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THE LAW OF CONTEMPT IN GHANA: LOOKING FOR CRITERIA FOR APPLICATION.

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ABSTRACT: The main objective of this research was to examine the application of existing standards which are employed by the superior courts in the determination of contempt in contempt proceedings. The study perused some decided cases and arrived at seven (7) elements prerequisite for the establishment of contempt, some of which were found in the decided cases. The exercise employed the doctrinal research method and content analysis to carry out the work. It was found out that, in most cases, the superior courts depended on the decided cases in arriving at a verdict. This was found to arise from the fact that committal for contempt is a creature of the Common Law. It was found that the use of discretion in the determination of contempt application can have serious consequence with respect to the integrity, dignity, respect and confidence in the administration of justice.

ABBREVIATION: JSC: Justice of the Supreme Court, SC: Supreme Court, GLR: Ghana Law Report, CALD : Council of Australian Law Deans, A G: Attorney General, C J; Chief Justice, NPP: National Patriotic Party, NDC: National Democratic Congress, CHASS; Conference of Assisted Secondary Schools, T.T.U: Takoradi Technical University

INTRODUCTION

Contempt can be generally defined as an act of disobedience or dis-respect toward a judicial or legislative body, or interference with its orderly process, for which a summary punishment is usually exacted. In a grander view, it is a power constitutionally granted to the judiciary to coerce cooperation, and punish criticism or interference in the administration of justice. The legal challenge in the application of committal for contempt is the lack of uniformity in the criteria for its application. In legal literature, it has been categorized, sub-classified, and

scholastically dignified by division into varying shades--each covering some particular aspect of the general power, respectively governed by a particular procedure[1].

The essence of committal for contempt aims at ensuring that the dignity of the court is never held in doubt by the public and acts which constitute affront to this object are consequently punished to serve as deterrent to potential offenders. This is captured in the statement of HAYFRON-BENJAMIN JSC in Republic v Nkansah, Supreme Court, 28 November, 1995 as follows: *'I think the point is now clear that any "conduct that tends to bring the authority and administration of the court into disrespect or disregard, and or to interfere with or prejudice parties, litigants or their witnesses" is a contempt.*[2]

In Republic v Mensa-Bonsu [1995-96] 1GLR377, SC.'' This is the reason why the courts are given power to commit for contempt, that is to punish any acts which tend to interfere with proper administration of justice, or which 'scandalize' the courts, by eroding public confidence in them or by weakening and impairing their authority'.[3] One of the means by which the courts can actually ensure continuous public confidence in the proper administration of justice is through the exercise of committal for contempt.

OBJECTIVE OF THE RESEARCH

The main objective of this research is to examine the application of existing standards which are employed by the superior courts in the determination of contempt in contempt proceedings.

STATEMENT OF PROBLEM

There is no precise definition of contempt as emanating from Statutes or Constitution to guide the courts in committing for contempt in Ghana. Article 19 (11) states thus: *No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law.*[4]

Article 19(12) - Clause (11) of this article shall not prevent a Superior Court from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed.

It is usually left to the discretion of the judges of the superior courts to decide an act which in their view constitutes contempt: *Article 126 (2) The Superior Courts shall be superior courts of record and shall have the power to commit*

[1]Washington University Law ReviewVolume 1961|Issue 1January 1961
[2] Republic v Nkansah, Supreme Court, 28 November, 1995
[3] Republic v Mensa-Bonsu [1995-96] 1 GLR 377, SC.
[4] Article 19 (11 & 12) 1992 Constitution, Republic of Ghana

for contempt to themselves and all such powers as were vested in a court of record immediately before the coming in to force of this constitution.[5]

This discretion, in most cases, leaves much to be worried about because it does not have a form or guide to commit offenders for contempt of court. Pursuant to the above lacuna in committing for contempt, certain acts which in the light of decided cases, can easily pass for committal for contempt may not be so committed and vice versa. This ambiguities in what behavior passes for committal for contempt, in themselves seem, to give room to affect the very reason for which the superior courts are given the power to commit to themselves contempt.

