

GHANA / JUDGMENT

OSEI KOFI VRS. BOATENG (LD/0197/2020) [2024] GHAHC 130 (27 June 2024)

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF
JUSTICE ACCRA LAND COURT DIVISION '9' HELD ON THURSDAY THE 27TH
DAY OF JUNE, 2024 BEFORE HER LADYSHIP
NABEELA NAEEMA WAHAB J. (MS.)
SUIT NO. LD/0197/2020
ALEXANDER OSEI KOFI - PLAINTIFF
VRS
KWADWO ASANTE BOATENG – DEFENDANT

AND IN THE MATTER OF: THE REPUBLIC
 VRS.
 KWADWO ASANTE BOATENG
 - RESPONDENT

EX PARTE: ALEXANDER OSEI KOFI - APPLICANT

RULING

I.

BACKGROUND

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1. The Plaintiff instituted an action against the Defendant by a Writ of Summons and Statement of Claim filed on 21st November 2019. It was the case of the Plaintiff that he purchased two plots of land, from the Defendant and has been in possession of same since the year 2002. It was the further case of the Plaintiff that the Defendant who has received full consideration for the land has refused to execute a Deed of Assignment in his favour. The Plaintiff added that although the Defendant has informed him that he intends to refund the money paid to

him for the subject land and rescind the transaction, the Defendant has failed to refund the money paid. Instead, the Defendant has evinced a clear intention to deprive him of the subject land by demolishing his fence wall and interfering with his construction works.

2. By his action, the Plaintiff sought inter alia a declaration of title to the land which was the subject of the dispute stated to be approximately 0.32 acres and situate at Amrahia in Accra, an order compelling the Defendant to execute a Deed of Assignment in his favour, an order for recovery of possession and an order of perpetual injunction to restrain the Defendant, his agents, servants, assigns and all those claiming through him from interfering with the subject land.
3. In a Statement of Defence filed by the Defendant on 8th January 2020, the Defendant stated that he agreed to sell one and a half plots measuring 0.24 acres to the Plaintiff and not two plots measuring 0.32 acres as claimed by the Plaintiff. The Defendant added that the consideration he received from the Plaintiff for the land was thus in respect of 0.24 acres.
4. The Defendant also stated that the Plaintiff resorted to constructing his fence wall on land assigned to adjoining assignees regardless of his disapproval. It was therefore later agreed between the Plaintiff and the SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 2 of 15 Defendant that the Defendant will find a new parcel of land/ alternative land elsewhere for the Plaintiff.
5. The Defendant stated that the Plaintiff informed him that he had found an alternative parcel of land which was two plots. He therefore agreed to pay a proportionate amount of the cost of the two plots of land found by the Plaintiff as the Plaintiff had purchased one and a half plots from him. The Defendant stated that the Plaintiff provided him with details of his bank account into which he paid the part payment of the alternative land and the agreement between the parties for the initial parcel of land which is the subject of the suit was abrogated by mutual consent.
6. The Defendant therefore denied the claims of the Plaintiff and stated that the Plaintiff is not entitled to any Deed of Assignment or to any of the reliefs claimed and indorsed on the Writ of Summons.
7. After a full trial, this Court differently constituted gave judgment on 21st October 2022. At page 24 of the Judgment, the Court noted the submission by Counsel for the Plaintiff that the Plaintiff had discharged the evidential burden on him, proven his case on the balance of probabilities and was therefore entitled to the reliefs endorsed on the Writ of Summons. The Court however held as stated in the concluding paragraph of the Judgment, at page 26, that “Generally, this Court finds the Defendant more credible on the balance of probabilities – Judgment in favour of the Defendant. No order as to cost”. II. APPLICATION BY THE PLAINTIFF/APPLICANT FOR ORDER COMMITTING THE DEFENDANT/RESPONDENT TO PRISON FOR CONTEMPT OF COURT SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 3 of 15

