

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD IN CAPE-COAST ON THURSDAY THE 1<sup>ST</sup> DAY OF MARCH, 2024 BEFORE HIS LORDSHIP JUSTICE JOHN-MARK NUKU ALIFO “J”

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SUIT NO. E12/135/2023.

THE REPUBLIC

VRS.

1. KOBINA EBO

- RESPONDENTS

2. K. BOATENG

3. KWAME ATTA PANYIN

4. KWESI KWANSAH

(All of Koful in K. E. E. A Municipality)

EX-PARTE: EBUSUAPANYIN KOW KWASAAH - APPLICANT

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**JUDGMENT**

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**INTRODUCTION:**

The Applicant, Abusuapanyin Kow Kwaasah of Koful in the K. E. E. A Municipality has brought this contempt application to vindicate the due administration of justice. He accuses the Respondents of breaking the law by willfully engaging in conduct intended to obstruct or interfere in the due administration of justice and thereby bringing same into disrepute. The Applicant argues that the conduct of the Respondents is not only disrespectful to the Court but that same is a calculated attempt to undermine the authority of the Court.

Although contempt of Court has not been specifically enacted, it nevertheless forms part of their inherent jurisdiction for the protection of the integrity and authority of the Courts from improper interference in the due administration of justice. In the case of **Republic Vrs. Mensa-Bonsu & Ors [1994-95] 1GBR 131-281 SC**, the Supreme opined that *“there are two kinds of contempt; criminal contempt which consists in acts tending to obstruct or interfere with the due administration of justice; and civil contempt, which consists in disobedience to the judgments, orders or other processes of the Superior Courts of record. Criminal contempt takes various forms, and it may be committed before the actual hearing of a case, or while it is pending in Court or when the hearing is concluded.”*

The power of the High Court to punish for contempt is provided in **Articles 19 (12) and 126 of the 1992 Republican Constitution of Ghana**, and re-enacted in **Section 36 of the Courts Act, 1993 (Act 459) as amended; Section 10 of the Criminal Offences Act, 1960 (Act 29) as amended and Order 50 of the High Court (Civil Procedure) Rules, 2004 (CI 47)**. **Order 50 of CI 47** sets the parameters by which an Applicant may move the Court for an order for an attachment for contempt of court. This was emphasized by the Supreme Court in the case of **Republic Vrs. High Court (Land Division) Accra & Others; Ex-Parte Kennedy Agyapong, Susan Bandoh (Interested Party), Suit No. J5/62/2020 delivered 20 October, 2020 (Unreported)**., where it was held that *“From our reading of Article 126 of the 1992 Constitution, it is clear that all Superior Courts are vested with jurisdiction to commit for contempt to themselves. Needless to say, the High Court, however differently constituted and/or designated, being a Superior Court, has the power to commit for contempt to itself.”*

As stated early on, no codified legislation in Ghana defines the act or omission that constitutes the offence of contempt unlike in other Common law jurisdictions such as the United Kingdom which has the Contempt of Court enactment. Ghanaian Courts therefore rely heavily on case law to resolve any issue regarding contempt of Court which comes before them.

The often-quoted definition of contempt is contained in the case of **Republic Vrs. Sito I; Ex Parte Fordjour (2001-2002) SCGLR 322** where the Supreme Court provided the following ingredients as constituting the offence of contempt of Court:

- a) There should have been a judgment or order which required the contemnor to do or abstain from doing something;*
- b) The contemnor knew what precisely he was expected to do or abstain from doing; and*
- c) That he failed to comply with the terms of that judgment or the order and that his disobedience was willful.*

Also, in **In Re Effiduase Stool Affairs (No.2); Republic Vrs. Numapau, President of the National House of Chiefs; Ex Parte Ameyaw II (No.2) (1998-1999) SCGLR 639 at 660, Justice Acquah** (as he then was) offered the following definition of contempt when he stated that:

*“In brief, contempt is constituted by any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.”*

Recently, in the case of **Republic Vrs. Bank of Ghana & 5 Others; Ex Parte Benjamin Duffour [2018-2019] 1 GLR 445,**

The Supreme Court declared that *“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...A party to the proceedings will be in contempt if he engages in an act subsequent to the filing of the case, which will have the effect of infringing the fair trial of the case or undermine the administration of justice. The conduct must be one which has the effect of prejudging or prejudicing the case even before the judgement is given.”*

The authorities aforementioned show therefore, that any act or omission pursued by a party to prejudice the fair trial or outcome of a case, or likely to bring the administration of justice into disrepute or interfere with any pending litigation and or to scandalize a Court even after the trial of a case is deemed contemptuous of the Court.