SIGNIFICANCE OF THE RESEARCH

This work will serve the following relevant legal purposes:

It will highlight the criteria for contempt application in Ghana

The outcome will deter potential offenders whose conduct would have, hitherto, been affront to the administration of justice. It will assist the administrators of the justice system in examining the existing standards in the determination of contempt in the face of lack of uniformities of the criteria for determination of contempt.

Individuals and institutions such as Takoradi Technical University will be circumspect in dealing with issues whose consequences could amount to contempt.

SCOPE OF THE STUDY

There are various types of contempt but this work is limited to contempt of court, criminal or civil. This is so limited to avoid contempt relating to parliament or the legislature.

LITERATURE REVIEW

Contempt of court is committed by a person who does any act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice, or by one who, being under the court's authority as a party to a proceeding therein, willfully disobeys its lawful orders or fails to comply with an undertaking which he has given.[6]

From the above definition, it can be deduced that there are certain ingredients which, when established or found in a committal application, can be said to have qualified as contempt and some of these are: conducts that defy

[5] Article 126 (2) 1992 Constitution, Republic of Ghana

[6] Black's Law Dictionary, Free Online Legal Dictionary, 2nd Edition

orders of the court, conducts that cast disrespect on the court, conducts that impede the administration of justice, conducts that insults the dignity of the court, conducts that scandalize the court, conducts that interfere with the administration of justice, conducts that bring the authority of the Court into disrepute.

The Supreme Court of Ghana decision on the MONTIE 3 gives credence to the presence of certain ingredients which when present in an action or conduct or utterance qualify to constitute contempt. The fact of the case is that on the 29th of June, 2016 three people namely, Godwin Ako Gunn, Alistair Nelson and Salifu Maase alias Mugabe, made certain statements on a radio talk show broadcast on an Accra radio station known as Montie FM, 100.1 FM. The statements were believed to be contemptuous of the Supreme Court. However, on the 5th of July, 2016, those people appeared before the Supreme Court on a summons issued by the court for them to show cause as to why they should not be held liable for contempt of Court on the following grounds:

Scandalizing the Court.

Defying and lowering the authority of the Court.

Bringing the authority of the Court into disrepute.[7]

The three, namely Godwin Ako Gunn, Alistair Nelson and SalifuMaase alias Mugabe, pleaded guilty to the charges of contempt and on their own admission committed for contempt. They admitted the fact that their conduct amounted scandalizing the Court, defying and lowering the authority of the Court and bringing the authority of the Court into disrepute. This decision sent strong signal to the media because the case roped in owners of "Montie" FM and a radio station host on the programme to serve as a caution to owners of all radio stations in Ghana on the need to engage in serious self-regulation of programmes aired on their stations. The Supreme Court's verdict, therefore, is set to positively enhance media freedom while cautioning for media responsibility in the exercise of press freedom as enshrined in Ghana's constitution. Civil and

Criminal Contempt

The two types of contempt are civil and criminal contempt. Civil contempt of court most often happens when someone fails to adhere to an order from the court, with resulting injury to a private party's rights. For example, failure to pay court ordered child support can lead to punishment for civil contempt. Typically, the aggrieved party, such as a parent who has not received court ordered child support payments, may file an action for civil contempt. A civil contempt will usually arise when a party to any proceedings forms the view that an order of a court of law has been disobeyed or interfered with. Criminal contempt usually arises when a party or stranger to the proceedings scandalizes a court by bringing the administration of justice into disrepute[8]

[7] Presidential Election Petition 2013

[8]Washington University Law Review Volume 1961|Issue 1January 1961

According to FINDLAW, actions that one might normally associate with the phrase "contempt of court," such as a party causing a serious disruption in the courtroom, yelling at the judge, or refusing to testify before a grand jury, would often constitute criminal contempt of court. It, therefore, becomes imperative for the courts to prevent any acts which constitute an affront on the dignity of the Superior Courts. It is an established fact that contempt of court was a development of the common law, and applied in all common law jurisdictions. Naturally, the construction of what constitutes criminal contempt in other common law jurisdictions seems the same. Contempt is defined as "consisting of words or acts which impede or interfere with the administration of justice, or which create a substantial risk that the course of justice will be seriously impeded or prejudiced."[9] It, therefore, means that conduct or utterance, tending to defy court's order, cast disrespect on the court, impede the administration of justice, insult the dignity of the court, scandalize the court, interfere with the administration of justice and bring the authority of the Court into disrepute amount to contempt of court.

