

17-12-2024

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD AT NKAWKAW - EASTERN REGION ON TUESDAY THE 17TH DAY OF DECEMBER, 2024 BEFORE HER LADYSHIP JUSTICE CYNTHIA MARTINSON (MRS), HIGH COURT JUDGE.

SUIT NO. D16/01/2022

IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT OF COURT PURSUANT TO ORDER 50 OF CI 47.

THE REPUBLIC

VERSUS

FELIX OTI BOATENG

EX-PARTE:

THE REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF GHANA

PARTIES

Applicant represented by Rev. Hayford Ayim.

Respondent present.

LEGAL REPRESENTATION

Selina Fenteng Esq. for the Applicant present.

Major Darteh Esq. for Respondent absent.

JUDGEMENT

On 25th November 2021, the Applicant filed a motion on notice and prayed the court for an Order for committal of the Respondent herein for bringing the administration of justice into irreparable disrepute by his wanton, deliberate, wilful acts and conduct by disregarding the proceedings in court, and an Order of the court restraining him as Defendant/Respondent in an Application for Interlocutory Injunction for building on the disputed land or developing any part of the land until

the final determination of the suit, which act/conduct is all calculated to overreach the court and the Plaintiff/Applicant herein. It should be recalled that this Application for Contempt was struck out for want of prosecution on the 9/6/22. However, on the 29/7/24 the Application was relisted for hearing.

The motion is supported by affidavit and supplementary Affidavits and exhibits. All the affidavit and supplementary Affidavits and Exhibits were adopted as properly filed by this court despite non-compliance with **Order 20 R 14** [Certificate of exhibits].

I wish to refer to some of the salient averments in the Affidavits of the Applicant as follows:

- That the Applicant caused a Writ to be issued against the Respondent on the 1st day of July, 2021 claiming the endorsement thereon and an Exparte Application for Interlocutory Injunction in a suit number C1/18/2021 titled

**THE REGISTERED TRUSTEES OF THE
PRESBYTERIAN CHURCH OF GHANA
HEADQUARTERS
H/NO. 596 C/1 MISSION STREET GA-081-9343
KUKU HILL, OSU ACCRA**

AND

**FELIX OTI BOATENG (a. k. a. AZOR BEBE)
G.P.S ET 2587-0936
AKYEM SEKYERE
ATIWA EAST DISTRICT EASTERN REGION**

- That the Writ and Statement of Claim were to be served with the Exparte Order for Interlocutory Injunction.
- That after several unsuccessful attempts to serve the Respondent personally, the Applicant was granted an Order on the 26th of July, 2021 to serve all processes on the Defendant by substitution.
- That photocopies of the processes are attached and marked as **Exhibits EAA, EAA1 & EAA2.**
- That the Respondent entered appearance on the 27th day of August, 2021 and an affidavit in opposition to the application for Interlocutory Injunction.

- That meanwhile on the 25th day of August, 2021 the Respondent filed a Statement of Defence.
- That notwithstanding the pendency of the application for injunction the Defendant/respondent has now developed the land up to lintel level by the Respondent's own showing.
- That photographs attached to the Respondent's own affidavit in opposition to the Interlocutory Injunction application dated the 27th day of August, 2021, clearly shows the Respondent is in contempt of Court by developing the land which act undermines the authority of the Court and brings the administration of justice into disrepute.
- That photocopies of the affidavit in opposition with the pictures are attached and marked **EAA3 (a)**.
 - That the Applicant is advised by their lawyer and verily believe the same to be true that the Respondent having ignored the Court and gone ahead to develop the land to its current level is contemptuous of the court and the court must take a serious view of his conduct and attach him for contempt of court .

On the 13/12/2021 the Applicant filed supplementary affidavit in support of application for attachment for contempt, I wish to state the salient depositions:

- That I inadvertently did not attach Exhibits "EAA, EAA1 and EAA2 referred to in paragraph 7 of the Affidavit in support.
- That I hereby attach same

Again, on the 21/5/24 the Applicant filed a supplementary affidavit with exhibit EAA4 and EAA5 Series attached.

Another supplementary affidavit was filed on the 29/7/24 deposed to by Rev. Hayford Ayim:

- That when the Applicant's lawyer questioned the Respondent why he was still developing the land notwithstanding the injunction Order, the Respondent retorted "**s3 woamma Court nn3)** to wit "**you did not come to court today**".
- That when Counsel advised the Respondent's agents /workers to cease or stop working on the land to avoid being cited for contempt, the Respondent again retorted "aden enti? Court no de3 me na m3kc na 3ny3 wcn" to wit "why? I have to be in court, not them".

- That photographs taken by me of the said encounter are attached and marked Exhibits “HA” series.

The Respondent resisted the application by filing affidavit in opposition on the 7/12/2021 and another one on the 11/10/24.