To succeed in an application for contempt, the applicant must prove that the contemnor acted willfully in the alleged conduct. Evidence must be adduced to persuade the Court that the act or omission was calculated, deliberate and intentional. Inadvertence or inattention will not suffice.

Contempt of Court, therefore, in my opinion, serves the primary function of protecting the sanctity and integrity of the Court and its proceedings.

Furthermore, it serves to sustain the rule of law and acts as a check on conduct that potentially renders civilized society ungovernable. The Courts are bestowed with awesome powers to deal with the offence of contempt in a manner that is nearly arbitrary. For this reason, **Akufo-Addo, C.J.** (as he was then) observed in the case of **Republic Vrs. Liberty Press and Others [1968] GLR 123-138** that *“the power is rarely invoked and only when the dignity, respect and authority of the Courts are seriously threatened.”*

#### **The Application, Affidavit Evidence and the Position of the Parties:**

By a Motion on Notice filed in this court on April 26, 2023 by the Applicant, he prays for “an order committing the Respondents for Contempt of Court” based on the grounds articulated in the supporting affidavit.

The background of this case according to the Applicant is that on 15<sup>th</sup> March, 2023 he issued a Writ of Summons against the Respondents in the instant application before the Elmina District Court as shown by his **Exhibit**

**“A.”** Applicant further states that amongst the reliefs sought before the trial Court is an order for perpetual injunction restraining the Respondents herein by themselves, their agents, assigns, privies, workmen, etc. as well as all other persons claiming through them from interfering with the Plaintiff’s ownership of the disputed land.

Applicant additionally states that he attached **Exhibit “B”** which is a Motion on Notice for Interlocutory Injunction with supporting affidavit and accompanying exhibits to his Writ of Summons for service on the Respondents. A search conducted at the registry of the trial court revealed that Respondents herein had been duly served with both Writ of Summons and Motion for injunction. Applicant contends that despite having notice of the processes filed, Respondents herein are willfully developing the land which is the subject matter of the pending suit in a manner which is disrespectful of the Court and calculated to undermine the authority of the Court. The deliberate conduct of the Respondents according to the Applicant will constitute an overreach when he succeeds in his action and also render nugatory the final judgment of the Court. Applicant therefore prays this Court to convict the Respondents of the offence of contempt and accordingly impose on them terms of imprisonment to serve as deterrent to them and members of the general public.

In his written submissions filed on 10<sup>th</sup> August, 2023, learned Counsel for the Applicant recited the facts as contained in the affidavit in support and submitted that Respondents have willfully acted in a manner which has brought the administration of justice into disrepute and should therefore be punished by this Court. Learned Counsel submitted that the offence of contempt of Court is quasi-criminal and since the instant action is civil the standard of proof required of the

Applicant is proof beyond reasonable per **Section 13 (1) of the Evidence Act, 1975 (Act 323)**. He cited the case of **Mamponghehe and Ors; Ex-parte Amadie and Buor [2007-2008] SCGLR@566** to argue that any act or conduct that tends to undermine the authority of the Court will constitute contempt of Court. He further reasoned that such acts will include any conduct which is prejudicial to the outcome of a matter pending before the Court and referred to the case of **Republic Vrs. Eha II Ex-Parte Togobo [2003-2005] 1GLR 328** where the Court of Appeal held at page 334 that;

*“The principle is that if a party knowing of the existence of a case, a writ, a petition, or a motion pending before an adjudicating body seeking to restrain an act makes a decision himself to deal with and grant the very remedy to himself without giving opportunity to the adjudicating body to hear the matter, he commits contempt.”*

Counsel then referred to **Exhibit “D”** series and contended that it is apparent from the face of the exhibits that despite their actual knowledge of the Writ of Summons and the application for injunction pending before the trial Court, Respondents herein flagrantly continued to change the nature and character of the land which formed the subject matter of the pending suit.