8. The Plaintiff as Applicant filed the instant application on 13th July 2023 seeking an order of the Court to commit the Defendant as Respondent to prison for contempt. It is essentially the case of the Plaintiff/Applicant as stated in the affidavit in support of the application and supplementary affidavit in support of the application filed on 15th August 2023 that at the time he instituted the action, he was in possession of the subject land. The Plaintiff/Applicant added that as the Defendant/Respondent did not file a Counterclaim to the substantive suit and the Judgment of the Court did not grant the Defendant/Respondent any reliefs, the Defendant/Respondent has no right to develop the subject land.
9. The Plaintiff/Applicant also stated that he filed a Notice of Appeal on 16th December 2022 which should indicate to the Defendant/Respondent that he intends to appeal against the Judgment of the Court dated 21st October 2022, yet, the Defendant has gone onto the subject land and is developing same. The Plaintiff/Applicant relied on a copy of a Notice of Appeal exhibited as Exhibit AOK 4 and pictures exhibited as Exhibit AOK 6 Series in support of these claims. The Plaintiff/Applicant stated that the conduct of the Defendant/Respondent is intended to prejudice the outcome of the appeal, bring the administration of justice into disrepute and public ridicule, hence his application.
10. The Defendant/Respondent in an affidavit in opposition and supplementary affidavit in opposition filed on 15th August 2023 and on 11th June 2024 respectively stated that before the Judgment of this Court, dated 21st October 2022, it was he who was in possession of the subject land and not the Plaintiff/Applicant. The Defendant/Respondent added that per the Judgment of the Court dated 21st October 2022, the Plaintiff/Applicant's claims failed in its entirety and it logically followed that whilst the reliefs sought by the Plaintiff/Applicant were denied, his defence or claims were upheld. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 4 of 15
11. It is therefore the case of the Defendant/Respondent that there is no Judgment or Order requiring him to do or refrain from doing anything; he is not aware of what he is to do or abstain from doing and the Plaintiff/Applicant has failed to show that he has not complied with the terms of any Judgment or Order of Court.
12. Relying on a report of a search filed on 20th July 2023, attached to his supplementary affidavit in opposition and marked Exhibit B, the Defendant/Respondent also stated that there is no indication from the Records of the Court that the Plaintiff/Applicant has filed any Notice of Appeal or that same has been served on him. The Defendant/Respondent therefore denied that any Notice of Appeal has been filed or that he has knowledge of a Notice of Appeal. He added that no stay of execution of the Judgment dated 21st October 2022 has been served on him and also that he had filed Entry of Judgment as the Judgment of the Court is in his favour.

13. The Defendant/Respondent added that he is not engaged in any construction works on the subject land. He explained that a grantee on a neighboring land is however engaged in the construction of a fence wall on the boundary of the land, where the grantee's land meets the land which was the subject of the substantive suit.
14. For all of the above-stated reasons, the Defendant/Respondent prayed that the application filed by the Plaintiff/Applicant should be dismissed with punitive costs. III. SUMMARY OF WRITTEN LEGAL SUBMISSIONS BY COUNSEL FOR THE PARTIES
15. Following the directions of this Court differently constituted, Counsel for the Parties filed written legal submissions. The matter was thereafter transferred by an Order of the Chief Justice to this Court. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 5 of 15
16. A summary of the written legal submissions filed by Counsel for the parties are as follows: SUMMARY OF SUBMISSIONS BY COUNSEL FOR PLAINTIFF/ APPLICANT
17. Counsel for the Plaintiff/Applicant, rehashed the case of the Plaintiff/Applicant in his written legal submissions filed on 12 December 2023. He stated that the Judgment of the Court dated 21st October 2022 is not executable as it does not contain any consequential orders. He also stated that although the Court differently constituted did not make an order granting the Defendant recovery of possession, the Defendant/Respondent has returned to the subject land and is constructing a fence wall.
18. Counsel for Plaintiff/Applicant submitted that the construction works on the subject land by the Defendant/Respondent after service of the Notice of Appeal and the instant application filed by the Plaintiff/Applicant is sufficient for the Court to commit the Defendant/Respondent to prison for contempt to ensure that the sanctity of the Court, its orders and processes are respected at all times. SUMMARY OF SUBMISSIONS BY COUNSEL FOR DEFENDANT/ RESPONDENT
19. Counsel for the Defendant/Respondent also rehashed the case of the Defendant/Respondent in his written submissions filed on 14th December 2023. Counsel for the Defendant/Respondent maintained that the Plaintiff/Applicant has not established a case against the Defendant/Respondent to the standard of proof required by law and prayed that the application should be dismissed. IV. ISSUE FOR DETERMINATION SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 6 of 15
20. Whether or not the Defendant should be committed to prison for contempt of Court. V. APPLICABLE LAW DEFINITION
21. In their judgment in the case of *In Re Effiduase Stool Affairs (No.2)*; *Republic vs. Numapau, President of The National House of Chiefs and Others*; *Ex Parte Ameyaw II (No. 2)* [1998-99], 639 at page 660, the Supreme Court held per Acquah JSC (as he then was) referring to the definition of contempt given by Oswald in his classic, *Contempt of Court (2nd ed.)* (1895) at page 6 that: "In brief, contempt of Court is constituted by any act or omissions tending to

obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.” (Emphasis added) TYPES / CONTEMPT OF COURT CLASSIFIED

22. In *Re Effiduase Stool Affairs (No.2)* (supra) the Supreme Court explained per Acquah JSC (as he then was) at page 661 that “... contempt of court might be classified either as direct and indirect or civil and criminal.” Direct contempts were those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. Indirect or constructive contempts were those arising from matters not occurring in or near the presence of the court, but which tended to obstruct or defeat the administration of justice, such as failure or refusal of a party to obey a lawful order, injunction or decree of the court laying upon him a duty of action or forbearance. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 7 of 15 Civil contempts were those quasi-contempts consisting in failure to do something which the party was ordered by the court to do for the benefit or advantage of another party to pending proceedings, while criminal contempts were acts done in respect of the court or its process or which obstructed the administration of justice or tended to bring the court into disrespect.” (Emphasis added)
23. The authorities also establish that contempt of court may be committed intentionally or unintentionally. In *Republic vs. Bank of Ghana & others; Ex-parte Duffour* [2018- 2019] 1 GLR, 445, the Supreme Court cited the case of *Republic vs. Moffat; Ex Parte Allotey* [1971] 2 GLR 391 and held at page 454 that “intentional contempt” may arise in two ways:
 - where a party wilfully disobeys an order or judgment of a court, and
 - where a party knowing that a case is sub judice, engages in an act or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an order of the court.” (Emphasis added)
24. Relying on the above-cited authorities, this Court finds that the case of the Plaintiff/Applicant as stated in the affidavits in support of the instant application is that by engaging in construction works on the subject land despite notice of the Plaintiff/Applicant’s Notice of Appeal and the instant application, the Defendant/Respondent has committed indirect or constructive contempt which is criminal in nature, for as explained in *Re Effiduase Stool Affairs (No.2)* (supra) it is the Plaintiff/Applicant’s case that this is an act that may prejudice or defeat the appeal he has filed and obstruct the administration of justice. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 8 of 15
25. The Defendant/Respondent is also alleged to have committed this contempt of Court intentionally for as explained in *Republic vs. Bank of Ghana & others; Ex-parte Duffour* (supra) and *Republic vs. Moffat; Ex Parte Allotey* (supra), it is the case of the Plaintiff/Applicant that despite the absence of an Order of the Court, the Defendant/Respondent knows of the pending appeal and the instant application and yet he is engaged in construction works on the land that may prejudice or interfere with the fair hearing of

