**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA-AD 2020**

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)
APPAU, JSC
PWAMANG, JSC
AMADU, JSC
KULENDI, JSC

CIVIL MOTION
NO. J5/62/2020

20TH OCTOBER, 2020

REPUBLIC

VRS

HIGH COURT (LAND DIVISION), ACCRA ……. RESPONDENT

EX PARTE: KENNEDY OHENE AGYAPONG ……. APPLICANT

SUSAN BANDOH ……. INTERESTED PARTY

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**KULENDI, JSC:-**

On the 17th day of September, 2020, the Applicant herein filed a motion on notice invoking the supervisory jurisdiction of this Court on an application for orders of Prohibition and Certiorari directed at His Lordship, Justice Amos Wuntah Wuni.

On the 14th day of October, 2020, after carefully reviewing the processes filed together with the oral submissions by Counsel for the Applicant and Respondent, this Court by a unanimous decision, issued the following orders:

> "1.The Court is unable to grant the Applicant's application for certiorari to quash the order of Wuntah Wuni J. directing the Applicant to appear before the High Court to answer contempt charges in the terms prayed.
> The Court is of the view that the alleged conduct of the Applicant, if proven against him scandalizes the Court and brings the Administration of Justice into disrepute and

will therefore ground the charge of contempt. The application for certiorari in the terms prayed is therefore refused and dismissed.

For the avoidance of doubt, the Order to appear to answer charges of contempt and the charge sheet are hereby preserved.

Save the above, all other proceedings taken before Wuntah Wuni J., in respect of the contempt charges are removed from the High Court and same is hereby quashed.

2. This Court however notes that the Applicant has made a case for prohibition against Wuntah Wuni J. and consequently, he is hereby prohibited from sitting on the contempt charges.

The Court directs that the matter should be sent back to the Registrar of the High Court for same to be placed before the High Court differently constituted to try the Applicant on the contempt charge de novo

Full reasons for this ruling will given on Tuesday, 20th October, 2020".

We hereby deliver the reasons for the orders aforesaid.

**BACKGROUND**

The background to the dispute that led to the said application and the preceding orders can be summarized as follows:

The Applicant complained that, the High Court (Land Division), Accra, Coram His Lordship Amos Wuntah Wuni J. by an order dated 9th September, 2020, summoned him to appear before the Court. The order read as follows:

"IN THE SUPERIOR COURT OF JUDICATURE, GHANA
IN THE HIGH COURT OF JUSTICE
LAND DIVISION
ACCRA-GHANA

SUIT No.: LD/0704/2020

1. **SUSAN BANDOH**
   No. 64, Patrice Lumumba Rd.
   Airport Residential Area,Accra

PLAINTIFFS

**CHRISTOPHER AKUETTEH KOTEI**
(Suing ad Head of family and Lawful Representative of the La-Bawaleshie-Otele Klannaa Weku)
VRS

1. **IBRAHIM JAJAH**
2. **NANA YAW DUODU a.k.a SLEDGE**
3. **KENNEDY OHENE AGYAPONG**
4. **THE INSPECTOR GENERAL OF POLIC (IGP**)

DEFENDANTS

ORDER TO APPEAR IN COURT

SGD
AMOS WUNTAH WUNI, J
JUSTICE OF THE HIGH COURT

WHEREAS the attention of the High Court (Land Court 12) has been drawn to a television and Radio program allegedly aired on NET 2 TV and OMAN FM stations on 2nd September 2020 at or around 9:00 p.m in which KENNEDY OHENE AGYAPONG, 3rd Defendant herein, allegedly scandalized and threatened this court in this case, pending before this court, in a manner which if proven against him, will amount to Contempt of Court;

I HEREBY SUMMON the said KENNEDY OHENE AGYAPONG per a warrant issued under my Hand and Seal to appear before the High Court (Land Court 12) on Monday, 14th September, 2020 at 10:00 a.m to show cause why he should not be severely punished for contempt, if the matters are proven against him to the satisfaction of the court.

GIVEN UNDER MY HAND AND SEAL OF THE HIGH COURT OF JUSTICE, LAND DIVISION, ACCRA, 2020.

SGD

ISSAHAKU MUSAH

"REGISTRAR"

**THE APPLICANT'S CASE**

Per the Applicant's affidavit in support, in the evening of Monday 14th September, 2020, it came to his knowledge that the above order and a hearing notice of contempt proceedings had been posted on the premises of his TV station at Madina. The Contempt proceedings were in respect of a suit titled: **Susan Bandoh & Anor VRS. Ibrahim Jajah & 3 Ors, [Suit No.: LD/0704/2020].** The return date for the hearing of the contempt charge was the 18th September, 2020. Applicant alleges that he has never been served with any Writ of Summons and Statement of Claim or any court processes in respect of the Suit titled **Susan Bandoh & Anor VRS. Ibrahim Jajah & 3 Ors, [Suit No.: LD/0704/2020].** He further says that, since he is a Member of Parliament, court processes such as the summons for contempt ought to have been served on the Speaker of Parliament for his further action.

The Applicant further says that he is usually conspicuous in public and honestly believes that the Bailiff of the High Court did not make any attempt to serve the processes on him personally.

The Applicant claims that the subject of his unsavory pronouncements was a suit titled **Emmanuel Mompi & 2 Ors vrs. Hon. Kennedy Ohene Agyapong [Suit. No.: LD/1028/2020]** pending before His Lordship Frank Aboadwe Rockson J in the High Court (Labour & Industrial Court 2) and not the suit before His Lordship Amos Wuntah Wuni J in the High Court (Land Court 12). The Applicant therefore argues that his inappropriate language was directed at the High Court (Labour Court 2) and not any other Court. Applicant says he has apologized to the High Court (Labour Court) presided over by his Lordship Frank Aboadwe Rockson J. The Applicant argues that since his inappropriate language was not directed at the High Court (Land Court 12), which is presided by His Lordship Amos Wuntah Wuni J., the said High Court (Land Court 12) is not seized with jurisdiction to order him to appear to show cause why he should not be 'severely punished' for contempt, if those allegations are proven against him.

The Applicant further argues that even if His Lordship Amos Wuntah Wuni J. has jurisdiction to hear the allegations of contempt, it will be unfair and very prejudicial for him to exercise the jurisdiction. This is because, to Applicant, the judge has demonstrated that he would

not exercise that jurisdiction since the words, "severely punished" clearly amounts to the fact that the exercise of discretion as enshrined in the Constitution shall not be applied fairly to him.

The Applicant subsequently filed a supplementary affidavit in support of the motion on 6th October, 2020. In his supplementary affidavit in support, the Applicant emphasised that "…the order made by His Lordship Amos Wuntah Wuni J for the Applicant to appear before him and answer why the Applicant should not be punished severely (sic) was made out of bad faith with clear bias and prejudice against Applicant".

