

GHANA / JUDGMENT

Republic Vrs Noye and Another Ex Parte Atuobi [2023] GHAHC 30 (27 January 2023)

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT
JUSTICE, (COMMERCIAL DIVISION), HELD AT ACCRA, ON
FRIDAY, 27 JANUARY 2023, BEFORE HIS LORDSHIP JUSTICE
CONSTANT K. HOMETOWU
SUIT

NUMBER: CR/0357/2022
THE REPUBLIC
VRS
1.DAVID NOYE
RESPONDENT
2.NEWLAND ANSAH
EX PARTE - FRANK AMOAKO ATUOBI
APPLICANT

JUDGMENT

INTRODUCTION

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: Page 1 of 9 “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”. The matter before the Court is a motion on notice for an Order of 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. Parties' Submissions APPLICANT'S CASE In a 32-paragraph affidavit in support of the motion, Applicant, Frank Amoako Atuobi, deposed, inter alia, that 1st and 2nd Respondents have unlawfully entered onto land, the subject matter of a pending litigation at the Weija Circuit Court, in Suit entitled David Noye vrs Frank Amoako Atuobi, with Suit Number C1/81/2020. Page 2 of 9 It is his further deposition that he filed a Motion on Notice for an Order of Interlocutory Injunction in the said civil suit, which motion was served on the Respondents. In paragraph 20 of the affidavit in support of the motion, deponent averred that "... Respondents are making all efforts to hurriedly complete the building project on the disputed land notwithstanding the pendency of the suit as well as the pendency of the application for Interlocutory Injunction". In paragraph 27, deponent again averred that '... by aggressively building and harassing me on the land despite having full knowledge of the pendency of the suit as well as the Application for Interlocutory Injunction, the Respondents are exhibiting conduct which shows wanton disrespect and total disregard for the authority of the Court and the justice administration system of this country". He prayed for an order of committal for contempt of the Respondents. RESPONDENTS' CASE: In his affidavit in opposition filed on 16th March 2022, 2nd Respondent, Newland Ansah (aka Nii Ansah Kanyankanyah), who is also the Lawful Attorney of the 1st Respondent (David Noye), caused his Solicitor to file an affidavit in opposition to the contempt application. In the said affidavit in opposition, Respondents denied the averments of the Applicant and said at paragraph 6 of the affidavit, among others, that "... the disputed land belongs to the Oshiyie stool, which stool headed by the Chief and occupant of the Oshiyie stool, in the name of the late Nii Page 3 of 9 Kofi Akrashie I, granted the land to the 1st Respondent sometime in the year 2004". Further, in paragraph 18 of the affidavit in opposition, deponent deposed that "... In further response, I say that we are not developing the land but only mould [s] blocks on the land for sale and not for construction or further development" He further averred that the Honourable Court seized with the civil suit did not make any orders that they tried to deliberately flout. He again deposed, inter alia, that the motion for committal is pre-emptive and creates the impression that an order has been made prohibiting Respondents from carrying out any development on the land. 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. SUBMISSIONS OF THE PARTIES In his written submission filed on 3rd October 2022, pursuant to the order of the Court, Learned Counsel for the Applicant, referring to case law, submitted that there are two types of contempt – one which requires that an order or judgment is flouted and the other which requires merely the filing of an application before a Court of competent jurisdiction for consideration. He submitted that the second type applies to the instant case. In his a charge of contempt may properly lie even in the absence of a direct order or judgment of the court, provided the act grounding the Page 4 of 9 contempt application is one that interferes with pending proceedings before a court. Counsel for the Applicant referred the Court to the Supreme Court case of The Republic v Bank of Ghana, The Governor (Bank of Ghana) and 4 Ors Ex Parte Benjamin Duffour, Civil Appeal No J4/34/2018, dated 6th June 2018, where the Apex Court noted as follows: "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". In the written submission filed on behalf of the Respondents on 14th November 2022, Learned Counsel for the Respondents submitted that "at the moment, Respondents are only moulding blocks on the land for sale". He further submitted that "the moulding of blocks on the land in dispute is of temporal nature and therefore cannot change the nature of the land. Neither can it in any way alter the nature of the land in dispute". He again submitted that since contempt is a quasi-criminal action, it is the duty of the Applicant to lead evidence to prove beyond reasonable doubt Page 5 of 9 that the Respondents had committed acts which amount to interfering with the administration of justice. THE LAW ON CONTEMPT OF COURT Contempt of Court is defined in the case of the Republic v Moffat and Others, Ex Parte Allotey [1971] 2 GLR 391 – 340, as follows: "... any conduct which tends to bring the authority and administration of the law into disrepute or to interfere with any pending litigation ... Once the respondent became aware of the pendency of the motion before the High Court, any conduct on their part which was likely to prejudice a fair hearing of that motion or interfere with the due administration of justice amounted to contempt of court". In the same case, the court observed further that "... lack of intention to commit contempt is no defence, and I am satisfied beyond every reasonable doubt that all the respondents are guilty of contempt of court. Their conduct did not only prevent the court from discharging its judicial function but also brought the authority and the administration of the law into disrespect..." For an application to succeed on a charge of contempt of court, it must be clearly established that

