

IN THE SUPERIOR COURT OF JUDICATURE AND IN THE HIGH COURT OF
JUSTICE AMASAMAN ACCRA REGION HELD BEFORE HER LADYSHIP
JUSTICE PRISCILLA DAPAAH MIREKU (MRS.) SITTING ON THURSDAY THE
27TH DAY OF JULY, 2023

SUIT NO. E12/AHC/36/2023

THE REPUBLIC

VRS:

COPS REAL ESTATE LIMITED & 4 OTHERS

EX PARTE; NII KWASHIE KPOBI

**RULING ON APPLICATION FOR AN ORDER OF COMMITAL AGAINST
RESPONDENT**

Before this Honourable Court is an application on notice for an order of committal to commit the Respondents for contempt of court by the Applicant. The applicant depose to the fact that he instituted an action against the 1st to 4th Respondents on the 18th day of October, 2021 and subsequently filed a motion on notice for interlocutory injunction which was upheld by this Honourable Court on the 21st day of October, 2021. The applicant attached a copy of the said application and order by the court as Exhibits 'A' and 'A1'. That all parties were in Court when the said order was made by the court and thus had knowledge of same. That the respondents by themselves, agents, assigns and workmen by their conduct and actions have the tendency to impugn the integrity

of the court and bring the administration of justice and for that matter the law into disrepute, disrespect and disregard, especially since their actions are an affront to the court. The applicant further deposes that he reported the respondents' action to the police where the police went on the site and arrested the workmen of the respondents namely Prosper Hodzi and the 5th respondent. That since the matter is sub judice and the fact is known to Respondents and they continue to engage in acts or omissions that tend to prejudice or interfere with fair trial of the matter despite the existence of a clear order of the court, that action, conduct or omission cannot escape liability for contempt. That in the instant application, the Respondents have committed contempt of this Honourable Court and to forestall such further blatant abuse of the court system, this court must act and be decisive, punitive and deterrent by committing the Respondents to custodial sentences.

The applicant's counsel before he moved the instant application discontinued this instant application against the 3rd Respondent. The 2nd respondent was absent even though there is proof of service of the instant application on him. However the 2nd respondent filed an affidavit in opposition to the instant application and deposes that he is the manager of the 1st Respondent company and since the order of this court restraining them, he has never stepped foot on the land the subject matter of dispute and also contempt applications are quasi criminal and it is action in *personam*. The 2nd respondent further deposed that, none of the sworn exhibits show that 1st and 2nd Respondents are captured committing the alleged act of contempt. That none of the

persons captured in the pictures are staff of the 1st Respondent company and none of the persons captured in the pictures were on the site at the instance of the 1st and 2nd Respondent. That the application is an attempt to stampede the Respondents to give up his land which he acquired through the sweat of his brow.

The 3rd respondent is also a company. It was only the 4th and 5th Respondents whose counsel was present to oppose the instant application. The 4th and the 5th respondent denies all the depositions of the applicant and the 4th respondent also denies being in court when the said order was made. The 5th respondent also denies that fact that he was arrested on site and depose that, he only went to the police station to secure bail for Prosper Hodzi when he called him on phone informing him of his arrest.

In the case of **REPUBLIC V. BOATENG & ODURO; EX PARTE AGYENIM-BOATENG & OTHERS [2009] SCGLR 154 @ 155**, the Supreme Court unanimously held that,

“a person could not be punished for the offence of contempt of court in the absence of willful breach of an order to do or refrain from doing some act. And the standard of proof required is proof beyond reasonable doubt.”

Contempt is a quasi-criminal relief, thus the onus on the applicant is proof beyond reasonable doubt and in the case of **IN RE EFFIDUASE STOOL AFFAIRS (NO. 2); REPUBLIC V. NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS**

and Others’ EX PARTE AMEYAW II (No. 2) [1998-99] SCGLR 636 @ 641, the Supreme Court held at Holding 2 that,

“Since contempt of court was quasi-criminal and the 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 defences put upon by the respondents.”

Section 13(1) of the Evidence Act, 1975 (NRCD 323) also 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.”

Thus, the onus is first on the applicant to make a prima facie case of contempt before the court will consider the defence of the respondents. Also, at the end of consideration of both application and response, the applicant should have proven beyond doubt that the respondents have *willful breach an order to do or refrain from doing some act* ordered by this Honourable Court.

As aforementioned, the applicant’s Exhibit A1 shows that, the interlocutory injunction order of this court was posted on a wall which is allegedly on the subject matter in dispute. Exhibit B which is a police report dated 6th December, 2022 states that one Prosper Hodzi was arrested when the police went on the site and saw workmen busily working on the land with the courts’ order posted on the wall. That the said Prosper Hodzi was identified as the foreman of the project and that is why he was arrested.

That later the 5th Respondent reported at the Divisional CID and introduced himself as the one who engaged the said Prosper as a mason foreman to the project. Thus, he was also arrested for questioning. The report further states that the 5th respondent confirmed he was aware of the pending suit but not the court order when same was read and explained to him by the police.

The applicant has proven that the order was posted on the subject matter giving notices to all parties involved. Thus it does not lie in the mouth of any of the respondent to say that they did not have notice of the order of the court. The 2nd Respondent denies the involvement of the 1st and 2nd respondents being involved in any activities on the land and the applicant failed to even prove by the preponderance of probabilities much more beyond reasonable doubt that they have failed to comply with the orders of this court.

Thus the contempt application against the 1st and 2nd Respondent is dismissed.

The applicant as aforementioned withdrew the application against the 3rd Respondent thus the contempt application against the 3rd respondent was struck out as withdrawn on the last adjourned date.

With regard to the 4th applicant, he denies being in court on the day the said order was made. Aside the applicant deposing that all parties were present, he did not show any proof of the 4th defendant being present when the said order was made. There is proof that the said order was subsequently posted on the subject matter giving notice to all

but the 4th respondent was not found on the subject matter, neither has he been mentioned or shown to have sent workmen on the subject matter to work on same. The applicant has failed to prove to act or omission done by the 4th Respondent which is in contempt of the court. This the contempt application against the 4th Respondent is also dismissed.

The evidence the applicant has put before this court point hands to the 5th Respondent and one Chin who the 5th respondent claims to be his boss per the police report Exhibit B. The order of the court was made on the 11th day of November, 2022. Per the said order, “all parties either by themselves, relatives, agents, workmen, servants, assigns, associates, privies and any other persons acting for them or on their behalf are restrained from developing or interfering with the parcel of land subject of dispute.”

Even though the 5th Respondent denies disobeying the orders of this court, the applicant proved beyond reasonable doubt that, the 5th respondent had notice of the order, that even with notice of the order, he engaged one Prosper Hodzi to work on the subject matter disregarding the orders of the court. The 5th Respondent is not a party to the suit but he falls under “relatives, agents, workmen, servants, assigns, associates, privies and any other persons” and act with impunity when he disregarded the orders of the court when the said order was clearly posted on the subject matter for the world to see. His counsel argueS that, the applicant should have gone after the said Chin instead of the 5th Respondent since the 5th Respondent had informed the

police, he was working for him. Whether or not the said Chin was also in contempt, will not wash away the sin of the 5th Respondent.

This honourable court finds the 5th Respondent to be in contempt of this honourable court and sentence him to 3 weeks in prison to serve as a deterrence to others.

MRS. PRISCILLA DAPAAH MIREKU J.

HIGH COURT AMASAMAN, ACCRA