The Applicant alleges that on 18th September, 2020, when he appeared before His Lordship Amos Wuntah Wuni J., the fact of the pendency of this application before this Supreme Court was brought to the attention of the High Court and Applicant's Counsel prayed for an adjournment of the contempt proceedings to abide the determination of the instant application. The prayer for adjournment was refused. The record of proceedings of the 18th September, 2020 which the Applicant annexed to his supplementary affidavit, indicates that the Court adjourned the matter to 25th September, 2020 at 10 am for "…Counsel to make full submissions on whether or not Respondent's Application filed yesterday in the Registry of the Supreme Court automatically stays the hand of this Court."

The Applicant petitioned His Lordship the Chief Justice on the 22nd day of September, 2020. A copy of the petition is attached to the Supplementary Affidavit and marked as Exhibit 3.

The Petition in part reads:

> "…Respectfully, our client indeed made uncomplimentary comments about a Judge who is presiding over a matter in which our client is the only Defendant and titled **Emmanuel Mompi & 2 ORS vrs. Hon Kennedy Ohene Agyapong Suit No. LD/1028/2020** but subsequently our client has rendered unqualified apology using the same medium on the 9th day of September, 2020 and again published same in the 'Daily Graphic' on the 10th day of September, 2020.
>
> It is our client's case that when he appeared before His Lordship, Amos Wuntah Wuni J. on the 18th day of September 2020, he indicated to the court through his lawyers that he has filed a motion in the nature of judicial review at the Supreme Court on grounds on prohibition and certiorari against His Lordship, Amos Wuntah Wuni J.

with a return date of October 13, 2020 for the motion to be heard at, and subsequently pray the Court for an adjournment to appear after the motion has been heard by the Supreme Court.

It is our client's position that he has not scandalized or threatened land court 12 presided over by His Lordship, Amos Wuntah Wuni J. for him to assume jurisdiction and preside over contempt proceedings against our client by the same Judge.

Respectfully, assuming without admitting that it was even the case that His Lordship, Amos Wuntah Wuni J, was the judge our client referred to in the said statement, it will be unlawful for the same Justice Amos Wuntah Wuni to preside over the contempt proceedings because he cannot be a judge in his own cause, since there is a high likelihood of bias and prejudice against our client.

We are by this petition, bringing to the attention of His Lordship, Rt. Hon Chief Justice, to restrain His Lordship, Amos Wuntah Wuni J. from presiding over the committal proceedings against our client because the order emanating from his court for our client to appear and answer to why he should not be 'severely punished' (SIC) which is attached hereto, in itself, is prejudicial and bias because our client did not even speak on Oman FM on that said day.

It is our humble submission that our petition would find favour with the Rt. Hon Chief Justice for the right thing to be done and justice be served accordingly.

Yours faithfully…"

The Applicant further deposes in his supplementary affidavit that on the 24th September, 2020, his lawyers also filed an application for stay of the contempt proceedings which was returnable on the 12th of October, 2020.

The record of proceedings of the 25th September, 2020 [Exhibit 3] shows that the trial Court was aware of the Applicant's petition to the Chief Justice. In fact, the trial judge remarked in open Court, and same is captured in the record of proceedings, that on the 23rd September, 2020, the petition of the Applicant was referred to him for his comments and that he had already sent his responses to the office of the Chief Justice.

Again the record of proceedings of the 25th September, 2020 [Exhibit 3] shows that the trial judge was in the know of the application for stay of proceedings filed by the Applicant on the 24th September, 2020 which was returnable on 12th of October, 2020. This notwithstanding, His Lordship Amos Wuntah Wuni J. still decided to go on with the contempt proceedings because, in his view, the pendency of an application for stay of proceedings does not serve as an automatic stay.

The learned trial judge then ordered that a video containing the alleged scandalous statements, downloaded from Youtube be played in Court. He also ordered that the transcript of the video be handed over to the Applicant's Counsel. The Applicant's Counsel opposed the playing of the YouTube video in court, arguing that, per the Electronic Communications Act 2008 (Act 775), and Section 6 of the Electronic Transactions Act, 2008 (Act 772), the court ought to have applied to YouTube for the video and not to download it suo motu. The Court thought otherwise, ordered the Applicant to step forward, and the YouTube video was played in open Court. The Court proceeded to take the Applicant's plea to the contempt charge and at the insistence of the Applicant's Counsel, a copy of an untitled A.4 sheet supposed to be the charge sheet was handed over to Applicant's Counsel. The proceedings were then adjourned to 28th September, 2020 for continuation.

The Applicant contends that on the 28th day of September, 2020, he was not present in court as he suffered from post covid complications. He had been advised by his doctor to stay out of public for fourteen (14) days with effect from 26th September, 2020. Consequently, his Counsel wrote to the Court for adjournment and attached an Excuse Duty Form signed from his medical doctor. Even though the request for adjournment was granted and the contempt proceedings accordingly adjourned to 12th October, 2020, His Lordship Amos Wuntah Wuni J. ordered that the Medical Practitioner who signed the Excuse Duty Form should appear in court on 1st October, 2020 to speak to the Excuse Duty Form.

The Applicant further says that on the 29th of September, 2020, a day to which the contempt proceedings had not previously been adjourned, His Lordship Amos Wuntah Wuni J, suo motu, and without any of the parties being notifies and/or present in Court, varied the date for the appearance of the Medical Practitioner to speak to the Excuse Duty Form from 1st October, 2020 to 6th October, 2020.

From the foregoing depositions and allegations of the Applicant, his plaint may be further summarized as follows that:

1. He ought to have been served with the summons to appear through the Speaker of Parliament;

2. That the High Court, (Land Court 12), Coram His Lordship Amos Wuntah Wuni J. does not have jurisdiction to order the Applicant to appear and to answer contempt charges against him since his comments were not directed at the High Court, (Land Court 12) but rather, the High Court (Labour Court 2); and

3. That it will be unfair and prejudicial for the His Lrdship, Amos Wuntah Wuni J. to preside over the contempt charges against him because the judge has demonstrated a real likelihood of bias and cannot exercise his discretion fairly.

**RESPONDENT'S CASE**

The Registrar of the High Court (Land Division) delivered an affidavit in answer, opposing the Applicant's application. And at the instance of this Court, we directed the Deputy Attorney General to make oral arguments for and on behalf of the Respondent. We propose to reproduce the entire depositions in the affidavit in opposition in extensor which read as follows:

"I, Issahaku Musah, of the High Court (Land Division), Law Court Complex, Accra make Oath and say that:

1. I am the Registrar of the High Court (Land Division) Accra, the Respondent herein; and I have the consent and authority of the Respondent to swear to this affidavit.

2. The matters to which I hereunder depose to are true to the best of my knowledge and belief and have come to my knowledge in the course of my work as the Registrar of the High Court (Land Division), Accra.

