made against him and his agents, etc., by the Court.

Now, here is the Respondent, who is the Plaintiff in the substantive case, who has spent money and continues to spend same to bring the Applicants herein and five other Defendants to court, claiming that the land in dispute is for him and his family. From the record before me, the case has been pending before this Court since 2017 and the Plaintiff/Respondent herein has been consistent in ensuring that the case progressed steadily; always personally present in Court and is currently in the witness box, being cross examined by Counsel for the Defendants, including the Applicants herein. This means that he is very much interested in protecting his family's interest in the land and would want to make sure that nothing untoward happens to the land until the Court declares title in the land to 'his family' after the conclusion of the case on the merits.

Yet when he learnt about the sand winning activities on his land, since at least, 29th November, 2022, when the order of injunction was made against him, he did not even go to the land to ascertain the veracity of the claim. As I have already analysed above, it is trite and everybody knows and this Court has taken judicial notice that sand winning activities destroy lands; it creates huge manholes on the land which makes it to lose its value unless a lot of money is expended to refill those manholes before it can be put to any valuable or beneficial use.

However, the Respondent is saying that as the owner of the land, as he claims, between 29th November, 2022 when the injunction order was made against him and 29th December, 2022, when the application for contempt was served on him, a whole one month or four weeks interval after he learnt of the destruction of his land through sand

winning, he did not even bother to go onto 'his own land' to verify the sand winning claims of the Applicants or make sure his land is safe from any encroachment and therefore he had no idea of the sand winning activities on the land.

From my analysis of the Respondent's conduct after he got to know about the sand winning activities on his own land, at least, since 29th November, 2022, when the order of injunction was made against him, it is my considered opinion that it is not that the Respondent is not interested in what happens on 'his own land' whilst he is busy in court trying to protect his family's interest in same. Rather, it is because he knew about the sand winning activities on the land and he has authorised the persons found in the exhibit G series to win the sand on the land for him and therefore they are his agents in that regard.

In my considered opinion, it is not reasonably possible that the Plaintiff/Respondent herein, who is spending money to protect his family's interest in the land in dispute before this Court, would look on unconcerned or stand by for a destructive sand winning activity to take place on 'his land', even after his attention had been drawn to the said activity, whether or not the said land is in court, unless he had sanctioned or authorised same. It is my considered opinion that the circumstances of the case points to the fact that it is the Respondent herein who has authorised other persons to win sand on the land in dispute for him.

From the photographs in the exhibit G series, the sand winning activities on the land in dispute is not a hidden activity that can easily be covered up. This involves a huge excavator and a big tipper truck, which cannot be hidden, once they are on the land in dispute. Their activities on the land are glaring, in the open for all to see. The excavator and the tipper truck cannot even move easily to hide, once on the land and that is why the Police still met them on the land on 8th December, 2022, which date is after the

injunction order has been granted, still winning sand on the disputed land, in defiance of the Court order and was able to take enough photographs, the exhibit G series, to show.

From the record before me, especially from the exhibit G series, I am satisfied that the Applicants have been able to prove that there is sand winning activities on the land in dispute, even after the Respondent and his agents, etc., have been restrained by the injunctive orders of the Court. Now, the Court can infer from the conduct of the Respondent that he authorised the sand winning activities on the land for himself. This is because even after he learnt about it, as owner of the land, as he claims, he did nothing to stop or further prevent it in order to preserve the land. He even lied to the Court about when he got to know about the sand winning activity on the land in dispute. He claimed, in his affidavit in opposition, that he got to know about the sand winning activities on 'his own land' only in December 2022 when he was served with the application for contempt even though the record before me shows that in fact, he knew about it before the Court made the injunction order against him on 29th November, 2022 because he was served with the motion for interlocutory injunction and its annexures before the injunction order was made.

It is trite that proving the guilt of an accused person beyond reasonable doubt does not involve only the provision of oral and documentary evidence by the prosecution but also by circumstantial evidence. Circumstantial evidence is a series of facts from which may be inferred, presumed or deduced, the existence, non-existence or proof of another fact. Circumstantial evidence is not proof of the fact itself. It is the pieces or incidents of facts, considered or put together, which provide the basis for drawing conclusion, inference or deduction of the existence or non-existence of a fact. See "**Essentials of the Ghana Law of Evidence" @ page 253**, authored by the eminent Justice S.A. Brobbey

(JSC as he then was). In **Duah v. The Republic (1987-88) 1 GLR 343**, the Court of Appeal held that:

"In criminal cases, it was sometimes not possible to prove the crime charged by direct or positive evidence of persons present at the time the crime was committed. So where the testimony of eyewitnesses was not available, the jury was entitled and indeed permitted to infer from facts which the prosecution had already proved from other facts necessary to either complete the elements of guilt or establish innocence."

See also **Frimpong @Iboman v. The Republic (2012) 1 SCGLR 297.**

As I have already stated above, in this instant case, the Applicants have been able to prove beyond reasonable doubt the destructive sand winning activities on the land in dispute before this Court even after the injunctive orders have been made by this Court against the Respondent, specifically not to win sand on the land until the final determination of the case on the merits, as showed by the exhibit G series.

