IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT JUSTICE, (COMMERCIAL DIVISION), HELD AT ACCRA, ON MONDAY, 30TH JANUARY 2023, BEFORE HIS LORDSHIP JUSTICE CONSTANT K. HOMETOWU

SUIT NUMBER: CR/371/2022

THE REPUBLIC

VRS

1.IBRAHIM JAJAH : RESPONDENT

EX PARTE

MR. ASAFO ADJEI

MRS. ASAFO ADJEI : APPLICANTS

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 11th 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".

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 14-paragraph affidavit in support of the motion, Applicant, Juliet Asafo Adjei, deposed that Respondent continued to trespass on the land, the subject matter of a suit, despite the pendency of an interlocutory

injunction before a Court (*differently constituted*) in suit number LD/0749/2019, entitled **Mr. Asafo Adjei and Mrs. Asafo Adjei vrs Ibrahim Jajah**. Attached to the instant motion as Exhibit A is a copy of the motion dated 24th May 2019, praying for an Order of Interlocutory Injunction to restrain the Defendant, his workers, agents, assigns privies and any other persons claiming by, through or under the Defendant from interfering with the land in dispute in any way until the final determination of the suit.

Also attached as Exhibit C is an affidavit of posting dated 21st November 2021, indicating that the motion was duly served on the Respondent by way of substituted service, pursuant to an order of the Court.

It is Applicant's deposition that despite the service of Exhibit A, Respondent continued to deal with the subject matter of the motion, in total disregard of and disrespect to the pending motion for interlocutory injunction, a conduct which has brought the administration of justice into disrepute or disrespect.

He prayed the Court to punish Respondent severely to deter likeminded persons from interfering with the administration of justice so as to preserve the sanctity of the powers of the Court.

RESPONDENT'S CASE:

In an affidavit in opposition filed on 4th April 2022, Respondent, Ibrahim Jajah, vehemently denied paragraphs 8, 9, 10, 11, 12 and 13 of the affidavit in support, thereby alleging that he never entered the land in dispute or

commenced development on same or instructed any person to develop the said land during the pendency of the motion for interlocutory injunction.

He averred further that he has never engaged in any conduct disrespectful of the administration of justice by interfering with the land in dispute despite the pendency of the motion, as alleged by the Applicant.

SUBMISSIONS OF THE PARTIES

In his written submission filed 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 Respondent and sentence him to imprisonment – that is to say despite the pendency of the motion for interlocutory injunction, Respondent continued his contumacious act by interfering with the subject matter of the motion.

According to Learned Counsel for the Applicants "The conduct of the Respondent is indeed contemptuous of the court and his disobedience is willful. As a consequence of this disobedience therefore, he deserves to be punished severely to serve as a deterrent to likeminded members of the community".

Learned Counsel for Respondent, also referring extensively to case law, submitted that Applicants failed to satisfy the burden of proving beyond reasonable doubt that Respondent entered the land in dispute or commenced any development on same during the pendency of the motion for interlocutory injunction. He contended further that he does not know the persons Applicants allege are developing the land in dispute.

He submitted further that "… the applicant failed to lead any evidence apart from bare affidavit that the respondent is developing the land during the pendency of an injunction application despite the denial by respondent".

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

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 as couched in the affidavit of support meets 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 Respondent denied ever entering the disputed land, as being alleged by the Applicants. The denial 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 Respondent entered onto 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 Respondent 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 Applicant attached photographs of the property being developed, that alone does not suffice to secure conviction. Doubts still exist and must be cleared.

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, Applicant failed to meet the standard of proof required by law, which is proof beyond reasonable doubt. Respondent cannot be said to be guilty of contempt of court, since Applicants woefully failed to discharge the burden of proving beyond reasonable doubt that

Respondent entered the disputed land or continued to develop same. As a result, the Court is compelled to give Respondent the benefit of the doubt.

CONCLUSION

It is clear that Applicants failed to convince the Court that indeed it is Respondent who is developing the land or entered onto same. The Court will fail in its duty of doing justice if it proceeded to convict the Respondent. It is said that justice must be done and must be manifestly seen to have been done. There is no room for conjecture and no reliance can be placed on inferences.

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:

Gordon C. Akpadie, Esq. – Counsel for the Applicants;

Ofosu Gyeabour, Esq, - Counsel for the Respondent**.**