I wish to quote the relevant paragraphs in this decision:

- That in relation to the averments contained in the paragraphs in the affidavit I opposed the Application for the Interlocutory Injunction.
- That in my averments, I stated that the time the Applicant brought the action I was in effective occupation.
- That I stated among other things, that I had built my house up to lintel level and I attached the exhibits 1 and 1A in support of my affidavit opposing the grant of Interlocutory Injunction
- That it seems strange that the Applicant should detach the pictures I used to oppose the application for Interlocutory Injunction and use same as evidence of contempt.
- That I am advised and verily believe same to be true that it appears that instead of prosecuting the case the Applicant is rather persecuting me as a way of preventing me from defending the action.

The affidavit in opposition filed on 11/10/2024 contains the following:

- That I will crave the indulgence of the court to rely on the averments contained in my statement of defence filed on 12th August, 2021
- That on the return date for the contempt application counsel did not attend court so the application was struck out for want of prosecution.
- That having had the application struck out for want of prosecution the Plaintiff cannot get up after three years to repeat the same application.
- That I am advised and verily believe same to be true that by the present application whereby the Plaintiff seeks to resurrect the application that had been struck out for want of prosecution over three years ago should not be countenanced by this honourable court.

- That I am advised and verily believe same to be true that counsel's conduct is tantamount to persecution and not prosecution.
- That I am advised and verily believe same to be true that this application has been brought in bad faith especially more so when Plaintiff/Applicant is going beyond their boundary line to claim an area that does not belong to them.
- I have attached a picture of our land taken on 8th April, 2022 at the onset of the case which clearly showed the buna tree that demarcated the Plaintiff's land from ours.

The motion was heard on 19th November 2024. Counsel for both parties relied on their affidavits in support and in opposition as well as their supplementary affidavits and oral submissions.

Counsel for the Applicant contended strongly that, the Respondent is in contempt of court for disregarding the injunction application and Order which was served on him and continue to do the very thing the injunction application is seeking to restrain him from doing.

On the part of the Respondent, his counsel made reference to the Order of this court differently constituted dated 25/11/2021, he contended that by that Order, the injunction was to lapse after 10 days, the present application was struck out only for it to be relisted after 3 years. Again, the Respondent has not done anything to show disregard or disrespect to the authority of the court or administration of justice.

These are the arguments for and against the application.

In my view, two issues call for determination in this case:

- 1) Whether or not the Respondent was served with the injunction application Order filed by the Applicant to restrain him from having anything to do with the disputed land.**
- 2) Whether or not the Respondent has done anything to show disregard or disrespect or to impugn the integrity or the authority of the court by**

doing the very thing the injunction Order or Application seeks to restrain him from doing.

Before I resolve these issues, I wish to discuss the offence of contempt in our legal jurisprudence.

The Applicant's application is founded on **Section 36 (1) of Act 459** which provides as follows: "The Superior Courts of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of the Constitution in relation to contempt of court". The same provision is found in **Article 126 (2) of the 1992 Constitution.**

Order 50 of C.I. 47 regulates the procedure for committal for contempt.

I wish to take the path to outline what constitute contempt and the ingredients the Applicant has to prove to be successful in this application.

In **Oswald's Contempt of Court, 3rd edition at page 6**, it is stated that, "To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrepute or disregard or to interfere with or prejudice parties, litigants or their witnesses during litigation. This means that, a person commits contempt and may be committed to prison for wilfully disobeying an Order of court requiring him to do any act other than payment of money or to abstain from doing some act".

The Order which a party can be said to have disobeyed should be unambiguous so that, the party will know what he is to do or not to do.

See:

- **Republic V. High Court Accra Ex-parte Laryea Mensah (1998-1999) SCGLR 360.**
- **In Re Effiduase Stool Affairs (No.2); Republic V Numapau, President of National House of Chiefs and Ors; Ex-parte Ameyaw (1998-1999) SCGLR 639.**

To constitute contempt, it must be proved that, the disobedience was a wilful breach of a court Order which requires the party to do or abstain from doing something.

See:

- **Republic V. High Court, Ex-parte Laryea Mensah (supra).**
- **Agbleta V. The Republic (1977) 1 GLR 445 CA.**
- **Republic V. Boateng & Oduro Ex-parte Ayenim Boateng and Others (2009) SCGLR 154.**

In the case of **Republic V. Sito I Ex-parte Fordjour, (2001-2002) SCGLR 322** the Supreme Court set down the ingredients which have to be proved in contempt as follows:

- (a) There must be a judgment or an Order requiring the contemnor to do or abstain from doing something.
- (b) It must be shown that, the contemnor knows what precisely he is expected to do or abstain from doing.
- (c) It must be shown that, he failed to comply with the terms of the judgment or the Order and that his disobedience was wilful.