The English case of AG v. Leveller Magazine Ltd. [1979] AC 440 finds relevance worthy of consideration. At page 449, Lord Diplock said: "Although criminal contempt's of court may take a variety of forms. They all share a common characteristic: they involve an interference with the due administration of justice, either in a particular case or more generally as a continuing process. It is justice itself that is flouted by contempt of court, not the individual court or judge who is attempting to administer it."

IMPORTANCE OF COMMITTAL FOR CONTEMPT

For the protection of parties at the court

The power of the superior courts to convict for contempt of court is indeed inherent in them [Article 126(2)]. In the opinion of, perhaps, the most authoritative jurist in civil procedure of the 20th Century, Sir I.H. JACOB, in his article on THE INHERENT JURISDICTION OF THE COURT,[10] described his position as thus:

"The power of the court to punish by summary process for contempt of court provides a protective umbrella under which the litigant parties may fairly proceed to the determination of the issues between them free from bias and prejudice and free from any interference and obstruction of the due process of the court"

Litigant parties who head to the court to seek justice must be confident that the courts are there to administer justice and the courts are expected to deal accordingly with those whose conducts or utterances can erode the confidence reposed in the courts by the constitution.

In the view of AninYaboah JSC, this was to serve a purpose that the judiciary in every modern democracy ought to be protected from executive and legislative interference that led the framers of the Constitution to put beyond

[9]Halsbury's Laws of England, 4th Edition Reissue, vol. 9(1) para. 402 at page 241
[10]Current Legal Problems, Volume 23, ISSUE 1, 1 January 1970 at page 29

doubt and in unambiguous language in Article 125(3) of the constitution of Ghana which forms the basis of the protection of the judicial independence from anybody in any manner or form.

For the protection of democracy

Upon reflection on the MONTIE 3, it is important to give deep thought to the words of the Supreme Court, and consider the reason behind the custodial sentences on the Montie 3 contemnors.

The rationale the Supreme Court gave to justify the reason why it handed the custodial sentences to the contemnors is very instructive and worth mentioning as one of the importance of the committal for contempt. Speaking through Sophia Akuffo JSC, (as she then was), the Supreme Court stated:

"Our sole focus in this matter is on protecting the paramount public interest in maintaining the independence, dignity and effectiveness of the administration of Justice."

The protection of public interest can only be guaranteed when there is an independent, dignified and effective administration of justice. In the exercise of the power of contempt, the courts are simply carrying out a constitutional duty imposed by the 1992 Constitution

After a consideration of relevant provisions of the Constitution, the court made the following important observations at pages 5-6 of the ruling as follows: - *"Among the three arms of government in this country, it is only in respect of the Judiciary that the Constitution has in plain words commanded every state authority and persons in Ghana to accord assistance in protecting its independence, dignity and effectiveness. The reason is simple, in order to sustain the democratic system of government established by our constitution, the Judiciary is the arm of government that has been given the authority to police the other arms, i.e. The Executive and Legislature as well as all governance institutions. The court is, therefore deserving of the utmost respect and reverence if our democratic enterprise, as a nation, is to succeed…*

Indeed, it is because the judicial function is for the cohesion of society at large that, even during the various periods of military rule which this country endured in times past, the courts were always preserved. There cannot be an efficiently run state wherein all persons could thrive in peace and security without an independent and dignified judiciary, operating fearlessly and competently, beholden to no one:"

Research Methodology

This session discusses the methods and methodologies which the study employed in the processes of collection of relevant materials through to their analyses. Articulation of the method and methodology is vital in any research endeavor when quality is key. This has necessitated the use of the methodological approach which would produce the expected outcome of the work.

Study Area

The study area covers aspects of administration of justice as regards the means by which the courts maintain their authority, respect, dignity and confidence reposed in them. One of such means by which the courts are able to achieve this objective is the committal of contempt as tool in the hands of the judges of the superior courts. The emphasis on contempt of court, though contempt in other jurisdictions are considered, is basically the peculiar nature of the use of this power in the Ghanaian context.