Learned Counsel then turned to the affidavit in opposition filed by Respondents which says that upon service of the Writ of summons and the Injunction application on them, they informed workers on the land to stop work with immediate effect until final determination of the matter. And that they were unaware of any further construction on the land after the service of the processes and that the acts depicted in **Exhibit “D”** series are works already carried out prior to the service of the processes. In his reaction, Counsel for the Applicant submitted that per **Exhibit “C,”** the last Defendant therein was served with the processes on 31<sup>st</sup> March, 2023 however **Exhibit “D”** series demonstrates that as of 21<sup>st</sup> April, 2023 construction activities were still ongoing in total disregard of the notice of the action pending

before the trial Court. Counsel concluded by stating that Applicant has been able to establish that the Respondents willfully interfered with or acted in a manner which tended to interfere with the due administration of justice. He then prayed for the grant of his application to commit the Respondents for contempt.

Responding to the application by way of legal submission, learned Counsel for the Respondents, Mr. Isaac Aggrey-Fynn also rehashed the facts as contained in the affidavit in opposition and denied *“any intention to willfully usurp the powers of the Honourable Court, nor to overreach the Applicant by the said act complained of...”* Counsel insisted that upon service of the processes on the Respondents, they informed the workers on the land to immediately cease all ongoing development. And since the offence of contempt is quasi-criminal, Applicant bears the burden of proving beyond reasonable doubt that the Respondents continued to develop the land after service of the Writ of Summons and the Injunction application.

Learned Counsel further argued that the **Exhibit “D”** series depicts developments already carried out on the land before the service of the processes on the Respondents. He contends that **Exhibit “D”** series submitted by the Applicant is **“manufactured exhibits”** deliberately taken with self-manufactured dates beneath the said pictures. He added forcefully that **Exhibit “D” series** are photoshopped pictures. Learned Counsel for Respondents concluded his submissions by pleading with this court for leniency in the unlikely event that the Respondents are convicted for the offence of contempt because no further developments have been undertaken on the land since notice of Applicant’s Writ of summons and Injunction application.

### **The Opinion of the Court & Analysis:**

The main issues in this application which require resolution can be summarized as follows:

- i) Whether or not the Respondents continued to build on the land after they had been served with notice of Applicant's Writ of Summons and Motion on Notice for Injunction pending the final determination of the substantive suit; and
- ii) Whether or not the conduct of the Respondent is willful.

The authorities are very clear that the offence of contempt of court being quasi-criminal, the requisite standard of proof is proof beyond reasonable doubt. Both learned Counsels in their written submission conceded this principle of law. The rule has been endorsed in several decisions such as **Kangah Vrs. Kyere (1979) GLR 458** and **Republic Vrs. High Court Accra, Ex Parte Laryea Mensah (1998-99) SCGLR 60**. Also, **Section 13 (1) of the Evidence Act, 1975 (Act 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."* This rule was illustrated in the case of **Republic Vrs. High Court Accra, Ex Parte Laryea Mensah (Supra)**.

Taking cognizance of the nature of the offence of contempt and the policy rationale for the strict proof of same, **Osei Hwere J.** (as he then was) in **Republic Vrs. Bekoe & Others; Ex Parte Adjei (1982-83) 1 GLR 91** opined that a civil contempt partook of the nature of a criminal charge because conviction might entail imprisonment. Consequently, the learned jurist stated that the principle of law was quite clear that where a person is charged with contempt of court, his guilt should be proved with the same strictness as required in a criminal trial of proof beyond reasonable doubt. It is worth emphasizing that the notion of "reasonable doubt" is doubt based on reason and common sense. It does not equate to fanciful doubt. **Republic Vrs. Villoroman, [2016] 1 SCR 1000, 2016 SCC 33 (CanLII)**.



