

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT JUSTICE,
(COMMERCIAL DIVISION), HELD AT ACCRA, ON MONDAY, 20 FEBRUARY
2023, BEFORE HIS LORDSHIP JUSTICE CONSTANT K. HOMETOWU

SUIT NUMBER: CR/0358/2022

THE REPUBLIC

VRS

KWAKU OWUSU ADJEI

RESPONDENT

EX PARTE

1. IVY AUSTIN

2. MERCY LARBI SIAW

APPLICANTS

3. MIRANDA AMPONG

JUDGMENT

INTRODUCTION

The matter before the Court is a Motion on Notice for an Order for Committal for Contempt of Court, filed at the Registry of this Court on 4th March 2022, pursuant to Order 50 Rule 1 of the High Court (Civil Procedure) Rules, 2004, CI 47, praying for an order of Committal against the Respondent for Contempt of Court.

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”.

Parties’ Submissions

APPLICANT’S CASE

In a 19-paragraph affidavit in support of the Motion, 3rd Applicant, Miranda Among, deposed on her own behalf and on behalf of 1st and 2nd Applicants, *inter alia*, that Respondent commenced an action against the Applicants and subsequently obtained a Judgment dated 29th July 2021 at the District Court, Abeka. However series of application had since been filed in respect of the Judgment, including, but not limited to, a Motion on Notice to Set Aside the Judgment; A Motion to Set Aside the Order Setting Aside the Judgment of the Court, all of which were granted, culminating in the filing of a Notice of Appeal at the High Court.

According to deponent, while the court processes were on-going, resulting in a lengthy legal battle, they filed a Notice of Appeal, annexed as Exhibit MA 6, being dissatisfied with and aggrieved by the Court’s ruling on the **Motion On Notice to Set Aside the Order Setting Aside the Judgment of the Court**.

Deponent averred further that following the filing of the Notice of Appeal on 8th December 2021, the Respondent levied execution against the Applicants, attached some of their stock and placed same in the hands of an auctioneer, sealed and shut the shops Applicants used as place of business for over twenty years.

As a result, according to deponent, Applicants subsequently brought an Application in the High Court on 25th January 2022, for **Stay of Further Execution and Other Executory Processes**.

It is deponent's further averment that following service of the said Application on Respondent, the latter wrote to inform the Court of his unavailability and requested for adjournment to 10th March 2022, which the Court obliged. Deponent attached a copy of the Proof of Service of the Applicants' Motion for Stay as Exhibit MA 8.

Deponent further averred that despite the pendency of the **Applicants' Motion for Stay of Further Execution and Other Executory Processes Pending Appeal**, Respondent, in a contumacious manner, on 1st March 2022, sent some agents and privies to the shop to further continue removal of the properties therein. Deponent further attached as Exhibit MA 9 series, pictures of the alleged privies and assigns of the Respondent removing the items from the shop, including a copy of a Newspaper of the day.

At paragraph 16 of the affidavit in support, deponent said "...by these said acts, the Respondent, while being fully aware of the pendency of our Motion On Notice for Stay of Further Execution and Other Executory Processes Pending Appeal, has conducted himself in a manner which brings the authority and administration of the law into disrespect and same constitutes contempt of court".

On 27th July 2022, Applicants filed a Supplementary Affidavit, deposed to by one Stephen Kotey. In the said Supplementary Affidavit, deponent averred at paragraph 4 that "... despite the pendency of the instant application for committal for contempt of court which resulted on the basis of illegal actions committed during the pendency of an Application for Stay of Execution Pending Appeal filed at the High Court, Accra, (General Jurisdiction 2) on the 27th of February 2022, the Respondent had gone ahead to place new tenants in the shops, the subject matter of the litigation.

He attached to the said Application some pictures, marked as Exhibit MA 10, showing the current status of the said subject matter of the Contempt Application.

He further averred that being fully aware of the pendency of the Application for an Order for Committal for Contempt, Respondent has conducted himself in a manner that can best be described as a total disrespect and disregard for the authority of this Court.

It is his additional averment that it is clear and beyond reasonable doubt that the Respondent is committed to further willfully bringing the administration of justice into disrepute as the Respondent has emphatically persisted in acts and conduct that are contumacious and rendered the success of the Applicants' appeal partly nugatory.