Design of Study

This research is designed to secure a deeper understanding of the concept of contempt as a disciplinary tool in the hands of the judges of the superior courts in Ghana. Firstly, it sought to itemize the basic ingredients based on which a set of behavior passes to constitute contempt of court and analyzed them along with decided cases in which the courts held conducts as contempt.

Secondly, a case in which the court dismissed application for committal for contempt was also analyzed to check if the required ingredients prerequisite for committal for contempt or otherwise were present or absent. In order to attain the objective of the study, the doctrinal research method and content analysis were used. 'Doctrine' has been defined as '[a] synthesis of various rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law. Doctrines can be more or less abstract, binding or non-binding'.[11]For example, 2009 Council of Australian Law Deans (CALD) Standards refer to the necessity for students to be able to achieve research methodology skills akin to the 'doctrinal', including:

(a) the intellectual and practical skills needed to research and analyze the law from primary sources, and to apply the findings of such work to the solution of legal problems.

(b) the ability to communicate these findings, both orally and in writing.

There are obviously varying degrees of complexity within doctrinal legal research. Different forms of legal research necessitate variations in the method. There is firstly the problem-based doctrinal research methodology used by practitioners and students. This approach is directed to solving a specific legal problem and normally includes the following steps: (1) Assembling relevant facts; (2) Identifying the legal issues; (3) Analyzing the issues with a view to searching for the law; (4) Reading background material (including legal dictionaries, legal encyclopedias, textbooks, law reform and policy papers, loose leaf services, journal articles); (5) Locating primary material

[11]Hutchinson, T; Duncan, N [2013]

(including legislation, delegated legislation and case law; (6) Synthesizing all the issues in context; and (7) Coming to a tentative conclusion.[12]

The doctrine in question includes legal concepts and principles of all types – cases, statutes, and rules. It follows that doctrinal research is research into the law and legal concepts.

It provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments. Doctrinal method is normally a two-part process, because it involves first locating the sources of the law and then interpreting and analyzing the text. This then leaves the researcher to the next step of locating the law, for the purpose of interpreting and analyzing the law within a definite context i.e., committal for contempt. In order to attain the aims set to be achieved in this study, the researcher purposively chose the doctrinal approach. There will also be some elements of content analysis to enrich the findings of this exercise. Krippendorff (2004) defined content analysis as *"a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use"*[13].

The relevant laws

Before analyzing the law, the researcher must first locate it, (Hutchinson, T; Duncan, N, 2013). In view of the above, the researcher had the following as the sources of law in respect of contempt of court in Ghana:

Information for the research was obtained from primary and secondary sources of law. The primary sources comprised the Constitution (1992) of the Republic of Ghana, legislations and other statutory instruments, and the Common law. The secondary sources included textbooks, journal articles and other publications.

Analysis of the Research

The analysis of the study was based on the position of the primary sources of the data used in respect of contempt, successfully decided cases on contempt, and a case on contempt which was dismissed. This is essentially desk research with reliance on approved, recognized and published works of law. This would be found from primary law and secondary law sources.

In other common law jurisdiction contempt of court is defined in their statute books. For example, the United Kingdom has as its own *Contempt of Court Act 1981 while India also has Contempt of Court Act 1971.*

In the United Kingdom, contempt of court under "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal

[12]Hutchinson, T; Duncan, N **[**2013**]**

[13]

proceedings regardless of intent to do so Contempt of Court Act 1981 UK. In the Contempt of Court Act 1971,(India)"contempt of court" means civil contempt or criminal contempt; "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court; "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. In Ghana, however, the situation is different. Article 19(11) of the Constitution, 1992, states that 'No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law', while Article 19 (12) states that Clause (11) of this article shall not prevent a Superior Court from punishing a person for contempt of itself notwithstanding that the act or omission constitution the contempt is not defined in a written law and the penalty is not so prescribed. [14]The power to commit for contempt is, therefore, left at the discretion of the justices of the superior courts in Ghana. It is imperative to note that the decided cases with regards to contempt of court have not departed from the Common Law regime in deciding to commit for contempt. Once the conducts or actions or utterances defy court's order, cast disrespect on the court, impede the administration of justice, insults the dignity of the court, scandalize the court, interfere with the administration of justice or bring the authority of the Court into disrepute such conducts or actions or utterances amount to contempt of court.