3. At the hearing of this application, Counsel will seek leave of this Honourable Apex Court to refer to all processes filed.

4. I deny paragraphs 7, 8, 9 and 10 of the affidavit in support of this application.

5. In further answer to paragraphs 7, 8, 9 and 10 , I aver that a search conducted by the 3rd Defendant/Applicant's Counsel disclosed that 3rd Defendant/Applicant was served with the Writ of Summons and accompanying statement of Claim on Thursday 18th June 2020 (search attached hereto and marked Exhibit LCD 1; also attached herewith is an Affidavit of Publications of the processes and Hearing Notice deposed to by Counsel for Plaintiffs marked Exhibit LCD 2 and Ghanaian Times Publication of 18/06/2020- Pages 16 & 17- Substituted Service of processes and Hearing Notice on Defendants marked Exhibit LCD 3)

6. I further aver that, in any case, Paragraphs 7, 8,9,10 go the defence of 3rd Defendant/Applicant.

7. In answer to paragraphs 11 and 12, I aver that the court Bailiff detailed to serve the summons on 3rd Defendant/Applicant filed an Affidavit of Non-Service on 14th September 2020 at Accra, wherein the said Bailiff stated that he attempted service on the 3rd Defendant but could not effect service for the following reasons:
   **"THAT I WENT TO HIS OFFICE AND HIS RECEPTIONIST CALLED HIM ON PHONE FOR ME TO TALK TO HIM. HE TOLD ME TO SNAP A COPY OF THE DOCUMENT TO HIM. HE LATER CALLED AGAIN TO DIRECT ME TO SEND THE DOCUMENT TO PARLIAMENT HOUSE"**

8. I further aver that, subsequently, I forwarded a copy of the ORDER TO APPEAR IN COURT per Letter No. LCD/541/20 on 11th September, 2020 to the Clerk of Parliament to be served on 3rd Defendant.

9. I also aver that, in reply, the Parliamentary Service stated that:
   "…The Clerk to Parliament is therefore, unable to serve the Honourable Member. I request that the Registry finds other means of serving this process on the Honouable Member. The Order is respectfully returned herewith.
   (Letter communicating service of court order through the Parliament of Ghana and Reply from the Clerk of Parliament attached herewith and marked Exhibit LCD 5 and Exhibit LCD 6 respectively)

10. I deny paragraphs 18 and aver that, in any case, it goes to the defence of the 3rd Defendant/Applicant.

11. I deny paragraph 19 and asseverate that "to punish severely" does not connote bias or prejudice.

12. In further answer to paragraph 19, I aver that in the MONTIE CASE, even though the court stated that the contemnors should show cause why they should "not be

sent to prison" such was not considered a statement indicative of bias. Similarly, "severely punished" does not exclude other sentences including a heavy fine.

13. In further answer to paragraphs 18 and 19, nothing has been said or done by the High Court (Land Division) for which it stands accused of bias or prejudice.

14. I asseverate that, the Honourable High Court (Land Division) has made no Orders, demanding Prohibitory Orders from the Honourable Apex Court.

Wherefore I swear to this affidavit in opposition in good faith."

On the 13th of October, 2020, we adjourned the hearing of this application to the 14th of October, 2020 and directed the Deputy Attorney General, Godfred Dame Esq., to apprise himself of the processes filed and to appear, represent and make submissions for and on behalf of the Respondent on the issues in contention in this application.

## ***Procedural Lapses in This Application***

The form of the application is not strictly consistent with Rule 61 of the Supreme Court Rules, 1996, (C.I 16) and Form 29 in part IV of the Schedule to C.I 16, which regulates applications to invoke the supervisory jurisdiction of this Court. The Applicant failed to properly set out the grounds of the application on the face of the motion paper. A supplementary affidavit of the Applicant was also filed without leave of court. That said, we did not deem either of these procedural irregularities as fatal because the grounds of the application were extensively articulated in the Affidavit and Supplementary Affidavit in Support and consequently, met the substance of the rule enough to enable us do substantial justice to the parties. See: Nana Kwasi Broni V Kwame Kwakye & Others(J4/19/2016)[2017] Unreported SC, (22 February 2017); Republic v. High Court, Accra Ex-parte Yalley;(Gyane &Anor –Interested Parties) [2007-2008] SCGLR 512; Republic v National House of Chiefs; Ex parte Odeneho Akrofa Krukoko II (Osagyefo Kwamena Enimil VI, Interested Party)[2010] SCGLR 134.

We also note that even though the Applicant's supplementary affidavit was filed without leave, the Respondent delivered an Affidavit in Opposition after the said supplementary affidavit and therefore had the opportunity to answer any depositions therein. As a result,

we are satisfied that the filing of the supplementary affidavit did not occasion any prejudice to the Respondent and/or the Interested Party.

Further, this application was endorsed for service on the Judicial Secretary instead of the Registrar of the High Court, the proper party for service. As a general rule of practice, once an application is against a Court, the proper party to be endorsed for service is the Registrar of the Court in question. The Registrar, upon receipt of service of any process, then causes same to be forwarded to the Attorney General, who by law is responsible for the conduct of proceedings of this nature for and on behalf of the Court. Despite the wrong endorsement for service, the Registrar of the High Court, received service without any objections and indeed, filed the said Affidavit in Opposition to the Application. We deem these procedural irregularities to be inconsequential in the circumstances of this case and it is for that reason that we are inclined to exercise this Court's power of waiver under Rule 79 of the C.I 16 to enable us do substantial justice to the parties.

## ***ISSUES***

From the processes filed and submissions of the parties, two main issues arise for our consideration.

They are:

a) Whether or not the High Court (Land Court 12), Coram: His Lordship Amos Wuntah Wuni J. has jurisdiction to issue contempt summons to the Applicant even if the Applicant's alleged scandalous statements were directed at High Court (Labour Court 2), Coram: His Lordship Frank Aboadwe Rockson J. and

b) Whether or not His Lordship Amos Wuntah Wuni J.'s use of the phrase 'severely punished' in the contempt summons and his conduct and disposition in the course of the proceedings before him amounts to bias, prejudice, and bad faith and disables the learned trial judge from being able to exercise his discretion fairly.

Before turning to the two main issues above, we wish to comment on a matter which has been flogged in the affidavits of the parties to this application. To Applicant's mind, the

Summons to Appear ought to have been served on the Speaker of Parliament. This is the subject of paragraphs 9 to 15 of the affidavit in support of the motion to invoke the supervisory jurisdiction of this court. Similarly, issue was joined over the matter of service in paragraphs 4, 5, 6, 7, 8, 9 and 10 of the affidavit in opposition deposed to by the Registrar of the High Court (Land Division). Even though, we are struggling to understand the import of these depositions on service for the application at hand, suffice it to say that scandalizing the Court and for that matter the administration of justice amounts to criminal contempt and when satisfactorily proven, will attract punishment. Therefore, if a party fails to appear in court after being served or notified of the summons to appear, a bench warrant may be issued for his or her arrest. For this reason, the provisions for service of criminal summons prescribed in Section 63 and 64 of the Criminal and Other Offences Procedure Act, 1960 (Act 30) offers much guidance.

