IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ADINYIRA (MRS), JSC (PRESIDING)
DOTSE, JSC
YEBOAH, JSC
MARFUL-SAU, JSC
DORDZIE (MRS), JSC
AMEGATCHER, JSC
KOTEY, JSC

WRIT NO.
NO. J1/28/2018

24TH OCTOBER, 2018

MAYOR AGBLEZE
DESTINY AWLIMEY
JEAN-CLAUDE KOKU AMENYAGLO

VRS

THE ATTORNEY GENERAL & THE ELECTORAL COMMISSION

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR COMMITAL FOR CONTEMPT OF COURT

IN THE MATTER OF:

THE REPUBLIC

VRS

1. **GLORIA AKUFFO (HON.)**
2. **JEAN MENSA**
3. **DR. ERIC ASARE BOSSMAN**
4. **SAMUEL TETTEY** ..... **RESPONDENTS**

EX PARTE:

1. **MAYOR AGBLEZE**
2. **DESTINY AWLIMEY**
3. **JEAN-CLAUDE AMENYAOGLO** ..... **APPLICANTS**

R U L I N G

ADINYIRA (MRS), JSC: -

On 31st October 2018, this Court heard an application for an order to commit for contempt of the Court four persons namely Gloria Afua Akuffo, who is the Attorney General, Jean Mensa, the Electoral Commissioner and her two Deputy Commissioners, Dr. Eric Asare Bosompem and Samuel Tettey; the 1st, 2nd, 3rd and 4th Respondents respectively.

The Applicants in the contempt application are Mayor Agbleze, Destiny Awlimey and Jean- Claude Koku Amenyaoglo who had on the 12th of September, 2018, issued a Writ No J1/28/ 2018 in the Supreme Court against the Attorney-General and the Electoral Commission as the 1st and 2nd Defendants respectively. In that suit the Plaintiffs are seeking inter alia a declaration that, upon a proper interpretation of Articles 4 (1) (5), (6) and (7) on the creation of new regions and Article 42 on the right to vote, all persons in the subject regions if they are not already registered are entitled to be registered and to vote in a referendum scheduled for the 27 December 2018.

The Applicants alleged that the 1st and 2nd Defendants went on to carry out the registration exercise despite the pendency of the suit and so they served them with an application for an interlocutory injunction pending the final determination of the main suit. They complained that despite the service of the motion on the Respondents, they went on to complete the registration exercise.

The Plaintiffs accordingly filed a motion in this court requesting the following:

> "[For] an order committing 1st , 2nd , 3rd and 4th respondents to prison for contempt of court, and for an order from this Honourable court against the respondents to prevent respondents from taking any steps or continuing or persevering in any process that is directed towards the 27th December, 2018 referendum which steps or processes will not only undermine the main suit and a

pursuant interlocutory injunction application, but will amount to a continuing disrespect to the court upon the grounds contained in the accompanying affidavit.

And for any further order or orders which this Honourable Court may deem fair and just in the circumstances."

ON 31 October, 2018, the Court upon hearing the parties, refused the application and reserved its reasons, which we are ready to deliver today.

Before we proceed we will like to make the following observations.

The judicial power of Ghana by article 125(3) of the 1992 Constitution has been vested in the Judiciary. This power cannot be fettered by any person, agency or organ including the President and Parliament. Any conduct that contravenes this provision is clearly unconstitutional and a breach of the principle of legality which embraces the rule of law and the independence of the Judiciary.

One of the main objectives of the offence of contempt of court is to protect the dignity of the court and the justice delivery machinery. The concept of contempt of court is to prevent unjustified interference in the authority of the court. There are two types of contempt; (a) where a party willfully disobeys an order or judgment of a court, and (b) 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. See **Oswald on Contempt of Court (3rd edition**), **In Re Effiduase Stool Affairs (No. 2); Republic v Numapau, President of the National House of Chiefs and others; Ex parte Ameyaw II (No. 2) [1998-99] SCGLR 639; Republic v Sito I; Ex parte Fordjour [2001-2002] SCGLR 322,** etc

However applying to the courts to have someone committed for contempt is not a trivial matter as contempt of court whether in civil or criminal matters invariably results in a conviction with imprisonment or a fine if there is proof beyond reasonable doubt that

the respondent is guilty of contempt. **Akele v Coffie and Anor and Akele v Okine and Anor (Consolidated) [1979] GLR 84; The Republic v Bank of Ghana and Others; Ex parte Benjamin Duffuor, S.C. (Unreported) J4/34/2018**

Submissions by the Applicants

The Applicants claim the writ was served on the 1st and 2nd Defendants on 13 September 2018 and alleged in paragraphs 17 and 18 of their affidavit in support of their motion paper that:

17. " That despite the service of the writ in the substantive suit on 1st and 2nd [Defendants] …[the] 2nd respondent held a press briefing on Friday, 14th of September, 2018 at which 2nd respondent said that despite having been served with applicants' writ for interpretation, the defendant (EC) will proceed with the limited voter exercise as scheduled. This exposed no less a court than the Supreme Court to ridicule

18. That the 2nd defendant acting by 2nd respondent justified its disobedience to the apex court of the land and brought the administration of justice into grave disrepute when it explained that, the writ did not come with an injunction application and that the writ did not have the effect of an injunction. Same defiance to the court's process was widely reported by the media."