- (i) there is a judgment or order requiring the contemnor to do or abstain from doing something; (ii) the contemnor knows exactly what he is expected to do or abstain from doing; Page 6 of 9 (iii) that the contemnor failed to comply with the terms of the judgment or order and his disobedience is willful. This is the position of the law as clearly spelt out in Ex Parte Fordjour. Nevertheless, this is the first position of the law on contempt. The second position is in relation to interfering with the subject matter of a pending litigation, in the absence of an express order or judgment of a court. It is this position that Counsel for the Applicant places reliance on. And it is also captured in the case of The Republic v. Mensa-Bonsu & Others; Ex Parte Attorney- General [1995-96] 1 GLR 377@403, referred to at the beginning of this Judgment. Thus, the true litmus test for a court to convict for contempt of court is to ascertain whether or not the conduct complained of is one that tends to bring the authority and the administration of the law into disrepute or disregard or to interfere with or prejudice parties. The issue for determination by the Court, in my humble opinion, is whether or not evidence of the alleged contemptuous conduct as couched in the affidavit of support meets the required standard of proof to secure conviction. In the Court's opinion, the instant matter need not be further proved beyond reasonable doubt. This is because mere admission by Learned Counsel for the Respondents that his clients are moulding

blocks on the disputed land is admission on his part that the Respondents are dealing with the land, the subject matter of the dispute, despite the pending motion for Interlocutory Injunction. Page 7 of 9 The Respondents did not deny the fact that they are not aware of the pending litigation. They also did not deny the fact that they are unaware of the Motion for Interlocutory Injunction. In deponent's view since 1st Respondent had been moulding blocks on the land prior to the institution of the pending action, it is rather Applicant who has interfered with the quiet enjoyment in the land. The Court takes this position with a pinch of salt, given that there is evidence on record to show that the land in question was being registered in the name of Applicant, with Log Number LRDGAR5946192020, as per a copy of the search report marked as Exhibit G. The position of the law is clear that once a matter is before court and a party is aware of same, that party should not do anything to the land that will interfere or prejudice the case. By continuing to mould blocks on the land, Respondents are overreaching the decision of the court. And by so doing, they are interfering with the fair administration of justice. In the instant matter, I need not carry coal to Newcastle.

CONCLUSION

It is clear in my mind that the action of the Respondents constitutes interference in the administration of justice. This is so because they continue to mould blocks on the disputed land despite the pendency of Page 8 of 9 the Application for Interlocutory Injunction before a court of competent jurisdiction. Accordingly, in my humble opinion, the case for contempt of court has been sufficiently made out against the Respondents. I therefore find that 1st and 2nd Respondents are guilty of contempt. 1st Respondent has never appeared in this Court. However, I note that he is being represented by 2nd Respondent. I convict both 1st and 2nd Respondents to pay a fine of Eight Hundred (800) penalty units within two (2) weeks from today. I further direct the Respondents to purge themselves of contempt by refraining from moulding blocks as well as the construction of the building on the disputed land until final determination of the matter before Court. Respondents are to abstain from interfering in any way in the land, the subject matter of the dispute until final determination by the Circuit Court. Parties: (SGD) Constant K. Hometowu (Justice of the High Court) Prosper Yaw Ntow, Esq. – Counsel for the Applicant; G. H. Quist, Esq, - Counsel for the 1st & 2nd Respondents; Page 9 of 9

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