The burden of proof beyond reasonable doubt does not require the party that bears the burden to prove his case with absolute certainty. The doubt must logically connect to the evidence or absence of evidence. And to effectually discharge the burden, a party need not lead evidence to dispel every shred of doubt. Put differently, reasonable doubt is limited to doubt that sensibly arises from the evidence or the lack of evidence founded on common sense and reason.

1. **Whether or not the Respondents continued to build on the land after they had been served with notice of Applicant's Writ of summons and motion on notice for Injunction pending the final determination of the substantive suit.**

**Exhibit "C"** which is the search result dated 25<sup>th</sup> April, 2023 shows that the 2<sup>nd</sup> Respondent was served by substituted service on 18<sup>th</sup> March, 2023 whilst the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents were served by the same means on the 31<sup>st</sup> of March, 2023. **Exhibits "D1" to "D4"** which are photographs forming part of the **Exhibit "D"** series appear to have been taken on 21<sup>st</sup> April, 2023 with **Exhibits "D5" and "D6"** bearing the date of 17<sup>th</sup> April, 2023. In their affidavit in opposition filed on 10<sup>th</sup> May, 2023 Respondents deposed at paragraphs 9 and 10 that:

*"9. Further exhibit D series were previous acts of the workers of the contractor engaged by the family to carry the construction work on the land before the Plaintiff/Applicant instituted the civil suit before Elmina District Court.*

*10. Exhibit D series were some of the previous act [sic] undertaken by the workers of the contractor for which the Applicant was not happy and subsequently caused his Lawyer to issue the writ of summons and the said injunction."*

Learned Counsel for the Respondents then submitted rather boldly that **Exhibit "D" series** is *"manufactured exhibits" deliberately taken with self-manufactured dates beneath*

*the said pictures to appear as if when the said writ of summons and injunction application was served on the Respondents they did not stopped [sic] working on the land.”* He insists that **Exhibit “D” series** are photoshopped pictures. In other words, **Exhibit “D” series** is a forgery.

In demonstrating the grounds for impeaching the authenticity of the **Exhibit “D” series**, Counsel for Respondents questioned for instance, how **Exhibit D2** and **D3** which were taken on the same date and time depicted different backgrounds and activities on the same land. A reasonable assessment of **Exhibit D2** on its face shows the full frontage of a building. A second separate building to the left is partly visible with a tiny portion of a blue object stationed by it. **Exhibit D3** is a photo taken further left of the first building with the full frontage in **Exhibit D2**.

**Exhibit D3** more fully captures the leftward building with the blue object already referred to in **Exhibit D2**. The blue object appears to be a barrel usually used on construction sites for water storage. **Exhibit D3** also show two men, one wearing a blue shirt and cap with the second man being shirtless or topless who appear to be applying mortar with a trowel to a three-course concrete wall. The mortar works in between the blocks appear fresh and wet. **Exhibit D4** is a much clearer picture of the man in the blue shirt and cap applying mortar to the wall previously mentioned in **Exhibit D3** above.

**Exhibits D2, D3** and **D4** were taken on 21 April, 2023 at 8:00 am. **Exhibit D1** taken on 17 April, 2023 depicted the same vicinity with the buildings already described. **Exhibit D1** shows about five (5) workers and a single course of block work jutting out the ground. **Exhibits D5** and **D6** taken on the same date as **Exhibit D1** show workers fetching and moving sand on the construction site already described.

It is apparent on the face of **Exhibit "D" series** that, the dates on the photographs could not have been manufactured. In the absence of any cogent evidence to the contrary, an ordinarily reasonable appreciation of the **Exhibit "D" series** will lead to the rational conclusion that the dates appearing on the photographs are the correct dates on which the activities portrayed in the photographs were performed.

Forgery is a criminal offence under the Criminal Offences Act (1960), Act 29 as amended

*"159. Whoever forges any document whatsoever, with intent to defraud or injure any person, or with intent to evade the requirements of the law, or with intent to commit, or to facilitate the commission of, any crime, shall be guilty of a misdemeanour."*

It is not sufficient for Counsel for the Respondents to boldly assert forgery against the Applicant in the following words: *"It is submitted that the exhibit D series are Photoshopped pictures,"* without leading any evidence to persuade this honourable Court to believe in his allegation. Whilst learned Counsel trumpeted that the Applicant bears the burden to prove the guilt of the Respondents beyond reasonable doubt in this application, he opted for complete silence in respect of his own burden of proof regarding the charge of forgery he zealously makes against the Applicant.