The Applicants said they reacted by filling a motion for interlocutory injunction in this Court on 18 September 2018 which was served on the 1st and 2nd Defendants the same day; but they proceeded with the registration exercise to conclusion. The Applicants argued that their conduct constituted contempt and therefore invited us to commit the 1st, 2nd 3rd and 4th Respondents to prison for contempt.

Thus paragraph 27 of their affidavit sworn to by the Applicants in support of their application reads:

27. "That notwithstanding that the 1st and 2nd respondents were served with a motion seeking to restrain them, the 1st defendant who is legal advisor for the government, the state for that matter still provided logistical support in terms of security at the limited voter registration centers whereas, 2nd respondent who acts on day to day basis for the commission together with two deputies and sit permanently at the Commissions office, went ahead and caused the limited exercise in the proposed regions."

Submissions by the 1st Respondent

The 1st Respondent denied committing any act amounting to contempt of this Court and said the claims made against her were as a result of a misunderstanding of the constitutional role of the Attorney-General under article 88 of the Constitution.

Submissions by the 2nd, 3rd and 4th Respondents

It is only the 2nd Respondent who filed an affidavit in opposition to the application. She denied she was in contempt as she was not aware that the Plaintiff had filed a motion for interlocutory injunction. She became aware of its existence after she was served personally with the motion for contempt and got a copy of the application for interlocutory injunction from the Registry of this Court.

.***CONSIDERATION***

The case relating to the Attorney-General

The Deputy Attorney-General as Counsel for the 1st Respondent submitted that the joinder of the Attorney-General was a misapprehension of the law and improper. He argued the Attorney-General was joined on the basis that she was an advisor to the Government in civil cases and that she was personally not involved in the action complained of.

We consider the joining of the Attorney-General in this application to be highly improper, unwarranted, vexatious and frivolous as neither she nor her office had anything to do with the registration exercise for the referendum, which is a duty solely consigned and reserved for the Electoral Commission under the Constitution. It was for this reason that we dismissed the contempt application against the Attorney- General.

The case relating to the Electoral Commissioner and her two Deputy Commissioners

The defence raised by the chairperson of the EC was that she was not served with the application for interlocutory injunction.

The object of service is to bring to the notice of an affected party of the institution or pendency of court proceedings. This is trite law. The common law and our jurisprudence have firmly affirmed that a party ought to be fully appraised of the proceedings before a court or tribunal can make any order against him.

Counsel for the Applicants urged upon us that there was proof of service of the application for interlocutory injunction on a Clerk at the Electoral Commission and referred us to copies of the proof of service by the bailiff.

Mr. Amenuvor, counsel for the Commissioners of the Electoral Commission relied on Order 7 rule 5 (1) of the High Court (Civil Procedure) Rules 2004, C. I. 47, to argue that the service on the clerk was not proper. Order 7 rule 5 (1) provides:

> (1) "Where service of a document on a body corporate may, in cases for which provision is not otherwise made by an enactment, be effected by serving it on the chairman, president or other head of the body, or on the managing director, secretary, treasurer or other similar officer."

The categories of persons mentioned in the said rule, are responsible persons who might know the nature and import of the documents served on them. Although the

Electoral Commission is not a body corporate in the strictest sense, yet by parity of reasoning, the commission being a legal entity has to be served in the mode illustrated in the above rule.

In this instant case it can be construed that the purpose of the application for interlocutory injunction was to restrain the Electoral Commission from continuing with a registration process that has started 3 days before the motion was filed. It is our considered opinion that in the circumstances, personal service on the commissioners was essential as it was their core functions which the Plaintiffs were seeking a court order to restrain them from exercising.

Service on the clerk was not good enough. As it turned out the Chairperson of the Electoral Commission had no notice of the application until she was served with this application to commit her for contempt; and her counsel got her a copy from the Court's registry. In the circumstances it cannot be said that the Electoral Commissioner and her two deputies knowingly engaged in acts which tend to prejudice or interfere with the fair trial of the case.

It is for these reasons that we did not find the Commissioners in contempt of court hence a dismissal of the application.

The application to commit the Respondents for contempt is without merit and therefore dismissed.

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

DORDZIE (MRS), JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

A. M. A. DORDZIE (MRS)
(JUSTICE OF THE SUPREME COURT)

AMEGATCHER, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

KOTEY, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

COUNSEL

ALBERT QUASHIGAH FOR THE APPLICANTS.

GODFRIED YEBOAH DAME, DEPUTY ATTORNEY-GENERAL WITH HIM YVONNE BANNERMAN, SENIOR STATE ATTORNEY, ENID MARFUL-SAU, ASSISTANT STATE ATTORNEY FOR THE 1ST RESPONDENT.

JUSTIN AMENUVOR WITH HIM MATTHEW APPIAH, MIRACLE ATATSI AND HOPE AGBOADO FOR THE 2ND RESPONDENT.