

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
JUSTICE, (COMMERCIAL DIVISION), HELD AT ACCRA, ON
MONDAY, 10TH JULY 2023, BEFORE HIS LORDSHIP JUSTICE
CONSTANT K. HOMETOWU

SUIT NUMBER: CR/0413/2022

THE REPUBLIC

VRS

1.GHANA MUSIC RIGHTS ORGANIZATION (GHAMRO)
2.ABRAHAM NORTEY ADJATEY : RESPONDENTS

EX PARTE

1.NANA BOAHENE A.K.A. STEBO
2. REV. MENSAH BONSU : APPLICANTS
3.KINGSLEY SARPONG
4.GLORIA DZIFA ASHINYO

JUDGMENT

INTRODUCTION

The matter before the Court is a motion on notice for an Order of Committal for Contempt of Court. It was filed at the Registry of this Court on the 30th of March 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”.

From the dictum above, it is clear that different types of conduct constitute contempt of court.

One type is where a party files a motion, seeking to restrain the other parties from interfering with the *status quo* or seeking a specific order from the Court and the respondents proceed to interfere with the subject-matter of the

motion, in disregard to the pendency of the motion, ahead of the adjudicating body taking a decision thereon.

Another type is the willful disobedience of an order or judgment of a court.

Parties' Submissions

APPLICANT'S CASE

In a 24-paragraph affidavit in support of the motion, deponent, Kingsley Sarpong, averred that on 7th December 2021, the applicants herein, who are plaintiffs in a suit before a court, (differently constituted) filed an application for interlocutory injunction, seeking an order to restrain the defendants (respondents herein) and their agents from conducting elections scheduled for 7th December 2021 or any other date, pending the determination of the substantive suit.

He deposed further that on 9th February 2022, the Court refused the application for interlocutory injunction.

Applicants, dissatisfied with the Court ruling, filed a Notice of Appeal on 18th February, 2022.

But prior to that, i.e., after the ruling of the Court on 9th February 2022, Respondents circulated an updated schedule of the elections on the WhatsApp platform of Ghana Music Rights Organization (GHAMRO), 1st Respondent herein, fixing a new date – 15th March 2022 - for the elections to be held.

The Applicants also filed a Motion for Stay of Execution with a return date of 9th March 2022. According to deponent, the said application for stay of

execution was duly served on the parties. A copy of the proof of service was attached to the motion and marked as Exhibit C.

On the return date their Counsel notified the Court that he wanted to raise a preliminary object to the application, on point of law. The Court therefore adjourned the case to 17th March 2022 for the objection to be heard.

It is deponent's further averment that on 11th March 2022, their Solicitor wrote a letter to the Respondents and requested them to desist from holding the elections on 15th March 2022, as such conduct was potentially contemptuous.

At paragraph 14 of the affidavit in support of the motion, deponent said "Before the application for stay could be determined, the Respondents, in defiance of the authority of court and out of disrespect to the court proceeded to hold elections on 15th March, 2022."

He averred further that the purported elections, which was a complete failure, amounts to an affront to justice and an attempt to put the administration of justice into disrepute.

He said, *inter alia*, that if the purported elections held on 15th March 2022 is allowed to stand, irrespective of the pending motion for stay of execution, the appeal pending and the motion for stay will be rendered moot and nugatory.

Deponent prayed the Court to commit Respondents to prison until they purge their contempt, as their conducts are inexcusably contemptuous.

RESPONDENTS' CASE:

In an affidavit in opposition filed on 28th February 2022, deponent Yaw Oxbon, National Coordinator of 1st Respondent, opposed the motion to cite

GHAMRO for contempt of court. He denied some of the allegations contained in the affidavit in support of the application.

At paragraph 13 of his affidavit in opposition, deponent averred essentially that after the Motion for Stay of Execution was served on them, they sought explanation from their Counsel as to how there could be a stay of execution of a ruling dismissing an injunction application. It is his further deposition that Counsel explained to them that since the ruling that dismissed the Applicants' application for interlocutory injunction "did not decide anything by way of rights or status of the Respondents that could be enforced by any of the known methods of execution, there could be no execution flowing from the refusal to grant the injunction".

According to deponent, based on the explanation offered by Counsel, they proceeded with the conduct of the elections on 15th March 2022, as scheduled.

He deposed at paragraph 17 that "we went ahead to conduct the election due to our mis-appreciation and/or the wrong interpretation of the explanation by counsel as to how a ruling dismissing an injunction application could be stayed."