As we stated in the methodology, the one case which we used for the analysis of this work is 'In the Gabriel Ahiadorme Okronipa vs. Takoradi Technical University and IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT'.

THE REPUBLIC

VRS:

TAKORADI TECHNICAL UNIVERSITY (T.T.U)

DR. MRS HENRIETTA ABANE

REV. PROFESSOR JOHN FRANK ESHUN

MR. FRNACIC REXFORD SA

[14] 1992 Constitution, Republic of Ghana

MRS. SYLVIA BEATRICE OPPONG MENSAH

EXPARTE: GABRIEL AHIADORME OKRONIPA,

the applicant, Gabriel Ahiadorme Okronipa brought an application for an order of committal of the respondents for contempt of court. In the accompanying affidavit in support, the applicant stated that he caused a writ of summons accompanied with a statement of claim to be issued against the 1st Respondent claiming among other things an order to dissolve the Ad-hoc committee set up by the T.T.U. Council for evaluation of the re-appointment of the Registrar.

To this writ of summons applicant deposed, 1st respondent entered appearance, filed a defense and an application for directions was filed with a return date being the 3 July, 2018.

The *2nd 3rd 4th and 5th respondents* being the chairperson of T.T.U Council, Vice Chancellor and member of the Council, the Conference of Assisted Secondary Schools (CHASS) representative on the T.T.U and Chairman of the Ad-hoc Committee for the re-appointment of the Registrar to T.T.U and current Registrar of T.T.U and Secretary to the T.T.U Council *respectively were aware of the pendency of the suit. However, the Ad-hoc Committee chaired by the 4.th respondent continued its work by holding deliberation to assess the 5th respondent's work for re-appointment as the Registrar of T.T.U.*

Applicant deposed in paragraphs 8, 9, 10 and 11 of the supporting affidavit as follows:

8. That on 21st June, 2018 the T. T. U Council, the governing body of the University met and among other things received the report of the Ad-hoc Committee for the re-appointment of the Registrar of T. T. U

9. *That all the Respondents except the 5th Respondent were present with other members of the T.T.U Council to deliberate.*

10. *That the Respondents have accepted the report of the Ad-hoc Committee for the re-appointment of the Registrar for T.T.U and re-appointed the 5th Respondent as Registrar of T.T.U.*

11. That the res litiga of the pending suit inter alia, is whether the vacancy for the office of the Registrar of T.T.U should be by a fresh appointment or assessing the incumbent registrar for appointment.

12. That I have been informed by my lawyer and believe same to be true *that the conduct of the respondents is calculated at usurping the powers of adjudication which is the preserve of the judiciary and have in fact usurped*

the Judicial functions of the courts". Contending that the acts of the respondents would render the final decision of the court otiose since the applicant would have been denied the right to be appointed the Registrar of T.T.U respondents actions constitutes an affront to the authority and sanctity of the court. The applicant deposed finally

that the respondents be duly and sufficiently punished or else it would send wrong signals to other like-minded citizens to flout the rule of law and the authority of the courts wit immeasurable impunity.

The respondents, however, opposed this application per their individual affidavit in opposition filed. The 2nd and 3rd respondents have deposed that the application is full of inaccuracies and misconceived. The 2nd respondent, deposed that the gravamen of the applicant's Writ of Summons is on the interpretation of statutes and laws by which the university should operate. *The interpretation of the statutes is what the court was called to provide. Did the defendant wait for the decision of the court or continued the very which the court was called upon to administer justice.*

The respondents could not deny the paragraph 10, which is:

That the Respondents have accepted the report of the Ad-hoc Committee for the re-appointment of the Registrar for T.T.U and re-appointed the 5thRespondent as Registrar of T.T.U, the very issue the court was called upon to adjudicate.