appeal and in complete disregard of the instant application. STANDARD OF PROOF

26. From the authorities, the law is settled that contempt of Court is a quasi-criminal process and the standard of proof required is proof beyond reasonable doubt as provided in section 13(1) of the Evidence Act, 1975 (N.R.C.D. 323). In the case of *Comet Products UK Ltd v. Hawkex Plastics Ltd* [1971] 1 All E R 1141 at page 1143-1144, CA, referred to by the Supreme Court in *Akele vs. Coffie and Anor* and *Akele vs. Okine and Anor (Consolidated)* [1979] GLR 84-90, and also referred to by the Supreme Court in its more recent decision in *Ex-parte Duffour* (supra) it was held that the standard of proof required in contempt cases is proof beyond reasonable doubt, whether the act complained of is criminal contempt or civil contempt. PROOF BEYOND REASONABLE DOUBT
27. In explaining what is meant by proof beyond reasonable doubt in contempt applications, the Court of Appeal held in the case of *The Republic vs. Daniel Mckorley, Exparte: Al-Hassan Iddisah* (Unreported; Suit No: GJ/0057/2020; 27th Day of February, 2023; CA), per His Lordship Kweku T. Ackaah-Boafo, J.A. thus: SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 9 of 15 I think the time has come ... to re-state the fact that when the law speaks of reasonable doubt it is not a fanciful doubt. To paraphrase the Supreme Court of Canada in *R. v. Villoroman*, [2016] 1 SCR 1000, 2016 SCC 33 (CanLII) at p. 1023, “A reasonable doubt is a doubt based on ‘reason and common sense’; it is not ‘imaginary or frivolous’; it ‘does not involve proof to an absolute certainty’; and it is ‘logically connected to the evidence or absence of evidence’ (See also *R. v. Lifchus*, [1997] 3 SCR 320, 1997 CanLII 319 (SCC)). In other words, the reasonable doubt threshold does not require a fantastical suspension of disbelief. It is a doubt that logically arises from the evidence, or the lack of evidence based on common sense and reason. (Emphasis added) BURDEN OF PROOF
28. The burden of proof is on the Applicant, the Plaintiff/Applicant in this case, to prove his case against the Defendant/Respondent beyond reasonable doubt.
29. The Plaintiff/Applicant must also make out a prima facie case before the Court will consider the defence (s) put up by the Defendant/Respondent, for as explained by the Supreme Court in *Re: Effiduase Stool Affairs No. 2* (supra): “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.” (Emphasis added)
30. In the case of *Republic v Boateng & Oduro; Ex parte Agyenim-Boateng & Others* [2009] SCGLR 154 at page 162, the Supreme Court speaking through Dotse JSC (as he then was) referred to the decision in *Re: Effiduase Stool Affairs No. 2* (supra) and similarly stated that a prima facie case of contempt must first be made out. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 10 of 15 PROVING THE GUILT OF A RESPONDENT

31. In the case of *Ex Parte Duffuor* (supra) the Supreme Court held as reported at page 453 – 454, that: “A respondent to a contempt proceeding may be found guilty in many ways. The party may be found guilty of direct contempt or indirect contempt which may be proved depending on the facts of the case in several ways.” (Emphasis added)
32. Thus, whilst the law is settled on the burden and standard of proof required in contempt cases, the guilt of the Defendant/Respondent may be proved in several ways depending on the facts of each case, as held by the Supreme Court in *Ex Parte Duffuor* (supra). VI.
ANALYSIS AND OPINION
33. In determining the issue raised by this application, this Court will examine the alleged conduct of the Defendant/Respondent complained of within the perspective of the law on contempt as summarized above.
34. As stated in paragraphs 24 and 25 above, the Plaintiff/Applicant alleges that the Defendant/Respondent is guilty of indirect, criminal contempt committed intentionally.
35. In explaining what acts may be regarded as intentional/ willful, in *Luguterah vs. Northern Engineering Co. Ltd* [1980] 1 GLR 62, Taylor, J. (as he then was) explained that to be punishable for contempt it must be shown that the acts complained of were SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 11 of 15 willful "... in the sense of not having been accidental and unintentional". (Emphasis added)
36. The Plaintiff/Applicant relied on a Notice of Appeal marked as Exhibit AOK 4 stated to have been filed on 16th December 2022 in proof of his pending appeal. The Court finds that the name of the Defendant/Respondent herein is stated on the process as the person directly affected by the Appeal and the process is stated to be for service on the Defendant/Respondent herein.
37. Exhibits AOK 6 series, Exhibits AOK 7 series and Exhibit AOK 8 series are pictures dated between 18th March 2019 and 25th July 2023 which indicate various stages of construction of a fence wall on a parcel of land. It is noted by the Court that the present application was filed on 13th July 2023.
38. The Plaintiff/Applicant relying on the above stated exhibits maintains that he has a pending appeal; the Defendant/Respondent has notice of the appeal; the fence wall shown in the pictures is being constructed on the subject land by the Defendant/ Respondent and the Defendant/Respondent is engaged in this act intentionally to interfere with the fair hearing or to prejudice the outcome of the pending appeal or in complete disregard for the processes of the Court.
39. The Court finds that the Plaintiff/Applicant has made a prima facie case and the Court will therefore consider the Defence(s) put up by the Defendant/Respondent.