The said sections provide as follows:

> **"Section 63—Service of Summons.**
>
> (1) Every summons shall be served by a police officer or by an officer of the Court issuing it or other public officer, and shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.
>
> (2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt thereof on the back of the other duplicate.
>
> **Section 64—Service when Person Summoned Cannot be Found.**
>
> Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some person apparently over the age of eighteen at his usual or last known place of abode or business. [As amended by the Criminal Procedure Code (Amendment) Act, 2002 (Act 633), s. (6)]"

Sections 63 and 64 of Act 30 spells out how criminal summons may be served. Nowhere do these provisions make a special exception for Members of Parliament.

It must however be noted that the Superior Courts when dealing with summons for contempt suo motu pursuant to article 126 of the Constitution, have a wider latitude and cannot be held to the terms of a subordinate statute such as the Criminal and Other Offences Procedure Act, 1960 (Act 30)

Of course, Article 117 of the 1992 Constitution of Ghana grants immunity to the Speaker, Members and Clerk of Parliament from the service of court processes in specific circumstances. The said article 117 states:

> "117 IMMUNITY FROM SERVICE OF PROCESS AND ARREST
>
> Civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to, the Speaker or a member or the Clerk to Parliament while he is on his way to, attending, at or returning from, any proceedings of Parliament."

To our minds, Article 117 does not bar service of court processes on a Member of Parliament. It only forbids service of processes on a Member of Parliament whilst such a member is on his/ her way to, attending, at or returning from, any proceedings of Parliament.

In any event, if Applicant believes he was not properly served, the avenue for redress of the alleged defective service is not certiorari or an order for prohibition.

Defective service, which the Applicant is complaining about, without more, cannot be the basis for the invocation of our supervisory jurisdiction.

**ISSUE ONE**

We now proceed to address the first issue of **Whether or not the High Court (Land Court 12), Coram: His Lordship Amos Wuntah Wuni J. has jurisdiction to issue contempt summons to the Applicant even if the Applicant's alleged scandalous statements were directed at High Court (Labour Court 2), Coram: His Lordship Frank Aboadwe Rockson J.**

On the above issue, It is the case of the Applicant, and same is argued in Applicant's Statement of Case filed on the 17th day of September, 2020, that '…the court he used

uncomplimentary words against was Labour and Industrial Court 2 presided over by His Lordship Frank Aboadwe Rockson J and have subsequently issued an apology through the same medium on the 9th of September, 2020 followed by a publication in the Daily Graphic on the 10th day of September, 2020, thus for His Lordship Amos Wuntah Wuni to assume jurisdiction over Labour and Industrial Court 2 case and order the Applicant to appear in Land Court 12 clearly amounts to exercising a jurisdiction which His Lordship Amos Wuntah Wuni J. does not have in fact and in law".

It was argued for and on behalf of the Respondent by the learned Deputy Attorney General, on 14th October, 2020, during his oral submissions before us, that the application was fundamentally misconceived, as same was predicated on the false assumption that there are different High Courts.

That assumption, he argued, is erroneous, because by the combined effect of articles 139(1) and 140 of the Constitution as well as sections 14(1) and 15(1) of the Courts Act, 1993, Act 459, there is only one High Court. He further urged that the mere constitution of the High Court into divisions, for the purpose of boosting the efficiency of its work, does not mean that there are different High Courts.

It was also submitted that by virtue of section 15(4) of Act 459, a Justice of the High Court may, in accordance with rules of court, exercise in court, all or any of the jurisdiction vested in the High Court by the Constitution, the Courts Act or any other law. The jurisdiction of the High Court vested in a Justice of the High Court includes the power to commit for contempt, as clearly enshrined in article 126(2) of the Constitution. There is therefore no doubt that the His Lordship Amos Wuntah Wuni J. had the power to commit for contempt, even though the words in question were allegedly spoken of a different Justice of the High Court, His Lordship Frank Aboadwe Rockson J. He cited the dictum of Akufo-Addo CJ in the case of REPUBLIC V. LIBERTY PRESS LTD (1968) GLR 123 at page 134 to buttress his point that one Court can commit for the contempt of another.

## ***Analysis/evaluation of case for certiorari***

This Court is being invited to intervene by the exercise of our supervisory jurisdiction under article 132 of the 1992 Constitution and to quash the 'Order To Appear In Court' dated 9th

September, 2020 to answer the allegation of contempt as well as to prohibit The High Court (Land Court 12), coram His Lordship Wuntah Wuni J from trying the allegations of contempt against the Applicant.

Article 132 provides that:

> "The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power."

The supervisory jurisdiction of this court is a great residual jurisdiction that allows this court to streamline the activities of the lower courts. Our control is limited to three main areas: against want or excess of jurisdiction; against patent errors of law on the face of the record; and against breaches or denial of natural justice.

His Lordship, Dotse JSC in the case of Republic v High Court, Kumasi: Ex-parte Bank of Ghana & Ors (Gyamfi & Others – Interested Parties) [2013-14] 1SCGLR 477, espoused the grounds for the grant of certiorari thus:

> "It is well settled that certiorari was not concerned with the merits of the decision; it was rather discretionary remedy which *would be granted on grounds of excess or want of jurisdiction and or some breach of rules of natural justice; or to correct a clear error of law apparent on the face of the record. The error of law must be so grave as to amount to the wrong assumption of jurisdiction; and it must be so obvious as to make the decision a nullity. Where the error of law or fact was not apparent on the face of the record, the applicant's remedy would lie in an appeal*'.

In words of Prof Modibo Ocran JSC in the case of the REPUBLIC V HIGH COURT (FAST TRACK DIVISION) ACCRA, EX-PARTE ELECTORAL COMMISSION (METTLE NUNOO & OTHERS – INTERESTED PARTIES ) [2005-2006] SCGLR 514:

> "Certiorari lies not only to review and quash a decision taken in the absence of initial jurisdiction, but also in the exercise of excess jurisdiction as when a court initially clothed with jurisdiction, embarks upon a path unwarranted or uncalled for in the disposition of the specific matter before it."

In resolving the first issue, we are enjoined by the rules of court and judicial precedent to ultimately answer the question whether the instant application meets the threshold set by law for our intervention. To answer this question, we have given regard to the nature of contempt powers of the Court and whether in the circumstances of this case, the trial judge was clothed with jurisdiction to issue the summons for contempt requiring the Applicant to appear before him and if not, whether certiorari ought to issue.