The reason for not waiting for the decision of the court was that the University being a creature of statue provides certain functions to be performed by the Registrar thus there is the need for a person to act in that position until the court decides otherwise and that the university intends to abide by the decision to be given by the court in the substantive case. It should be noted that the work of the ad hoc committee was not for the appointment of an acting Registrar but a substantive Registrar, which indeed the Council accepted and consequently appointed the 5th Respondent as substantive Registrar while the case was still pending before the court.

The 4" respondent on his part has deposed in his affidavit that he is not the chairman of the Ad-hoc Committee deposed to by the applicant. He further deposed that all depositions made concerning him are not true. The 5th respondent deposed in her affidavit that as the person who was the subject matter of the deliberation, she was not a party to any deliberation alleged by the applicant. The 5th Respondent, however, was a beneficiary of the exercise.

It is well settled that contempt of court is a quasi-criminal process that is a civil wrong with criminal consequences. It purports to protect the dignity of the courts and the integrity of administration of justice. Contempt is constituted by any act or conduct that tends to undermine the authority of the court or tribunal by interfering with the process pending in that court or tribunal. Could the attitude of the respondents be termed contempt, considering the reason that the 1st respondent entered appearance, filed a defense and an application for directions was filed with a return date being the 3 July, 2018. The action of the respondents indicated their readiness to allow the court to adjudicate. The respondents, notwithstanding the steps they had taken so far in the court process, went ahead to perform the task which they asked the court to provide direction and verdict. It

can be deduced that the action of the respondents amounted to interference with the work of the court. It purported to tell the court the direction the court should go.

In the case of Republic v Nkansah, Supreme Court, 28th November, 1995, (Unreported) HAYFRON-BENJAMIN JSC in defining the power and authority of the court said, 'the power of this court to commit for contempt is granted by Article 126(2) of the Constitution, 1992. It is neither dependent on nor ancillary to any jurisdiction granted to this court by any statute or any other law. Yet, again, by Article 129(4) of the Constitution, 1992, this court in the determination of any matter brought before it has all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law not to demand obedience to the court's orders, but also vindicate its authority. His Lordship goes further to states that the Counsel for respondent takes a narrow view of the meaning of contempt of court and would restrict same to disobedience to court orders. His Lordship states further thus 'I think the point is now clear that any conduct that tends to bring the authority and administration of the court into disrespect or disregard, and or to interfere with or prejudice parties, litigants, or their witnesses is contempt.

Could the action or conduct of the respondents in this case in discussion be said to have prejudiced the decision of the court? In line with the positions of decided cases as seen in the literature and exposition of contempt of court in the Republic v Nkansah, can the act of the Respondents arrived at the case of GABRIEL AHIADORME OKRONIPA v T.T.U amount to blatant disrespect for the court?

Also, in Opoku y Libherr France SAS [2012] 1SCGLR 159, the Supreme Court on the meaning and nature of contempt of court held that "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, where during, or following the pendency of a matter before the court, a person scorns the orders of the court or disregards such pendency, the offence is against the court itself, for its authority and administration of the law into disrespect or disregard. In Re-Effiduase Stool Affairs No.2 Republic y Nurnapau, President of the National House of Chiefs and others, Exparte Ameyaw [1998-99]SCGLR 639".

A person who asserts that another person is in contempt of court has the burden to prove the allegation beyond reasonable doubt as provided under Section 13 (1) of the Evidence Act, 1975 NRCD 323.

Did the applicant sufficiently discharge the burden of persuasion beyond reasonable doubt?

In Republic vs Nu Achia II, Exparte Joshua NmaiAddo {201 5} 83 GMJ13, the Supreme Court held "without doubt, a contempt application is a quasi-criminal relief. Section 13 (1) of NRCD 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".

Thus, to be guilty of contempt of court, the applicant must show that the respondents beyond reasonable doubt by their individual conduct or action have undermined the authority of the court in respect of the pending suit.