See also

- **The Republic V. Afewu & Anor Ex-parte Takoradi Flour Mills & Anor (2018) 121 GMJ 210 CA.**
- **Republic V. Conduah, Ex-parte Supi George Asmah (2013-2014) 2 SCGLR 1032.**

I wish to add that, in a situation where there is a pending application like injunction which has not been determined, any act that seeks to do the very thing or act the application is seeking to prevent will amount to contempt of court. See: **Republic V. Moffat and Ors. Ex-parte Allotey (1971) 2 GBR 391.**

In the case of **Aryeetey V. Agbofu II & Anor (1994-1995) GBR 250, the Supreme Court held at page 252** as follows:

“The applicants having been served with the application deliberating stole the match by doing the very act that the motion is sought to restrain them while the motion was pending. Once the applicants had become aware of the pendency of the motion,

any conduct on their part that is likely to prejudice a fair hearing of the motion was tantamount to contempt of court”.

However, since contempt is a quasi-criminal, the law requires that, its proof by the Applicant against the Respondent should be beyond reasonable doubt.

See **Republic V. Acquaye alias Abor Yamoah II Ex-parte Essel & Others (2009) SCGLR 749.**

In **Kanga V. Kyere (1979) GLR 458**, it was stated in the headnote as follows: “To obtain committal for contempt the applicant must strictly prove beyond reasonable doubt that, the Respondent has wilfully disobeyed and violated the court’s Order. In the absence of such evidence, the Respondents could not be guilty of contempt”. See also:

- **Republic V. Nii Achia II Ex-parte Joshua Nmai Addo (2015) 83 GMJ 13 SC.**
- **Republic V. High Court Kumasi, Ex-parte Koduah (Paragon Investment Ltd-Interested Party) (2015-2016) 2 SCGLR 1349.**

However, the law is settled that, a charge of contempt will not arise if there is a judgment subsisting and the person who is injuriously affected by the said judgment or the loser issues another writ for substantially the same reliefs in either the same court or in a different court.

See:

- **Republic V. Duffour Ex-parte Asare (2007-2008) SCGLR 394.**
- **Republic V. Major Clifford Atta Wirrom (Rtd) Ex-parte Erasmus Qaison & Anor (2013) 63 GMJ 133 CA.**

Coming back to the instant application, the Applicant attached to the present Application, a copy of the respondent’s affidavit in opposition and exhibits attached to the Interlocutory Injunction dated 25/11/2021 as exhibit EAA3, EAA3a and EAA3b. Counsel also filed supplementary affidavit on the 13/12/21 exhibiting the Writ as exhibit EAA, an indenture, pictures and a motion for Interlocutory Injunction as EAA1 series. Other supplementary affidavits also had Exhibit EAA5 series, exhibit EAA4, the Order and the Ruling as well as Exhibit HA series.

According to counsel, the Respondent continues to build in clear disregard to the Orders of this court.

I have also thoroughly considered the Affidavit in opposition of the respondent. He avers that the Order (Exhibit EAA4) had long lapsed and the present application was struck out and that, the Applicant went to sleep only to wake up to apply.

I have studied the Application before me as well as the main file of the substantive suit attached to the docket of the present Application. CMC in the substantive suit has been concluded and it has been scheduled for hearing on 6/2/2025.

It is on record that on the 1st day of July 2021, this honourable court differently constituted granted an Ex-parte application for Interlocutory Injunction upon an application for an ex-parte injunction brought by the Plaintiff /Applicant herein. The Order was to lapse after 10 days. The Plaintiff Applicant then sought leave from the court to serve the said Order through substituted service as well as subsequent processes, and same was also granted on the 26/7/21. It was posted as directed by the court and proof of posting dated 27th July 2021 is available on record.

However, it should be noted that the said Interlocutory Injunction sought Exparte was repeated on notice on the 09/07/2021 contrary to counsel for the respondent's assertion that it was not repeated on notice. Affidavit in opposition was filed by counsel for Respondent with Exhibits attached. The application for Interlocutory Injunction on notice was granted on the 25/11/2021.

Interestingly, in the Application filed on 09/07/2021, both parties and their counsel were actively involved in the application and were all present in court when the Application was granted. The Order contains the following.

Upon reading the Affidavit of Emmanuel Asiedu Ansah of the Presby church Akyem Sekyere H/NO. A /95 Atiwa East District on behalf of the plaintiff/ Applicant herein filed on the 16th day of November,2021 in support of the Motion Ex-parte praying the honourable court for an Order of Interlocutory Injunction.

AND UPON HEARING Selina Fenteng Esq. Counsel for Plaintiff/Applicant herein.