It has been said by Akuffo Addo C.J in the case of REPUBLIC v. LIBERTY PRESS LTD. AND OTHERS [1968] GLR 123 at page 135 concerning the power of the courts to commit persons for contempt that:

> "...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. Such conduct constitutes the offence of contempt of court, and the courts are vested with the power of dealing with it in a manner that is almost arbitrary. For this reason, the power is rarely invoked and only when the dignity, respect and authority of the courts are seriously threatened. It has been said that these powers are given to the courts (and the judges) to keep the course of justice free; power of great importance to society, for by the exercise of them law and order prevail; those who are interested in wrong are shown that the law is irresistible"

In REPUBLIC V MENSA-BONSU AND OTHERS [1994-95] GBR 130, the need to preserve the sanctity and integrity of the courts and its judges was eruditely postulated as follows:

> "Article 127(2) of the Constitution 1992 guaranteed the independence of the judiciary. The high premium placed on the integrity, dignity and independence of the judiciary under the Constitution underscored the importance of the judiciary in society. The judiciary was an indispensable institution in any democratic society for the administration of justice. It was therefore of the utmost importance that the sanctity and integrity of the courts and its judges were preserved to enable them to

perform their judicial functions peacefully and without interference from any quarter, hence the power to commit for contempt. -

In the case of REPUBLIC V MENSA-BONSU [1995-96] 1 GLR 377, SC, her Ladyship Bamford Addo explained that the purpose of contempt is not to vindicate any particular judge but to protect the whole system of administration of justice. The learned justice stated thus: "***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 the proper administration of justice, or which 'scandalises' the courts, by eroding public confidence in them or by weakening and impairing their authority. The power to commit summarily for contempt is indeed an effective but very powerful tool which must be wielded only in very clear cases. It must be noted however that it is not to be used from a tenderness of feeling or to vindicate any particular judge, it is used to protect the whole administration of justice and to keep the 'blaze of glory' round the courts for obvious reasons. The public must have confidence in the law and the courts, and any attempt by any one calculated to erode such confidence must be viewed very seriously and must be punished swiftly to restore the integrity of the courts which administer the law."***

The courts exist to administer justice. In order to protect the administration of justice from abuse and arbitrary manipulations, the people of Ghana, made judicial power and authority subject only to the constitution. The constitution gives the Courts the power to ensure that they are able to maintain their dignity and aura of respect, which dignity and respect is important in the Courts performing their primary function as the bastion of justice. The attorning language of Article 125 is so solemn. It says:

> *"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."*

The aspiration of the Ghanaian people to attain justice, ensure their freedom and the protection of their fundamental human rights is eloquently captured in the Preamble of the 1992 Constitution of Ghana and finds itself in all the articles in the Constitution. The sacred role of the judiciary cannot be sacrificed on the altar of ridicule, scorn, opprobrium or impudence of any individual to the disadvantage of society at large.

Date- Bah JSC in Adofo v. Attorney-General [2005-2006] SCGLR 42 had this to say concerning the all-important solemn obligation of our Courts:

> "*It is our considered view, which is happily shared by all Ghanaians, that the Law Courts of Ghana shall be the custodian and the bastion of the liberty and dignity of Ghanaians, the guardian of the Constitution, in short, the citadel of justice. The independence of Judges is an essential prerequisite to the attainment of this objective, and it can be achieved only under certain accepted conditions."*

The citadel of justice (as Date-Bah JSC puts it) will not function properly, if it is not accorded the power to maintain its dignity and ensure that it is not treated with indignity, humiliation or discourtesy. For this reason, the powers of the Superior Courts to commit anyone for contempt have always been inherently recognized by the Courts at Common Law. In the Ghanaian legal jurisprudence, this critical power of the courts to commit for contempt has received statutory emboldenment and constitutional crystallisation. The 1992 Constitution which is the supreme law of the land and which embodies the hopes and aspirations of Ghanaian people has conferred on all Superior Courts, the power to commit for contempt to themselves.

For purposes of brevity we shall quote article 126 (1) and (2) of the 1992 Constitution and Section 36 of the Courts Act, 1993 (Act 459) to illustrate the constitutional and statutory recognition of the powers of the Superior Courts to commit persons for contempt to themselves.

Specifically, article 126 (1) and 126(2) of the 1992 Constitution states as follows:

> "126.(1) The Judiciary shall consist of -
>
> (a) the Superior Courts of Judicature comprising -
>
> (i) the Supreme Court;
>
> (ii) the Court of Appeal; and
>
> (iii) the High Court and Regional Tribunals.
>
> (b) Such lower Courts or tribunals as Parliament may by law establish.

(2) The Superior Courts shall be superior courts of record and shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of this constitution."

Also, section 36 (1) of the Courts Act, 1993 (Act 459) provides that:

"The Superior Courts of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of the Constitution in relation to contempt of court."

We find it pertinent to point out that, historically, the 1969 Constitution also in article 102 (5) contained similar provisions which recognized the power of the Superior Courts to commit persons for contempt to themselves. Article 102(5) of the 1969 constitution was reproduced without any alteration in article 114 (6) of the 1979 Constitution.

From our reading of Article 126 of the 1992 Constitution, it is clear that all Superior Courts are vested with jurisdiction to commit for contempt to themselves. Needless to say, the High Court, however differently constituted and/or designated, being a Superior Court, has the power to commit for contempt to itself.

Significantly, article 126(1)(a)(iii) provides for only one High Court. It is therefore for purposes of the convenience of judicial administration that the Chief Justice is mandated under article 139 (3) to create divisions of the High Court. These functional designations of various divisions of the High Court is not to derogate from the power or jurisdiction of any division of the High Court, howsoever designated or constituted, to commit for contempt to itself. Like the numerous tributaries of a river, these divisions form part of a single High Court.

This is why article 139 (1) of the 1992 Constitution further provides that:

"139 (1) The High Court shall consist of -

(a) the Chief Justice

(b) not less than twenty Justices of the High Court; and

(c) such other Justice of the Superior Court of Judicature as the Chief Justice may, by writing signed by him, request to sit as High Court Justice for any period.

(2) The High Court shall be constituted -

(a) by a single Justice of the Court; or

(b) by a single Justice of the Court and jury; or

(c) by a single Justice of the Court with assessors; or

(d) by three Justices of the Court for the trial of the offence of high treason or treason as required by article 19 of this Constitution.

(3) There shall be in the High Court such divisions consisting of such number of Justices respectively as the Chief Justice may determine.

Consequently, save that they are divisions of the High Court, Land Court 12 and Labour & Industrial Court 2 do not exist as separate, distinct, and/or different courts from a juridical point of view; they are tributaries of one river, the High Court of Ghana.