Per the writ of summons as issued on 18th May, 2018 the applicant sought the following reliefs against the T.T.U. i.e. the 1st Respondent:

A declaration that the setting up of an Ad-hoc Committee by the University Council to assess the re-appointment of the Registrar of T.T.U sins against the statute 10 (ii) and (vi) of Takoradi Technical University (T.T.TU) Statues, 2016

A declaration that the vacancy about to occur for the office of the Registrar for T.T.U is one of appointment and not re-appointment.

An order to dissolve the Ad-hoc Committee set up by the T.I'. U Council for evaluation of the re-appointment of the registrar.

An order to reconstitute the Search Committee for an appointment of

Registrar.

An order to compel the Search Committee to vet plaintiff's application for the office of Registrar".

From the above reliefs the court was called upon to make declarations in respect of mode of procedure to appoint a registrar of the T.T.U and reconstitute a Search Committee to vet plaintiff' s application for the office of a Registrar which very office has been allegedly offered to the 5th Respondent. The applicant alleged that on 21st of June 2018, the T.T.U Council, the governing body of the 1st respondent met and among other things received a report from the Ad-hoc Committee for the re-appointment of the registrar of T.T.U and all the respondents excluding the 5th respondent deliberated on the report and indeed appointed, the 5th respondent as the registrar while the case was pending before the court. This allegation was found to be a fact. The appointment of the 5th Respondent was carried out.

The most essential issue the court had to resolve in this case was the effect of what took place on 21st of June, 2018 on the pending suit and the evidence proffered by the applicant. Also, on performance of a statutory duty and contempt of court, Her Ladyship was persuaded by the decision of KyeiBaffour J in Republic vs Justice AninYeboah& 5 OrsExparte Francisca Senvaa Boateng. Suit No.CRJ76O/17 dated 29th March 2018 where he opined that 'where the respondents have issued the invitations to the applicant to appear before them for the

purposes of performing their statutory mandate, then I think that notwithstanding the pendency of the motions of the Applicant in court, that cannot amount to contempt of the High Court, Why? The courts as servants of the legislature cannot preclude a body set up by statute with its functions spelt out by the statute and which said functions can and is exclusively performed by the Disciplinary Committee alone from performing them and this is without prejudice at all to the pendency of the application for judicial review". Thus, even where the applicant did establish that 1st Respondent's Council (per 2&1, 3rd and 4th respondents) has executed its function under Act 922, the court did not deem such acts as basis for the court to find for contempt of the court. Also, in the Court of Appeal case The Republic vsEsiTakyiwa& 2 OrsExparte Nana AdarkwaYiadom and another Suit No.H1/02/15 dated 13th May 2015, Cape Coast the Court observed that a supplementary affidavit filed to attach an arbitration report on grounds of being inadvertently omitted was adopted by the trial court and stated "we think the trial judge erred although he cited order 50 rule 3 (3) it being (sic) of C.I.47 which required that no other grounds save those set out in the affidavit in support of the motion, shall be relied upon during the hearing of an application for contempt".

Technicalities

The technicalities involved in filing writ of summons can affect success or otherwise of a case. Her Ladyship Hannah Taylor dwelt more on the technical lapses in the affidavit of the applicant instead of the conduct of the respondents which the applicant was praying the court to punish. The 1st Respondent did admit going ahead to make the appointment, based on two reasons:

That the reason for not waiting for the decision of the court was that the university being a creature of statute provides certain functions to be performed by the Registrar thus there was the need for a person to act in that position until the court decides otherwise

and that the university intended to abide by the decision to be given by the court in the substantive case.

The applicant filed supplementary of affidavit in support of his application in attempt to discharge his burden of proof that appointment had been made, not waiting for the decision of the court.

However, Her Ladyship Hannah Taylor had this to say:

The applicant cannot as of right file the supplementary of affidavit in support. Further, in the instant case, the applicant has in paragraph 8 of the supporting affidavit deposed that T.T.U Council met on 21st June, 2018 to receive the report of the Ad-hoc Committee and the Exhibit "DD" is to support his claim. Exhibit "DD" bears only the signature of Sylvia Oppong

Mensah as secretary who according to the applicant in paragraph 9 of the supporting affidavit in the following words, deposed;

"That all the respondents except the 5th respondent were present with other members of the T.T.U Council to deliberate on the said report".