Deponents prayed the Court to severely punish Respondent for contempt of court by committing him to prison.

RESPONDENT'S CASE:

In his affidavit in opposition filed on 17th March 2022, **Respondent**, Kwaku Owusu Adjei, Plaintiff/Judgment Creditor in suit number A9/84/2019, before Abeka District Magistrate Court, vehemently opposed the contempt application. He denied the alleged contemptuous conduct and deposed that he has never taken any action that holds the Court in disdain. He described the Applicants' Motion for Contempt as "... anachronistic, unmeritorious, irregular and vague as their Application for Stay of Execution and so it has no value to pursue before this Honourable Court".

In paragraph 7 of the affidavit in opposition, Respondent averred that "Applicants' Motion for Stay of Execution contingent upon which they filed their Application for Contempt is itself bankrupt as it is purported to, in one breath, seek a Stay of Execution as a whole as portrayed in the heading of their Motion paper and in another breath seeking to stay further execution of the judgment dated the 29th day of July, 2021 as borne by the heading to their Affidavit in Support".

It is his further deposition that the heading of the Applicants' Affidavit in Support in itself shoots in the foot their Motion for Stay of Execution in whatever quantum they seek because their admission, no matter how tacit and undefined, amounts to a point-blank lashing of a dead horse primarily because they could not state the quantum of execution effected and the quantum yet to be executed".

In paragraph 9 of the affidavit in opposition, Respondent deposed that Applicants' Notice of Appeal was filed, not only out of time but also Respondent had long executed the judgment using the appropriate judicial processes by which the Deputy Sheriff of the Court undertook the execution and Applicants' items in the shops handed over to them.

He deposed further that having taken possession of his shops by moving Applicants out nearly three (3) months earlier, it sounds rather odd Applicants are in Court seeking to reverse that which had been executed.

He prayed the Court to dismiss the application *in limine* as it has not satisfied the requirement which would enable the Court make an order committing Respondents for contempt.

ISSUE OF BENCH WARRANT

Meanwhile, earlier, on 7th April 2022, the parties announced to the Court their intention to settle the matter amicably. The Court obliged, encouraged them to find an amicable solution to the matter and adjourned the suit for the parties to announce settlement on a given date.

On 22 June 2022, Learned Counsel for the Respondent, Hans Kofi Adde, informed the Court as follows:

"My Lord, we have been able to resolve all issues. But we have not been able to file the terms as the Honourable Court requested. Our very last day was two days ago and for this reason we are humbly before this Honourable Court announcing that we

have settled the matter and we still come praying for a short time to bring the said settlement notice”.

The Court, once again, obliged and adjourned the suit for the last time to 20th July 2022 for the adoption of the executed Terms of Settlement.

On 29th July 2022, the Court received a correspondence from Counsel for the Respondent, informing the Court of the “dire medical condition of the Respondent for which it is practically impossible for him to move his limbs”. Attached to the correspondence, marked as Exhibit KOA 1, is a Medical Certificate in respect of the Respondent. Learned Counsel for the Respondent prayed the Court for an adjournment pending full recovery of the Respondent.

In the days following the receipt of this correspondence, both Counsel for the Respondent and Respondent never came to Court, despite the issuance of several hearing notices duly served on Counsel for the Respondent.

On 29th July 2022, following repeated acts of absenteeism exhibited by Respondent and his Solicitor, the Court issued a Bench Warrant for the arrest of Respondent. He has till date not been arrested.

On 13th October 2022, Learned Counsel for the Applicants informed the Court as follows:

“... at the last hearing both Counsel for the Respondent and the Respondent were absent from Court. My Lord therefore made an order for a Bench Warrant to be issued for the Respondent to show cause why he was absent. My Lord, although the warrant was issued, till date, we have still not been able to effect the arrest of the Respondent. My Lord, this is because he is not available at all his known locations and nobody seems to know his whereabouts. My Lord, we also served Counsel for the Respondent with a Hearing Notice for today’s date. My Lord, although the Hearing Notice has been served, Counsel is not here to answer to the Respondent’s whereabouts.”

Despite the service of the Hearing Notice and Court Notes on Counsel, once again, he failed to appear in Court on 3rd November 2022 as directed by the Court.

On 3rd November 2022, the Court allowed Counsel for the Applicants to move the motion for committal for contempt.

