IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA, AD. 2016

CORAM: AKUFFO, JSC. [PRESIDING]

ANSAH, JSC.

YEBOAH, JSC

BENIN, JSC.

PWAMANG, JSC

CIVIL MOTION

NO: J8/108/2016

27TH JULY 2016

ABU RAMADAN

EVANS NIMAKO

VRS

1. ELECTORAL COMMISSION

2. THE ATTORNEY GENERAL

IN RE: 1. THE OWNER OF THE STATION – MONTIE FM

2. SALIFU MAASE @ MUGABE

3. ALISTAIR NELSON

4. GODWIN AKO GUNN

THE RULING OF THE COURT

On 18th July, 2016, the court convicted the contemnors herein for contempt of court on their own pleas and adjourned to today for sentencing. As we have decided to invoke our undoubted powers to punish the contemnors for their contempt, we deem it necessary to explain the reasons for our decision. That will clarify for the contemnors, and in fact the general public and media owners and practitioners in particular, why they are being punished, in the hope and expectation that valuable lessons will be learnt by all, and this nation will be spared the recurrence of such reprehensible behavior, which bodes no one well.

We are very mindful of the valuable role that the media, as the fourth estate of good governance, has to play in affording the citizenry and the state valuable information and fostering national discourse. However, to whom much has been given much is also expected and the constitutional freedoms and protections guaranteed to the media in Ghana are intended to be exercised and enjoyed with professionalism, good faith and self-control. Certainly they are not to be abused wantonly and contumaciously.

The contemnors were brought before this Court, by its own summons, for them to show cause why they should not be committed to prison for contempt of court on three grounds namely;

(a) Scandalizing the court

(b) Defying and lowering the authority of this court and

(c) Bringing the authority of this court into disrepute.

Scandalizing the court consists of scurrilous abuse of a judge or impugning the integrity or impartiality of a court or a judge. In this case the 3rd and 4th contemnors, willfully, attacked the Chief Justice, whom they mentioned by name, and accused her and the rest of the court of favoring the plaintiffs in Suit No. J1/14/2016 intituled Abu Ramadan & Anor v Electoral Commission & Anor while exhibiting bias against the Electoral Commission. They alleged that the Court was motivated by a desire to assist the opposition New Patriotic Party (NPP) in the forthcoming elections. They defied, insulted and lowered the authority of the Court when they stated that they will not accept the decision of the court on the voters' register and they incited listeners in the general public to reject it. Statements that attempt to dictate the orders or other dispositions that a Court should make or should not make are calculated to interfere with and obstruct the course of justice and thereby bring the authority of the court and the administration of justice into disrepute. That is exactly what the 3rd and 4th contemnors did when they threatened to deal with the judges if, in a motion filed by the applicants in CM/J/108/2016 intituled Abu Ramadan & Anor v Electoral Commission & Anor, the Court delivered a verdict that displeased them. They cruelly and callously reminded the justices of the murder of three High Court Judges on 30thJune, 1982 (a day that will forever remain in the annals of this country as a day of infamy). This was, doubtlessly, intended to browbeat and prevent the court from performing its duty to administer justice as it deemed fit.

The attack, which was directed at the Chief Justice of the Republic of Ghana and the Apex Court of the land, amounts to criminal contempt of the Judiciary. We are here confronted with contemptuous conduct which has the effect of undermining and eroding the very foundation of the Judiciary by shaking the confidence of the people in the ability of the court to deliver independent and fair justice. In this light, though there is something that could be said of the substantively criminal nature of the threats made by the 2nd - 4th contemnors to do harm to High Court and Supreme Court judges, that is a matter for a different branch of government, which, without need for any prompting, ought to be alive to its duties vis-à-vis enforcement of the criminal law of the land. 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.

Article 125(1) of the Constitution states that:

> "Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary **which shall be independent and subject only to this Constitution**."(emphasis supplied)

To this end and for the achievement of the all-important principle underpinning this article, the 1992 Constitution, in Article 127 (2) provides as follows;

> "Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfere with Judges or judicial

officers or other persons exercising judicial power, in the exercise of their judicial functions; and all organs and agencies of the State shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to this Constitution."