**Section 15 (a) of Act 323** states *"Unless it is shifted, (a) the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue."* The Respondents have failed to adduce any evidence to persuade this Court to disbelieve the validity of **Exhibit "D" series**. Having accepted the authenticity of the said exhibits, this Court finds that construction works continued on the land which is the

subject matter of the pending action after the service on the Respondents of the Applicant's writ of summons and motion on notice for injunction.

**2. Whether or not the conduct of the Respondent is willful.**

The Respondents do not deny service of the Applicant's processes. They admit in paragraphs 4, 5 and 6 of their affidavit in opposition that upon receipt of service of Applicant's Writ of Summons and the accompanying Motion for Injunction and on the advice of their Counsel, they informed the contractor to cease further development of the land until the final determination of the case in Court.

In paragraph 7, Respondents denied knowledge of any further development on the land. What is quite intriguing is that the Respondents did not declare either by their affidavit or submissions by Counsel that they took steps to confirm that the contractor actually ceased further development of the land when he was informed to do so.

The affidavit evidence as well as submission made on behalf of the Respondents sounds like the Respondents are passing the buck and telling the Court that so far as they are concerned, they duly informed the contractor to stop work upon service of the Applicant's Writ of Summons and Motion for Injunction. It will not suffice if this is what they are indeed saying because the Respondents had a duty to ensure that further developments on the land were truly suspended until the final determination of the action by the Court. This obligation on the Respondents extends to ensuring that information and instructions given to their agents, assigns, workers, etc. regarding cessation of development were certainly complied with. There is no evidence before this Court that Respondents verified that the contractor ended further development on the land when he was informed to do so.

The settled rule of law is that acts be they authorized or otherwise done by a servant in the course of his employment are binding on his employers as enunciated in the classic case of **Guardian Royal Exchange Assurance (Ghana) Ltd. Vrs. Appiah (1984-86) 1 GLR 52**. The contractor was hired by the Respondents to develop the land, **Exhibit "D" series** demonstrates that further construction took place after notice of the processes was brought to the attention of the Respondents. Since the wrongful conduct was closely connected with the work he was contracted to do and did so in the course of his employment, the Respondents cannot exempt themselves from liability occasioned by the contractor's conduct even if he was expressly prohibited by the Respondents. This Court thus finds on the evidence that the further developments on land were the willful acts of the Respondents. If the Respondents were diligent, they would have taken steps to confirm that the contractor abided by their instructions to him to end further work on the disputed land.

Based on all of the above, this Court takes the considered view that a case of contempt has been properly made against the Respondents herein both under common law and statute by **Section 13 (1) of Act 323**. The Applicant has succeeded in proving the Respondents' guilt beyond reasonable doubt. As a result, I hold the Respondents in contempt of Court and convict them accordingly.

However, having read the impassioned plea for leniency by learned Counsel for the Respondent in his written submission and also taken into account the fact that this is the Respondents' first brush with the law, I am of the considered opinion that the imposition of a fine is most appropriate.

Consequently, the Court imposes a fine of **200** Penalty points against each of the Respondents within 1 month; in default, each Respondent shall serve 14 days in jail.

The Respondents shall sign a bond of good behavior for 12 months and not to repeat such acts of contempt during the pendency of this matter Furthermore, Respondents shall pay **GH¢2,000.00** to the Applicant to enable him to offset part of his legal costs.

**(SGD)**

**JOHN-MARK NUKU ALIFO "J"  
(JUSTICE OF THE HIGH COURT)**

**COUNSEL:**

**MAUD ARTHUR DADZIE ESQ. FOR APPLICANT HOLDING THE BRIEF FOR  
MICHAEL ARTHUR DADZIE ESQ.**

**ISAAC AGGREY FYNN ESQ. FOR RESPONDENT**