He concluded that assuming without admitting that the 1st Respondent is in contempt by going ahead with the conduct of the elections, GHAMRO, 1st Respondent herein, has received a just punishment by the court setting aside the said elections.

2nd Respondent, Abraham Nuerthey Adjatey, opposed the application for committal for contempt, in his affidavit in opposition filed on 28th February 2022.

He deposed that as Chief Executive Officer of 1st Respondent, he was responsible for the day-to-day management of GHAMRO. He said following the expiration of the tenure of office of the immediate past directors of 1st Respondent on 17th March 2021, the governing board of 1st Respondent was handed over to him and some other members of Management until a new governing board was elected. He said further that following the holding of an Extraordinary General Meeting (EGM) of 1st Respondent on 19th April 2021, an interim board of directors was elected to take over the affairs of 1st Respondent. Again, a five-member Election Committee was appointed to oversee the conduct of elections.

It is his further deposition that "... my role in the election matters is merely nominal and I am not responsible for taking decisions on election matters".

It is his further averment that based on the interpretation of Counsel's explanation, the Election Committee went ahead with the conduct of the elections.

He again averred, among others, that he was not served with any letter from the Applicants' Lawyers requesting them to desist from holding the elections, as alleged.

He prayed the Court to dismiss the motion on notice for committal for contempt of court.

SUBMISSIONS OF THE PARTIES

Learned Counsel for the Applicants submitted, among others, that any conduct that tends to impede the free course of justice and brings the administration of justice into disrepute constitutes contempt. She further

argued that both Respondents knew about the pendency of the motion for stay of execution, filed by the Applicants and scheduled to be heard on 17th March 2022, and yet went ahead to hold the elections two days earlier, on 15th March 2022. She argued further that the fact that both Respondents, in their affidavits in opposition, said that the Election Committee went ahead to hold the elections, based on the explanation they received from Counsel, is an indication that they well knew about the pending motion. It is therefore her further submission that since both Respondents knew about the pendency of the motion for stay of execution, their conduct in holding the elections two days before the motion was heard interfered with the administration of justice.

She referred the Court to the case of **Aryeetey vs. Agbofu II & Anor [1994-95] GBR 250**, where the Court held as follows:

“The applicants having been served with the application deliberately stole the match by doing the very act the motion sought to restrain. While the motion was pending, it was disrespectful to the Ga Traditional Council for the first applicant to install the second applicant. Once the applicants have become aware of the pendency of the motion, any conduct on their part that was likely to prejudice a fair hearing of the motion was tantamount to contempt” [emphasis added]

She also referred the Court to the case of **Republic vs Bank of Ghana and 5 others; Ex parte Benjamin Duffour** (suit number J4/34/2018) where the Supreme Court stated that:

“One of the main objectives of the offence of contempt of court is to protect the dignity of the court. The courts have been set up to ensure peaceful settlement of disputes for the maintenance of law and order. It is in the general interest of members of the community that the authority vested in the courts to protect them is not trampled upon. Any act which therefore seeks to emasculate the authority of the courts should not be countenanced. The members of the community must at all times have confidence and hope in the authority of the courts to deliver justice. The concept of contempt of court is to prevent unjustified interference in the authority of the court. It is also designed to prevent any act which seeks to damage the dignity of the court. Contempt of court is not there to protect the dignity of anyone individual person but the overall dignity of the justice delivery system”

Learned Counsel for the Applicants further submitted that the attempt by the Respondents to feign ignorance for the contemptuous act is a ruse, meant to throw dust into the eyes of the court.

She prayed the court to punish Respondents severely since their conduct is not only disrespectful to the court but is also an affront to justice.

Learned Counsel for the Respondents submitted that the elections conducted by the Respondents did not amount to an execution of any orders of the court. As such, the holding of elections cannot be construed to be an obstruction of justice or show of disrespect to the court.

He stated further that the court’s ruling of 9th February 2022 did not decide anything by way of rights or status of the Defendants which could be executed or enforced by any means, such as by writ of *fieri facias* (fi-fa),

garnishee proceedings, charging orders, appointment of a receiver, writ of sequestration and an order for committal for contempt.

In his opinion, the ruling did not also require the Defendants to do or abstain from doing anything failing which they could be committed for contempt of court.

He said “the question of stay of execution therefore did not arise since there could not be any execution flowing from the refusal to grant the injunction. Accordingly, the conduct of the elections did not amount to an execution of the ruling of the court, which ruling was not an executable one”.

He prayed the court to dismiss the motion for contempt as unmeritorious.

As stated earlier, there are different types of contempt of court.