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 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.

In the case of **Republic v Liberty Press Ltd and Ors [1968] GLR 123,** at page 135, the Court in explaining the rationale for the power of the courts to commit for contempt of court said as follows;

"……the important position of the Judiciary in any democratic set-up must be fully appreciated. Performing, as they are called upon to do, the sacred duty of holding the scales between the executive power of the state and the subject and protecting the fundamental liberties of the individual, the courts must not only enjoy the respect and confidence of the

people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority. For this reason **any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice becomes an offence not only against the courts but against the entire community which the courts serve."** (emphasis supplied).

Indeed, it is because the judicial function is for the cohesion of society at large that, even during all the various periods of military rule which this country endured in times past, the courts were always preserved with their powers intact. 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. By the Judicial Oath prescribed by the Constitution each judge has sworn to

> **"...truly and faithfully perform the functions of my office without fear or favor, affection or ill-will; and that I will at all times uphold, preserve, protect and defend the constitution and laws of the Republic of Ghana. So help me God."**

This (i.e. our responsibility to the Almighty God and the Republic of Ghana) is our guiding light and it is not the current Chief Justice and the other judges that are our primary concern in this matter. It is the institution of Justice.

We are very conscious of the constitutional right of citizens to criticize the Judiciary and hold it accountable to the people of Ghana from whom justice emanates. As was said by Lord Atkin in the case of **Ambard v Attorney-General of Trinidad and Tobago [1936] AC 322 at 335;**

> "Justice is not a cloistered virtue, she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

In an effort not to be seen as stifling public debate on the work of the Judiciary, this Court has, by and large, been very circumspect and reticent in the exercise of its power to punish for contempt and, has in recent times, restrained itself from reacting to certain commentaries on proceedings pending in this court, some of them patently prejudicial and bordering on contempt of court. We have been compelled to act in the instant matter because of its gross nature in that it bore all the marks of a calculated attack on the Judiciary, which is detrimental to the administration of justice, and we would have been reneging on our Constitutional duty if we failed to act.

We summoned the directors and secretary of Network Broadcasting Co. Ltd because, as owner of *Montie* FM, the company provided the physical facilities for the contemptuous statement to be aired to the public. It is trite law that where a corporation is held in contempt of court, it is the directors and officers who answer for it, since they constitute the human face of the legal entity. Where the contempt is committed by an unincorporated body, then it is the members of

the body that answer for it. Hence in the case of **Republic v. Liberty Press Ltd** (supra), it was the Managing Director of the Liberty Press Ltd, the printer and 28 professors and lecturers who were members of "Legon Society on National Affairs", publishers of *Legon Observer,* who answered for a publication in that magazine that scandalized the Judiciary.

It appears that this aspect of the law on corporate liability for contempt of court has been lost on media operators of this age. The directors and officers bear ultimate responsibility for things done in the name of a media house and, therefore, must take more than a casual interest in what is aired from their station. We are not at all impressed by the statements by the officers of the 1st contemnor who parroted each other to the effect that prior to our summons they had not been paying close attention to what happens on their radio station since there is a management body in charge of its operations. Indeed, their said statements were a demonstration of total irresponsibility since the Board members of a corporate body are in charge of policy setting and direction – that is why they are called 'Directors'. We were indeed not only shocked, but also saddened to hear each of them, as well as their Company Secretary, say that, until a recording of the offending programme was played in Court they had not listened to nor heard the reprehensible utterances of the 3rd and 4th contemnors, despite the fact that, for a couple of weeks both the print media and radio stations of this country had been full of discussions of the diatribe that was aired by their station, *Montie* FM. Were they just dissimulating or were they truly that careless of their duties; one wonders.