In delivering her judgement in the case of TSATSU TSIKATA VRS ATTORNEY GENERAL [2001-2002] 2 GLR 1, her Ladyship Bamford Addo JSC stated as follows:

> "I have also resorted to case law for guidance: see Atta v Kankan [1963] 1 GLR 54. In Wiredu v Mim Timber Co Ltd [1963] 2 GLR 167, SC it was held as stated in the headnote in holding (3) that: "The High Court under the Courts Ordinance, Cap. 4 (1951 Rev.), repealed, as under the Courts Act, 1960 (CA 9) was just one High Court exercising jurisdiction throughout the country. It was divided into judicial divisions merely for the convenient administration of justice but not for the purposes of limiting the jurisdiction of each judicial division to only matters arising within its division . . ." Consequently, it is right to say that the division of the High Court into judicial divisions as noted above was merely geographical and for the convenient administration of justice and does not, as claimed by the defendant, refer to special divisional courts to be created by the Chief Justice: see also Wilmot v Wilmot [1981] GLR 521 where the meaning of "judicial division" was given to the same effect. Even though it is a judgment of the High Court, I cite it for its persuasive value."

Understandably, as a result of the increasing complexities and intensities of human activities (social and economic) and the ever increasing dimensions/areas of endeavor, divisions of the High Court have expanded from being simply geographical to being subject matter

based. Consequently divisions such as Financial, Commercial, Probate, Land, Matrimonial, Criminal, Labour, Financial, General Jurisdiction, insurance, admiralty, etc, continue to be determined by the Chief Justice.

From the processes filed in this application, Applicant alleges that his alleged scandalous comments were in respect of the case of EMMANUEL MOMPI & 2 ORS VRS. HON. KENNEDY OHENE AGYAPONG [LD/1028/2020] which case is before the High Court (Labour Court 2). However, a look at all the filed processes of the case of EMMANUEL MOMPI & 2 ORS VRS. HON. KENNEDY OHENE AGYAPONG [LD/1028/2020] shows that the processes were filed in the Land Division of the High Court. In fact, the Suit Number is one which is given to cases in the Land Division of the High Court. This clearly demonstrates that the divisions of the High Court are for administrative purposes only but not jurisdictional segregation.

To be properly seized with the jurisdiction to commit for contempt, the fundamental question to answer is whether or not the High Court that summoned the Applicant for contempt is a superior court of judicature. Therefore in our view, every division of the High Court, has power to issue contempt summons for persons to appear before it to answer to the charges of contempt.

To hold otherwise will be to pretend that the effects of contemptuous acts of individuals on any administrative division of the High Court, affects that administrative division alone. In our opinion, it does not. An attack on any one judge and/or division of the High Court in ways that, when proven, will amount to contempt of court, is an attack on the administration of Justice in general. It is an attack on the Judiciary, which is tasked with the constitutional duty to administer justice.

In any event, on the face of the contempt summons that was served on the Applicant and the processes filed in this application, it is obvious that there is a pending case before the High Court (Land Court 12), presided over by His Lordship Amos Wuntah Wuni J wherein the Applicant is the 3rd Defendant. The first paragraph of the Contempt Summons shows that the trial judge is of the opinion that the allegedly scandalous and threatening statement were directed at him and they were uttered in respect of the pending suit before him wherein the Applicant herein is the 3rd Defendant. The opening recital of the Contempt Summons in part reads:

"WHEREAS the attention of the High Court (Land Court 12) has been drawn to a television and Radio program allegedly aired on NET 2 TV and OMAN FM stations on 2nd September 2020 at or around 9:00 pm in which **KENNEDY OHENE AGYAPONG, 3rd Defendant herein**, **allegedly scandalized and threatened this court in this case, pending before this court,** in a manner which if proven against him, will amount to Contempt of Court;…"

We do not think that the High Court (Land Court 12), Coram: His Lordship Amos Wuntah Wuni J. is precluded from issuing contempt summons to the Applicant to appear before him in the manner that he did. More so, when the Judge was of the opinion that the alleged scandalous and/or threatening words of the Applicant are in respect of the case pending before him. Even if there is any merit to the Applicant's contentions in this regard, which we think there is not, we are of the opinion that the plaint by the Applicant that his words were targeted at the High Court, (Labour Court 2) are defences that the Applicant may put up at the High Court for a possible exculpation. This court's supervisory jurisdiction is not the forum for the Applicant to put up his defenses to the charge of contempt.

As for the argument by the Applicant that a judge of the High Court cannot commit for contempt of another, we see no reason in principle why, in appropriate circumstances, a judge of the High Court cannot commit for the contempt of another. This is because the primary purpose of contempt proceedings is not to vindicate any particular judge but rather to ensure that the administration of justice, the primary duty of the court is not put to disrepute and public confidence in the Court, its officers and processes eroded. Therefore, where the conduct of an individual has the potency of defying, scandalizing or lowering the authority of the court or bringing the administration of justice into disrepute, a court differently constituted may hear the matter. In the matter of the contempt proceedings in the case of Abu Ramadan & Anor vrs. Electoral Commission & Anor, In Re: 1. The Owner of the Station, Muntie F.M & 3 ORS[ J8/108/2016], the infamous Muntie 3, is a case in point. . The Supreme court, constituted by SOPHIA AKUFFO (JSC), ANSAH(JSC), ANIN YEBOAH(JSC), BENIN (JSC), and PWAMANG (JSC) said as follows:

*"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."*

For the above reasons, it is immaterial whether the Applicant's unsavory comments were directed at the High Court (Labour Court 2), Coram: His Lordship Frank Aboadwe Rockson J, or the High Court( Land Division) Land Court 12, Coram: His Justice Amos Wuntah-Wuni. Either or both venues being divisions of the High Court, in our view, has jurisdiction to summon the Applicant to appear before the High Court to answer allegations of contempt against him. It is for this reason that the application for certiorari in the terms prayed, and save as qualified by this court, is refused and dismissed.

**ISSUE TWO**

The second issue for our consideration is ***Whether or not His Lordship Amos Wuntah Wuni J.'s use of the phrase 'severely punished' in the contempt summons and his conduct and disposition in the course of the proceedings before him amounts to bias, prejudice, and bad faith and disables the learned trial judge from being able to exercise his discretion fairly.***

The Applicant, alleges that the learned trial judge has by his words and conduct demonstrated the real likelihood of bias against him. He deposed as in paragraph 19 of his affidavit in support as follows:

"19.That I am advised by Counsel and verily believe same to be true that even if his Lordship Amos Wuntah Wuni J. was seized with jurisdiction to hear the committal for contempt, it will be unfair and prejudicial for him to exercise that jurisdiction since the words, ***severely punished*** clearly amounts to the fact that the exercise of

discretion as enshrined in the Constitution shall not be applied fairly against the Applicant."