1. Where a court order or judgment is willfully disobeyed;
2. Where there is a pending application seeking an order to restrain a certain conduct and Respondents disobeyed the existence or pendency of the said application.

In the instant case, the second scenario is applicable - the pendency of the motion for stay of execution and the decision of the Election Committee to proceed to hold the said elections two (2) days before the scheduled date for the motion to be heard.

Thus it is crystal clear that the written submission of Learned Counsel for the Respondents is clearly off the mark. His submission was in reference to the first scenario, whereas the matter at hand relates to the second scenario.

The issue before the court is whether or not by proceeding to hold the elections, Respondents interfered with the administration of justice as a result of the pendency of the motion for execution before the court.

From evidence on record, particularly the affidavit in opposition filed by the Respondents and the exhibits attached to the motion for contempt, it is clear and undisputable that 1st Respondent went ahead and conducted the election, in disobedience and disrespect of the pending motion. It is no defence to argue that their Counsel gave them an explanation which was interpreted to mean that they could proceed to conduct the election. The simple truth of the matter is that there was a pending motion in the matter and as such proceeding to conduct the election is a clear disruption of the path of justice, an interference in the administration of justice, conduct which is contumacious. What cannot escape the eyes of the court is the fact that the said election was conducted just two (2) days before the date scheduled to hear the pending motion. This action or conduct seriously interfered in the administration of justice. 1st Respondent should have postponed the elections, and waited for the court to make a determination on the application before proceeding to hold the elections. In fact, 1st Respondent postponed the elections once. What then prevented them from doing so a second time, so as not to overreach the decision of the court and render same void and nugatory. It appears 1st Respondent was attempting to be playing it smart.

2nd Respondent, on the other hand, denied that he was served with the pending motion for stay of execution. I have had a critical look at Exhibit C. It is clearly indicated therein that the motion for an order for stay of execution pending appeal was served on "Peter Osei Asamoah Esq through Secretary

Amanda S. Tawiah at their Chambers at Osu-Accra.” It was served on Counsel for the Respondents.

As contempt of court is quasi-criminal and punishment for same is either fine or imprisonment, it is incumbent on Learned Counsel for the Applicant to provide further evidence, to convince the Court that indeed the motion was served on the 2nd Respondent. This would have prevented what is referred to as the “assertion and denial situation”. Applicants would have established a *prima facie* case and met the requirements of the burden of proof placed on them by law.

In the case of **Boamah & Ansah Sikatuo v Amponsah [2012] 1 SCGLR 60**, the Supreme Court observed 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 2nd Respondent was directly involved in the conduct of the elections. No such evidence was led, no further documentary proof was tendered into evidence to inextricably link 2nd Respondent to the alleged contumacious conduct. The Court is thus compelled to hold that 2nd Respondent is not guilty of contempt of Court.

On the other hand, it is very clear to the court that 1st Respondent is guilty of contempt of court. There is no doubt in the court's mind that 1st Respondent has a guilty mind. Holding of the elections constituted an obstruction of justice. There was a pending application before the court; 1st Respondent knew about the pending application and was duty bound or expected to allow the Court to make a determination thereon, its merit notwithstanding, before proceeding to hold the elections. Thus proceeding to hold the elections, without due regard to the pendency of the said motion, obstructed the roadways of justice, overreached the decision of the Court and undermined the administration of justice. The conduct indeed created an obstruction to the administration of justice.

CONCLUSION

Under the circumstances, the motion for an order for contempt of court succeeds in part. I convict the 1st Respondent accordingly.

In imposing sentence on 1st Respondent, the court is mindful of the fact that GHAMRO is a juristic person; the court is also aware that the said elections have been declared null and void by the ruling of the Court [differently constituted]. The court is further mindful of the submission of Learned

Counsel to the effect by declaring the said elections null and void, 1st Respondent has received its due punishment for holding the said elections.

This fact notwithstanding, the Court considers that holding the said elections just two clear days before the pending motion was heard was an attempt by the 1st Respondent to avoid the consequences of the determination of the court. That was a serious conduct that was likely to prejudice a fair hearing of the motion for execution. The court considers this an aggravating factor.

1st Respondent is liable for contempt and the Court imposes a fine of One Thousand (1000) penalty units on 1st Respondent.

(SGD)

Constant K. Hometowu

(Justice of the High Court)

Parties:

Annie Emefa Fiawoo (Mrs), Esq. – Counsel for the Applicant;

Peter Osei Asamoah, Esq., with Rebecca Addai Duah - Counsel for the 1st and 2nd Respondents.