Regarding the owner of the frequency over which *Montie* FM transmits, Zeezee Media Ghana Ltd, represented by Mr. Harry Zakour, that is the person who provided what we may term the soft facility for the offending statements to be aired, consequently, he aided the commission of the contempt. Frequencies are allocated to a country and constitute a very valuable national resource, intended to contribute to uplifting the consciousness of the citizenry and national ethos. Those fortunate members of the public, to whom frequencies are granted, therefore, owe a responsibility to the People of Ghana to assure that such valuable national resource is not wantonly dissipated; they must not allow the frequencies to be used to hurt or otherwise jeopardize the public interest.

The 2nd contemnor who, as host of the programme, was expected to *moderate* it and keep any obstreperous or vituperative panelist in line, rather joined the 3rd and 4th contemnors with supporting comments to denigrate the Chief Justice and the Court. Moreover, he spurred them on to 'open the fire', adding his own vicious words to theirs, in the most disrespectful and deadly terms. He was heard, in the recording, ranting and raging in the most unmeasured terms against the Judiciary. That is not the proper role of the host of a radio station programme and we expect that other hosts in other broadcast networks will learn from this and stay within bounds, acting at all times with the utmost professionalism which Ghanaian journalist were once upon a time known for.

As for the panelists, 3rd and 4th contemnors, it is clear that when they entered the studio on the days in question, they held nothing back and could not be bothered by any codes of ethics, decency and

decorum. They completely forgot that they were on planet Earth in a country called Ghana with laws, regulations and customary rules of etiquette and decorum. They were totally reckless and insensitive in their comments having regard to the fact that they were speaking on the eve of the anniversary of the murder of the three judges, a very painful and sorrowful period for most patriots of Ghana.

Nevertheless, we are mindful that the summary power of the court to punish for contempt of court that has been preserved by Article 126 (2) of the Constitution is almost arbitrary and such awesome power calls for circumspection in its exercise. In **Izuora v R (1953) 13 WACA 313 at 316,** PC Lord Tucker delivering the judgment of the Board of the Privy Council said:

> "... it is desirable to bear in mind what was said in the judgment of the Board delivered by Lord Goddard in the case of Parashuram Detaram Shamdasani v The King-Emperor [1945] A.C. 214 at 270] where these words are to be found: 'Their Lordships would once again emphasize, what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised…"

We have taken due note of the ready admission of guilt by all the contemnors and the apologies they have rendered in this Court. We have also taken into consideration statements made on the same *Montie* FM by 2nd Respondent aimed at purging himself of the

contempt before appearing in this court. The main culprits appear to be somewhat remorseful as they stand in the dock. The officers of 1st contemnors have expressed their revulsion at what the 2nd, 3rd and 4th contemnors said about the Judiciary and have suspended them from the radio station. They promised to put in place policies and measures to prevent a similar occurrence on their network. Four lawyers have also put in pleas of mitigation for the contemnors and pleaded with the court to temper justice with mercy and that the Respondents are first offenders who lost their heads out of excitement over the liberal nature of the airwaves we have under the 1992 Constitution.

However, we realize that reckless attacks on judges of this court in particular and the Judiciary in general have become rampant in recent times and appear to be escalating in outrageousness and temerity. We need to make it universally unattractive for any person to indulge in such conduct. Despite the fact that four persons were punished for contempt of this Court during the Presidential Election Petition hearings in 2013, we have noticed a resurgence of contumacious statements about the court that have the tendency to bring the administration of justice into disrepute. We need to remind people who decide to criticize the Judiciary that within the right to publish and transmit, within the freedom of expression, there is a line that ought not to be crossed. This is encapsulated in the Directive Principles of State Policy, Article 41 which states, inter alia, that:

"The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen -

a) to promote the prestige and good name of Ghana and respect the symbols of the nation;
b) to uphold and defend this Constitution and the law;
c) to foster national unity and live in harmony with others;
d) to respect the rights, freedoms and legitimate interests of others, and generally to refrain from doing acts detrimental to the welfare of other persons;
e) to work conscientiously in his lawfully chosen occupation;

i. to co-operate with lawful agencies in the maintenance of law and order

In these regards the contemnors have failed dismally.

It is on account of the preceding observations that we sentence the contemnors herein.

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

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