Applicant further stated at paragraphs 21 of his supplementary affidavit as follows:

"21. That I am advised by Counsel and verily believe same to be true that the Applicant's prayer for the apex court to prohibit His Lordship Amos Wuntah J. and also quash the order made by His Lordship Amos Wuntah Wuni J. for the Applicant to appear before him and answer to why Applicant should not be punished severely (sic) was made out of bad faith with clear bias and prejudice against the Applicant".

On the issue of the real likelihood of bias, Applicant complains that the use of the phrase "punished severely" by His Lordship, Amos Wuntah Wuni J. in the summons to appear clearly shows that the judge will not exercise his discretion fairly against him.

The full text of the relevant part of the summons is reproduced verbatim below:

*"WHEREAS the attention of the High Court (Land Court 12) has been drawn to a television and Radio program allegedly aired on NET 2 TV and OMAN FM stations on 2nd September 2020 at or around 9:00 p.m in which KENNEDY OHENE AGYAPONG, 3rd Defendant herein, allegedly scandalized and threatened this court in this case, pending before this court, in a manner which if proven against him, will amount to Contempt of Court;*

*I HEREBY SUMMON the said KENNEDY OHENE AGYAPONG per a warrant issued under my Hand and Seal to appear before the High Court (Land Court 12) on Monday, 14th September, 2020 at 10:00 a.m to show cause why he should not be severely punished for contempt, if the matters are proven against him to the satisfaction of the court."*

In response to the application for prohibition, the learned Deputy Attorney General submitted that the record of what occurred at the Court below was before the Supreme Court. The Court was vested with supervisory jurisdiction over the High Court by Article 132 of the Constitution. He therefore invited the Court to assess the conduct of the Judge, make

a determination whether his conduct was excessive and issue the relevant orders deemed necessary to curb any infractions observed.

However, in responding to a question by the Court whether or not he did not deem the use of the expression "severely punished" as indicative of bias, the learned Deputy Attorney General answered in the negative. He submitted that he did not find the use of the adverb "severely" prefixed to "punished", sufficient to indicate bias. The reason, he said, is that even private practitioners when drafting motions for contempt, pray on their motion paper for the alleged contemnor to be "kept in prison until such time as he purges himself of contempt". He contended that the expression "severely punished" was only an indication of the seriousness of the alleged conduct.

He however added that the manner in which the His Lordship Amos Wuntah Wuni J. conducted the case before him, especially his refusal to wait for the Supreme Court's determination of the instant application, could give reasonable basis for inferring an abuse of the Applicant's right to fair trial.

***Analysis/evaluation of case for prohibition.***

An order of prohibition would be granted to prevent a lower court from proceeding with a decision where there is a real likelihood of bias on the part of the judge. In the case of AMADU V MOHAMMED [2007-2008] SCGLR 58 at 59 Justice Date-Bah in delivering the judgement of the Court articulated that: 'While undoubtedly, real likelihood of bias in a judge is ground for granting an order of prohibition against him, such likelihood has to be established on the basis of facts duly proved.'

In REPUBLIC V HIGH COURT, KUMASI; EX PARTE MOBIL OIL (GHANA) LTD HAGAN (INTERESTED PARTY) [2005-2006] SCGLR 312 the Supreme Court stated that an order of prohibition would lie where there is a real likelihood of bias. The court stated as follows:

> *"(2) At common law, a judge, magistrate or an independent arbitrator would be disqualified from adjudicating whenever circumstances pointed to a real likelihood of bias, by which was meant "an operative prejudice whether conscious or unconscious in a relation to a party or an issue before him. That would apply in particular where*

*the circumstances pointed to a situation where a decision might be affected by pre-conceived views."*

**Georgina Wood JSC**(as she then was) in that same case said at page 339 of the report that: "...where as in the instant case, a judge has unequivocally made known his views about the merits of the critical disputed issues he would be called upon to adjudicate, in a very direct or forthright manner as to suggest prejudgment or predetermination, I would think that he must be disqualified on the grounds of a real likelihood or danger or possibility that he would not apply his mind impartially to determining the very matter(s) on which he has formed an unqualified opinion."

The issue of bias was also considered in NANA YEBOA-KODIE ASARE II & 1 OR. V NANA KWAKU ADDAI & 7 ORS UNREPORTED, [MOTION NO.: J7/20/2014], Supreme Court, dated 12/02/2015. This Court held that the English House of Lords tried to resolve the conflicts in the definition of what constituted bias when it got the opportunity in R v Gough 1993 AC 646. The court laid down the following approach to be followed by a court in deciding whether to set aside a decision of an inferior tribunal on account of bias. After referring to the R v Gough case (supra) **Benin JSC** who read the majority decision, cited with the approval of the bench the case of **In re Medicaments and related classes of Goods** (No. 2) (2001) TLR 84 in which the English Court of Appeal came up with a test for determining 'bias' at page 85 of the report where **Lord Philips MR** said: "*The court had first to ascertain all the circumstances which had a bearing on the suggestion that the judge was biased. It then had to ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased... Thus, for bias to succeed or prevail, there must be proof of actual bias, in the form of pecuniary benefit to the judicial officer. It could also be proved by interest of a proprietary nature which may lead or amount to a real likelihood of bias. And it must also arise from the circumstances of the situation which a fair-minded and objective person may conclude that there was a real danger or real possibility of bias".*

A compliant of bias must be proven satisfactorily based on positive and cogent evidence, which on the balance of probabilities would lead every reasonably prudent man to the conclusion that the existence or the likelihood of bias was more probable than its non-existence. Mere allegation of suspicion of bias will not do. This is because, if this court were

to prohibit judges from hearing cases on mere unproven allegations and speculations alone, it would operate as a leeway for litigants and their lawyers to use such an opportunity to engage in forum-shopping and thus abuse the court processes and defeat the ends of justice.

In the case **of** REPUBLIC V. HIGH COURT, DENU; EXPARTE AGBESI AWUSU II (NO.1) (NYONYO AGBOADA (SRI III) INTERESTED PARTY) (2003-2004) 2 SCGLR 864, this Court after reviewing a long list of cases on the subject of judicial bias, stated that: "a charge of bias or real likelihood of bias must be satisfactorily proved on the balance of probabilities by the person alleging same. Whether there existed a real likelihood of bias or apparent bias was an issue of fact determinable on a case to case basis. … to disqualify the trial magistrate and invalidate his decision, the allegation of bias must be supported by evidence. A mere or reasonable suspicion of bias was not enough: the law recognised not only actual bias but that interest, other than interest of a direct pecuniary or proprietary nature, which gave rise to real likelihood of bias. Without more, the conduct of the trial magistrate could not support the charge of bias and since there was no foundation in the allegation of bias, the trial magistrate was right in dismissing the application."