In moving the motion, Counsel for the Applicants relied heavily on the Supreme Court case of the **Republic v Bank of Ghana, (the Governor) and 4 ors, Ex Parte Duffuor, Civil Appeal Number J4/34/2018, dated 6th June 2018**, where the Supreme Court observed that where a party, knowing that a case is sub-judice, engages in any act or omission which turns to prejudice or interfere with the fair hearing of the case, despite the absence of an order of the Court, the party would have engaged in intentional contempt. This was what the Court said:

“When a court is seized with jurisdiction to hear a matter, nothing should be done to usurp the judicial power that has been vested in the court by the Constitution of Ghana. In effect, the state of affairs before the court was seized with the matter must be preserved until the court delivers its judgment. This is so whether or not the court has granted an order to preserve the status quo or not. A party to the proceedings will be in contempt if he engages in any act, subsequent to the filing of the case, which will have the effect of interfering with the fair trial of the case or undermine the administration of justice”.

It is clear from the above that a person is said to be in contempt of court for either disobeying a Court Order or Judgment on the one hand or obstructing justice by interfering with a pending motion before the Court makes a determination thereon, on the other.

The issue before the Court is to determine whether or not Respondent’s action of moving Applicants and their items from the shops constitutes contempt of Court.

From evidence on record, Respondent knew or was aware of the pending Motion on Notice for Stay of Execution. Available records, Exhibit MA 8, in particular, shows

that the Motion was entrusted to the care of the Court Bailiffs of the General Jurisdiction and served on Respondent personally at Mamobi market on the 16th of February 2022 at 12:58 hrs.

Besides, he wrote to the Court informing it about his unavailability on the return date, which correspondence triggered an adjournment of the hearing.

Whilst the motion was pending, he could not legally continue to deal with the subject-matter of the said motion, his personal views about the merit of the motion notwithstanding. Dealing with the subject matter of a pending motion is a clear act of interference with the administration of justice, an attempt to overreach the decision of the Judge. It is simply unacceptable.

In his affidavit in opposition, Respondent deposed that the pending application was vague. In the Court's opinion, even if the Application was "vague and bankrupt", as described by deponent, once a Respondent has had notice of it, it is his duty to let the *status quo* of the subject matter remain without interference because the matter is *sub-judice*. This is to avoid a possible scenario where a party takes an action that will clearly overreach the determination to be made by the Judge. This is simply contempt of court.

The actions described in the affidavit in support of and supplemental to the motion were such that they turn to overreach the decision of the Court, properly seized with the matter.

Even where there are perceived defects in the application, once it is before a Court of competent jurisdiction, it is the duty of the Judge, in the exercise of his or her judicial power, to make a determination thereon; not the parties, whose determination is most likely to be biased and prejudicial to a fair hearing of the matter.

The averment in the affidavit in opposition to the effect that the application "amounts to a point blank lashing of a dead horse" is completely and totally out of place, unwarranted and does not constitute a proper defence.

The only expectation from the Respondent is to raise a reasonable doubt as to his guilt and not to condemn an application.

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”.

It is not the case in the instant application.

Again, apart from deposing that he had taken possession of the shop three months earlier, Respondent did not indicate any specific date(s) that the Applicants were dispossessed of the shop to enable the Court make a determination whether or not it was done before or the filing of the application.

Be thus as it may, it is the Court’s respectful opinion that the instant application is a clear case of contempt of Court. The Court is not in doubt as to whether or not Applicants successfully discharged the evidential burden on them.

CONCLUSION

The Court holds and finds that the contumacious conduct of the Respondent interfered with the administration of justice and brought same into disrepute and disrespect.

Accordingly, Respondent must be cited for contempt of court and severely punished to serve as deterrent to others, whose conduct is likely to bring the administration of justice into disrespect.

Consequently, Respondent is hereby convicted *in absentia* for the offence of contempt of court.

Respondent is accordingly sentenced to two (2) months imprisonment, IHL, *in absentia*.

A bench warrant is hereby re-issued for his arrest.

(SGD)

Constant K. Hometowu

(Justice of the High Court)

Parties:

Susalee A Asare, Esq. – Counsel for the Applicants;

Hans E. K. Adde, Esq. - Counsel for the Respondent.