Again, from the fact of the sand winning activities on the land in dispute, this Court has been able to infer from the conduct of the Respondent – lying to this Court that he never knew about the sand winning on the land before the application for contempt was served on him and also not showing concern or doing anything about the destructive activities on 'his own land' even after he had become aware of same through the injunction processes served on him and the orders of the Court - that he has always known about the sand winning activities on the land because the persons winning sand on the land in dispute, as shown in the exhibit G series, are his agents in that regard and he had authorised them to win sand on the land on his behalf or for him. If he did not authorize those persons, upon learning of this destructive sand winning activity on 'his own land', the Respondent would have made every effort to stop them

immediately, instead of waiting to tell the Court when he got to know of it for the first time even though indeed and in fact he knew about it already.

From the evidence before me, the Respondent's action on the land was deliberate and calculated. He clearly and willfully disobeyed the injunctive orders of the Court with impunity. He believed that he can hide behind his agents and willfully defy the orders of the Court, restraining them not to win sand on the land. This is because he was sure, as he had been told, that once the Applicants did not see him personally or physically involved in the sand winning activities on the land, it would be difficult or impossible for them to prove same against him and that is why he authorised his agents to continue with the sand winning activities on the land in dispute, in clear defiance and disobedience of the orders of the Court with such impunity, thus undermining and bringing the administration of this Court into disrepute.

The Respondent has in turn, per his affidavit in opposition, pointed accusing fingers at the Applicants that they are also developing structures on a portion of the land in dispute. He tendered photographs labelled as exhibits 1 and 1(a) in proof.

However, a careful consideration of the Respondent's claims proves nothing against the Applicants.

At paragraph 9 of the Respondent's affidavit in opposition, this is what he wrote:

"*That on the contrary, it is the Applicants herein and/or the other defendants in the substantive suit who have in the face of the injunctive order gone ahead to roof a building under construction as well as construct the foundation of another as shown in the photographs exhibited herewith marked '1' and '1a' which is contemptuous and should not go unpunished."*

In my opinion, the Respondent's words *"it is the Applicants herein and/or the other defendants"* show that he is not even sure whether it the Applicants herein or the other

Defendants in the substantive suit or all of them together who are doing the construction he is alleging.

From the Respondent's own amended statement of claim in the substantive suit (exhibit A herein), the first to fifth Defendants are one set of Defendants on a portion of the land he is claiming whilst the sixth and seventh Defendants are another set of Defendants he is alleging are also on another portion of the land he is claiming. The first Applicant herein is the sixth Defendant whilst the second Applicant is the first Defendant in the substantive suit, meaning that they belong to the two different sets of Defendants in the substantive case, each occupying a different portion of the land in dispute, as alleged by the Respondent in his pleadings in the substantive suit.

In my opinion, it is therefore not possible that they have come together to construct one building or the other on a portion of the disputed land.

In any case, if the Court is to take the Respondent seriously on his claim against the Applicants, he was to prove, beyond reasonable doubt, what part each of the Applicants and/or the other Defendants in the substantive suit played in the construction he is complaining about in his exhibits 1 and 1(a). From the record before me, he did not do so.

In conclusion, I find, declare and hold that the allegation of contempt levelled against the Respondent by the Applicants has been proven beyond reasonable doubt. I find the Respondent herein guilty of contempt of court and he is hereby committed for the offence.

Accordingly, as punishment, I sentence the Respondent to a term of ten (10) days imprisonment. In addition, he shall pay a fine of GHC5,000.00, to be paid on or before 15th March, 2023 or in default serve an additional term of seven (7) days imprisonment.

I also direct that the Police shall arrest forthwith, the operator of the excavator and the driver of the tipper truck that they themselves found on the land in dispute on 8th December, 2022, as shown in the exhibit G series, charge and prosecute them under section 106(a) of the Minerals and Mining Act, 2006 (Act 703). This is because sand is defined as a mineral under the Act and any person who mines minerals otherwise than in accordance with the Act commits an offence and is punishable in accordance with the Act. If in the opinion of the Police, this Act is not applicable to the sand winning activities on the land in dispute, they may charge and prosecute them under any other appropriate law.

It is trite and this Court has taken judicial notice that illegal sand winning is an offence punishable by law.

I also direct that the Police shall continue to arrest anybody else found on any portion of the land in dispute winning sand after the date of this judgment, charge and prosecute him/her in accordance with the above Act or any appropriate law until the final determination of the substantive suit to its logical conclusion on the merits.

I award costs of GHC5,000.00 in favour of each of the Applicants against the Respondent.

SGD.

CECILIA DAVIS J.

JUSTICE OF THE HIGH COURT

LAWYERS:

1. **ISAAC AGGREY-FYNN FOR THE APPLICANTS**

2. **JOHN MERCER WITH FELIX ASSAN FOR THE RESPONDENT**