40. The Defendant denies that there is any appeal pending. From the report of the search filed by the Defendant/Respondent on 20th July 2023 at the Registry of the Court and attached to the Defendant/Respondent's supplementary affidavit as Exhibit B this Court finds that at the time the instant application was filed, there was no indication that any Notice of Appeal has been served on the Defendant/Respondent or that a Notice of Appeal has been filed at all. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 12 of 15
41. The Court has also considered the affidavits in opposition deposed to on oath in which the Defendant/Respondent denies that he is the one engaged in the alleged construction works and explains that it is a grantee of his on the land adjoining the subject land who is engaged in the construction of a fence wall on a portion of the land where both land boundaries meet.
42. The Court finds that whilst the Plaintiff/Applicant's Exhibit AOK6 series, Exhibit AOK7 series and Exhibit AOK8 series show construction works on a parcel of land between March 2019 and July 2023, there is no proof that the works shown are on the subject land and not on the boundary of the subject land shared with a grantee of the Defendant/Respondent.
43. There is also no proof that the Defendant/Respondent is the actual person engaged in these works other than the claim by the Plaintiff/Applicant that the Defendant/Respondent is the person who brought workers to the land to start the construction of a fence wall which the Defendant/Respondent denies.
44. In *Re Effiduase Affairs (No 2)* (supra), at page 666 of the report, the Supreme Court speaking through Acquah JSC (as he then was) referred to the case of *Kangah v Kyere* [1979] GLR 458 and explained that an Applicant must strictly prove beyond all reasonable doubt the guilt of the Respondent to obtain a committal order for contempt.
45. After consideration of all the affidavits filed, attached exhibits and written legal submissions, the Court finds that the Plaintiff/Applicant did not prove the guilt of the Defendant/Respondent beyond all reasonable doubt to obtain a committal order for contempt of Court. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 13 of 15 VII. CONCLUSION
46. The Court finds that the guilt of the Defendant/Respondent has not been established beyond reasonable doubt.
47. The application filed by Counsel for Plaintiff/Applicant on 13th July 2023 seeking an order of the Court to commit the Defendant/Respondent to prison for contempt of Court is hereby refused.
48. No order as to costs. NABEELA NAEEMA WAHAB (MS) J. (JUSTICE OF THE HIGH COURT)
COUNSEL KWADWO OSEI ODAME FOR THE PLAINTIFF/APPLICANT

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- PRESENT YIADOM ATUOBI-DANSO FOR THE DEFENDANT/RESPONDENT - PRESENT CASES REFERRED TO: SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng
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1. In Re Effiduase Stool Affairs (No.2); Republic vs. Numapau, President of The National House of Chiefs and Others; Ex Parte Ameyaw II (No. 2) [1998-99], 639.
 2. Republic vs. Bank of Ghana & others; Ex-parte Duffour [2018-2019] 1 GLR, 445.
 3. Republic vs. Moffat; Ex Parte Allotey [1971] 2 GLR 391.
 4. Comet Products UK Ltd v. Hawkex Plastics Ltd [1971] 1 All E R 1141.
 5. Akele vs. Coffie and Anor and Akele vs. Okine and Anor (Consolidated) [1979] GLR 84-90.
 6. The Republic vs. Daniel Mckorley, Exparte: Al-Hassan Iddisah (Unreported; Suit No: GJ/0057/2020; 27th Day of February, 2023; CA)
 7. Republic v Boateng & Oduro; Ex parte Agyenim-Boateng & Others [2009] SCGLR 154.
 8. Luguterah vs. Northern Engineering Co. Ltd [1980] 1 GLR 62.
 9. Kangah v Kyere [1979] GLR 458. SUIT NO: LD/0197/2020 – Alexander Osei Kofi vs Kwadwo Asante Boateng Page 15 of 15
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