By the applicant's own showing the 5th Respondent being Mrs. Sylvia Beatrice Oppong Mensah was not present at the said meeting. How then does he reasonably expect the court to rely on the contents of Exhibit "DD" as supporting the allegation of receipt of a report and deliberations on the subject of the suit pending to cite respondents for contempt, which requires proof beyond reasonable doubt?

From the foregoing I find that 5th Respondent was not at the meeting that deliberated allegedly on issues relating to her appointment as a registrar, the applicant has not established a prima facie case against her.

It is important to note that the practice in board meetings, like Council, is that a person in attendance who has interest in the factum probandum, has to recuse herself or himself, pending the determination of the issue(s) and thereafter, she or he is called back to continue in the meeting. The Registrar, being Secretary to Council was called back to continue the Council work. This was not captured by the applicant. This is why Her Ladyship Hannah Taylor said that '*the applicant has not established a prima facie case against her (the 5th Respondent).*

If the reason for not waiting for the decision of the court was that the University being a creature of statute provides certain functions to be performed by the Registrar thus there is the need for a person to act in that position until the court decides otherwise and that the university intends to abide by the decision to be given by the court in the substantive case, why was the Registrar absent from the meeting and yet deliberations took place. The 1st Respondent did not deny the fact that a meeting took place to appoint a Registrar, the very issue the court was called to adjudicate.

Was the court, in this instant case, called upon to determine whether or not the actions of the Respondents amounted to contempt of court or the technicalities involved in the application?
In her verdict, Her Ladyship Hannah Taylor, had this to say: '*In conclusion, relating the principles upon which a person should be committed for contempt to this case, the applicant failed to discharge the burden of proof placed on him. Accordingly, the application fails and same is dismissed*'.

To my mind, Her Ladyship Hannah Taylor, dwelt more on, and gave emphasis to, the technicalities of filing and not the conducts of the respondent which the applicant sought the court to commit them for contempt of court.

Summary

The exercise attempted to look into the lack of uniformity in the application for committal of contempt in Ghana. This became necessary due to the fact that contempt, as a legal term and creature of common law, is not defined in Ghanaian statutes. In other jurisdictions like the United Kingdom and India, there exist statutes for cases relating to contempt of court.

The Ghanaian situation, *supra,* is quite different in that contempt is not defined in a written law. 'Article 19(12) states that *Clause (11) of this article* (Article19) *shall not prevent a Superior Court from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed'.*

The judges use their discretion based on decided cases and what they deem, in their mind, to constitute contempt. The use of discretion affects the outcomes of application for contempt, especially if it is not court initiated case of contempt. The lack of uniformity in contempt application can be said to be responsible for it.

The Takoradi Technical University narrowly escaped contempt liability. In our humble opinion, if there had been an enactment which does not leave what constitute contempt to the discretion of the superior courts, the Officers of the University would have punished for contempt.

Conclusion

There is great concern in respect of the implication for the administration of justice due to the fact that the principles that determine contemptuous conduct is subject to the discretion of the judges.

In the Gabriel Ahiadorme Okronipa vs. Takoradi Technical University and IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT.

THE REPUBLIC

VRS:

TAKORADI TECHNICAL UNIVERSITY (T.T.U)

DR. MRS HENRIETTA ABANE

REV. PROFESSOR JOHN FRANK ESHUN

MR. FRNACIC REXFORD SA

MRS. SYLVIA BEATRICE OPPONG MENSAH

EXPARTE: GABRIEL AHIADORME OKRONIPA,

Used as the case study, the action of the Respondents amounted to contempt of court. Since it was within the bosom of the judge to determine what constitute contempt, little can be said to the contrary.

Recommendation

Going forward, it is recommended that judges should do much as they can to administer justice in the interest of the public, taking cognizance of the needful i.e. that the dignity, authority, respect and confidence the public has in the court would not be scandalized or eroded as a result of their verdicts.

Furthermore, institutions of higher learning like Takoradi Technical University, should be guided in their conduct when same relates to the courts to avoid contempt ruling against them.

Legal Officers of such institutions should be consulted before embarking on actions which could easily lend themselves to liability in contempt.

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