IT IS HEREBY ORDERED THAT an Interlocutory Injunction is granted restraining the defendant, whether by himself, family or theirs agents servants, assign, privies workmen or any person whomsoever described from entering and developing or

constructing or dealing with the disputed land in any manner that is contrary to the interest of the plaintiff till the final determination of the suit . EXHIBIT EAA4, the Order and the Ruling refers.

It should be noted that, the said Order had mistakes and is akin to the Order for Ex-parte interlocutory granted on the 1/7/2021 which was to lapse after 10 days. Even the date under reference was wrong.

However, considering the substance over the form, the said Order for the Interlocutory Injunction filed on Notice on the 09/07/21 was served on the Respondent on the 10/5/2024.

To settle this controversy, Counsel for the Applicant provided the court with the actual Ruling delivered before this court differently constituted in the presence of all the parties on the 25/11/2021 also exhibited as EAA4.

In my humble view, granted the Order for the Motion on Notice was served late on the respondent which is not even the gravamen of the Affidavit in opposition, they were all present together with their lawyers in court when the Ruling was delivered by this court differently constituted.

I am convinced that the Respondent was still building when the Application for the Interlocutory Injunction was pending and that explains why the date of the Order and the date of the Application for Committal are all dated the 25/11/2021.

I have also examined Exhibits EAA3a series carefully being the respondent pictures during the pendency of the Application for Interlocutory Injunction. I have also considered Exhibit HA series and EAA5 series being the current state of the building which has been roofed and land cleared. The respondent has not denied that these are his works just that he has been in possession from the inception of the substantive suit.

I have examined all the exhibits carefully. There is no doubt that, the Respondent responded to the Application for the Interlocutory Injunction filed on the 9/07/21 through the Affidavit in opposition filed on the 27/08/2021

Besides, from Exhibit EAA4 during the reading of the actual Ruling of which the Order was drawn from, though the Order had mistakes both the respondent and

his counsel were in court. In fact, the Ruling was read in open court in the presence of the Respondent and his counsel and the respondent was enjoined from entering, developing or constructing or dealing with the disputed land in any manner or developing the land in dispute contrary to the interest of the Applicant until the final determination of the suit. However, the documents exhibited by the Applicant show that the Respondent has developed beyond the lintel level deposed to in his Initial affidavit to the Interlocutory Application and has roofed the said building contrary to his earlier averments in Exhibit EAA3 which is his exhibit attached to his Affidavit in Opposition in the Injunction Application. Even in exhibit HA, the Respondent is found on the disputed land and he has not denied that.

Besides, his contention that this contempt Application was struck out is of no moment since the court in its wisdom relisted same. It does not matter how long it took for it to be relisted.

In the case of **Comet Construction Co. Ltd. V. Ghana Commercial Bank, Tema (Garnishee) (1976) 2 GLR 2020 at 224**. The Court of Appeal per Amissah JA held thus “without knowledge of any kind of the courts proceedings or Order, a person cannot be held in contempt of court for acting in a manner which interferes with the proceedings or contravenes the Order.”

I am convinced that, the Respondent had knowledge of the Injunction Application then sub-judice and even the final Ruling of the court which took place in his presence and in the presence of his counsel.

The Respondent therefore held himself or conducted himself with the highest impunity and continues building as the substantive suit is on-going.

The Respondent did not deny that he had no knowledge of the Order dated 25/11/2021. There is no doubt that in a Contempt Application, knowledge cannot be imputed personal knowledge is required at Common Law and in our Law. However in this case the Respondent cannot say that he had no knowledge of the Order and the Ruling which was delivered right in his presence.

It is settled that, before an act can be deemed to be contempt of court, it must lead or be likely to lead to an interference with administration of justice.

The Applicant has been able to prove beyond reasonable doubt on the face of the affidavits and the exhibits that the respondent is in contempt.

It is therefore my opinion that, the Applicant's application meets the standard of proof beyond reasonable doubt as required under **Section 13 of the Evidence Act, 1975 (NRCD 323)**.

I am of the view that, the courts should not be pushed to convict for contempt where the guilt of the Respondent has not been proved beyond reasonable doubt by the Applicant. The courts should also be very slow to grant such prayer except in very clear situation of show of disregard or disrespect to the administration of justice.

The courts power to convict for contempt is sacred and must be used carefully and judiciously.

See: **The Republic V. Nana Kwabena Ampong & Ors. Ex-parte Nana Kwame Addae & Anor (unreported) Suit No. E 12/72/2010 dated, 27th January 2011.**

From the above rendition, all the two issues set down would be answered in the Affirmative against the Respondent.

The Respondent is therefore guilty of contempt of court. He is convicted accordingly. He is to pay a fine of 420 Penalty units or in default thirty [30] days imprisonment at the Koforidua Prisons in the Eastern Region.

(SGD.)
JUSTICE CYNTHIA MARTINSON [MRS]
HIGH COURT JUDGE