Much earlier, the Court of Appeal had held in AMPONSAH V MINISTER OF DEFENCE [1960] GLR 140 AT 141*,* where *Korsah CJ said that:*

> "To justify an allegation of interest or *bias* against a judicial officer, it must be established that he in fact has some interest in the subject-matter, or has such foreknowledge of the facts as to make it impossible for him to adjudicate upon the matter with an independent mind and without any inclination or *bias* toward one side or other in the dispute."

Again, in ATTORNEY –GENERAL V SALLAH 2 G AND G, 487, the Court of Appeal then sitting as the Supreme Court, said at page 488 of the report that:

> "What then is the law on disqualification on the ground of *bias?* We think that *bias* in a judge disqualifies him from adjudicating upon a case. And in this regard the law recognizes not only actual *bias* as a disqualifying factor but a likelihood of *bias* as well.

As has been discussed above, there need not be actual bias in a matter to disqualify a judge, but the presence of a real likelihood of bias will also disqualify a judge from adjudicating on a matter. This rationale for this rule against bias is reflected in the time-honoured legal cliché that not *only must justice be done; it must also be seen to be done*. For this reason in the case of THE REPUBLIC V HIGH COURT SEKONDI, EX PARTE MENSAH AND OTHERS 1994-95 GBR, Hayfron-Benjamin JSC, cautioned that:

> "Where a judge sensed that one or all parties to the litigation has lost confidence in the judge's impartiality the proper course for such a judge was to decline jurisdiction."

In the instant case, we observe that contempt is quasi-criminal. As such, the rules of criminal procedure are applicable in contempt proceedings. A charge is prepared and read to the contemnor in open court. The plea of the contemnor is taken. If he pleads guilty, the contemnor is convicted on his own plea and thereafter his sentence given. Even when the contemnor is convicted, his plea of mitigation is usually considered before a sentence is passed on him. Therefore, the discretion to determine the severity of the punishment to impose on anyone standing contempt trial does not arise, until the guilt of the contemnor is concluded and the trial moves into the considerations for punishment or sentencing. It demonstrates prejudice, bias and in fact amounts to grave judicial indiscretion for a judge to form an opinion on the severity or leniency of punishment to impose on a person who is presumed innocent until proven guilty and in any event even before the trial begins, a finding of guilt or otherwise is made and the Court embarks on an evaluation of the considerations for punishment such as mitigating and aggravating factors. In fact sections 177(2) and 293 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30) requires the court to receive evidence to inform itself on the proper sentence to pass. The said sections state as follows:

> "177(2). The Court may receive evidence to inform itself as to the sentence proper to be passed and in the event of the Court convicting or making an order against an accused in respect of which an appeal lies, the Court shall inform the accused of the right to appeal at the time of entering the conviction or making the order.
>
> 293. Evidence for arriving at a proper sentence.

The Court may before passing sentence, receive evidence it considers fit, in order to inform itself as to the sentence proper to be passed."

In our opinion, the nature of the contempt summons, to the extent that it was suggestive of the magnitude or gravity of the sentence that would be meted out to the Applicant, was prejudicial. Where a judge, even before taking the plea of an accused, expressly states that if the charge preferred against the Accused (the Applicant herein) is proven against him, he shall be "punished severely', the inference that the judge is clearly biased is irresistible.

Further, having perused the record of proceedings of the 18th, 25th, 28th and 29th September, 2020, we observed that the conduct of the proceedings were quite confrontational. The conduct of the trial judge leaves much to be speculated about his disposition to dealing with the Applicant impartially. Among others, he refused an oral application for adjournment to abide the outcome of an application before this Court seeking to quash the proceedings before him and to prohibit him from continuing the trial. He also continued the trial on 25th day of September, 2020 when in fact there was an application for stay of proceedings pending before the court with a return date of 12th October, 2020. The Proceedings of 25th September, 2020[Exhibit 3] are telling. The exchanges and manner in which the trial court was obviously determined to take the plea of the Applicant and to introduce a YouTube video in evidence raise concerns of due process. As for the manner in which the charges were introduced and what is supposed to be a "Charge Sheet"[Exhibit 5] and transcript of the YouTube video[Exhibit 4] which were handed to the Applicant and/or his lawyers, the least said about them the better. Subsequently, when on the 28th day of September, 2020 [Exhibit 7], the Applicant could not be present in court due to a medical excuse, the court suo motu summoned the Medical Practitioner who signed the Excuse Duty Form to appear on the 1st of October, 2020 to answer questions in respect of the medical Excuse Duty that he had issued to the Applicant. On the 29th of September, the Court, on a date to which the proceedings were not previously adjourned, again, suo motu, issued an "Order For Variation Of Order To Appear Before Court" [Exhibit 8]. On a totality of the circumstances, we are concerned to note that the entire proceedings fell short of the standard of decorum and due process that ought to characterize proceedings in court and more so intended to ultimately vindicate the dignity of the court and its processes and bolster public confidence in the administration of justice.

These considerations, coupled with the trial judges express language regarding the gravity of punishment, he contemplates against the Applicant, smacks of prejudice and bias. In context, the word severely is a single but defining word that betrays the judges intention if it comes to punishment of the Applicant. That kind of subjective language and moreover coupled with the conduct reflected in the proceedings as enumerated above, puts a judge in a position where he or she cannot be presumed to be objective, and/or impartial.

In any event, we observe that, when the circumstances that give rise to contempt proceedings are such that, a judge becomes personally interested in the matter, or that a judge's personality is attacked or that scandalous or insulting language has been used against a particular judge, and, where the contempt is committed *ex facie curiae*, that particular judge, where the circumstances permit, should not adjudicate on the matter.

This is especially so because, the purpose of the contempt proceedings is to maintain the dignity of the court and ensure public confidence in the administration of justice. If judges who are personally interested in a matter or whose personality have been subjected to scandalous and contemptuous attack have to sit and adjudicate on such matters and pass judgement, justice will not appear to be done, even though such judges will have the jurisdiction so to act.

Even in cases of contempt committed *in facie curiae*, there is the need to do a balancing between the need to stamp out interferences with ongoing legal proceedings and the need to ensure that justice appears to be done. Where a judge, in fairness to his conscience is of the opinion that the nature of contempt committed *in facie curiae* is such that he cannot impartially discharge his judicial oath, such a judge should recuse himself from sitting on the proceedings and cede the trial to the Court, differently constituted.

CONCLUSIONS

It is for these reasons that we issued the orders of 14th October, 2020 aforesaid.

**E. YONNY KULENDI**

**(JUSTICE OF THE SUPREME COURT)**

**P. BAFFOE-BONNIE**
**(JUSTICE OF THE SUPREME COURT)**

**Y. APPAU**
**(JUSTICE OF THE SUPREME COURT)**

**G. PWAMANG**
**(JUSTICE OF THE SUPREME COURT)**

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