IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- 2011

CORAM: ATUGUBA, JSC (PRESIDING)
DR. DATE-BAH, JSC
ANSAH, JSC
BONNIE, JSC
AKOTO-BAMFO, JSC

CIVIL APPEAL

J/4 / 35/ 2011

23RD NOVEMBER, 2011

RANSFORD OPOKU & ORS.- - - APPELLANTS.

VRS

1. **LIBHERR FRANCE SAS ---- RESPONDENTS**
2. **PAUL JOOSTEN**

J U D G M E N T

ATUGUBA, J.S.C:

The appellant had been employed by the 1st respondent as Human Resource Executive. Sometime in February 2009, the appellant who describes himself as a "locked out and victimized whistle blower" brought some police officers to the respondent's premises, without permission. The 2nd respondent claimed that the appellant threatened him when he asked why the appellant had brought police officers to the premises. The incident was reported to the Airport Police Station and the appellant was invited for questioning. He admitted bringing the police officers but was unable to give any reasons for his conduct. The appellant then proceeded on leave after the incident. Based on the appellant's conduct, the 1st respondent wrote a letter to the appellant through its managing director terminating his employment. The termination was to take effect on his return from paid leave, on 4th April, 2009.

Meanwhile, the appellant had, while still on leave, filed a suit with six other employees against the respondent. They claimed that the1st respondent had rendered them redundant and were therefore entitled to a redundancy package.

On 3rd April, 2009, the appellant filed a motion on notice for committal for contempt against the 1st and 2nd respondents on the basis that the 2nd respondent had terminated his employment after he had filed a suit for redundancy pay.

The trial judge held, *inter alia*, that the termination of the Appellant's employment amounted to contempt as it was intended to frustrate and to prejudice the outcome of the pending suit and bring the authority of the court and the administration of law into disrepute. The trial judge ordered the respondents to reinstate the appellant until the final determination of the substantive case. The respondents appealed to the Court of Appeal. The Court of Appeal unanimously set aside the ruling of the trial court. At page 233 of the record of appeal, the Court of Appeal held that

"*…the termination of the employment of the respondent during the pendency of the substantive action in the court below has no bearing at all on the subject-matter of the suit before the trial court.*" (e.s).

The appellant filed the instant appeal, pleading 13 grounds. In sum, the appellant herein claims that the Court of Appeal erred when it set aside the ruling of the trial court because it did not fully consider the ramifications of the termination of the appellant's employment on the appellant's pending suit against the respondents.

Contempt of court is a long standing power of the common law. Its nature is fairly well settled. Its application however can be problematic in the particular circumstances of a case. A particular area has been the effect of the issue of a writ of summons on the rights of the parties thereto. There is an English view that the mere issue of a writ does not preclude a party from exercising his rights. The typical occasion of contempt has been conduct prejudicial to the determination of a pending motion.

Nonetheless, in Ghana the courts do assert contempt in relation to prejudice to the *res litiga* in a pending action. See *Balogun v. Edusei* (1938) 3 W.A.L.R 547, *Dombo v. Narh* 1970 CC 68, *Republic v. Akenten II; Ex parte Yankyera* (1993-94) 1 GLR 246 C.A., and *Republic v. Eha II and Others; Ex parte Togobo & Others* (2003-2005) 1 GLR 328 C.A., among others.

The general principle as to the question of contempt has been well laid down per Adade JSC in *Republic v. Mensa-Bonsu and Others; Exparte Attorney-General* (1995-1996) 1 GLR 377 at 403 thus:

"There are different forms of contempt. Underlying all of them, however, is one basic notion, that the *roadways and highways of public justice should at all times be free from obstruction*. Conduct which tends to

create such an obstruction constitutes contempt. Thus *interfering with witnesses or jurors; frightening off parties to litigation; refusing to answer questions in court; commenting on pending proceedings in such a manner as to prejudice the outcome; running down the courts and the judges; refusing to obey an order of the court – any of these, if calculated to, or tend to, impede or obstruct the course of justice will constitute contempt.* And conduct complained of therefore must be viewed and assessed against the backdrop of this basic principle." (e.s)

This principle has been stated in much the same way in other cases , notably, *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. In the present case the trial judge relied heavily on *Republic v. Akenten II, Exparte Yankyera, supra*. The Court of Appeal, per Yaw Appau J.A however has well demonstrated the distinction between that case and the present one. At pages 230 to 231 of the record of appeal Yaw Appau J.A stated thus:

"In the Yankyera case, the subject-matter of the action before the Judicial Committee of the Offinso Traditional Council was *the determination of the rightful person* among the three claimants *to occupy the Gyasiwa Stool of Offinso. While the matter was pending before the Judicial Committee of the Offinso Traditional Council, the Offinsohene Nana Akenten purported to abolish the Gyasiwa Stool completely, thus rendering the final decision of the judicial committee of the Traditional Council otiose or of no moment* since there would be no stool for the would –be successful claimant to occupy after the litigation. That was why the Offinsohene was held to be in contempt of the Judicial Committee." (e.s.)

At pages 232 to 233 Yaw Appau J.A then stated thus;

> "Though the 1st appellant and the other defendant denied the allegations made in the claim of the respondent and the others, *I do not think the gravamen of the respondent's case in the court below was to secure his employment with the 1st appellant*, the termination of which could prejudice the outcome of the case. Already, the respondent is saying he no more works with the 1st appellant and that the 1st appellant is forcing him to work for the 1st defendant which he did not want to do thus the action. *So if the 1st appellant/company, which had denied the allegations, wants to give meaning to the complaint of the respondent by asking him to leave in peace to save the company, how could that act or conduct affect the final outcome of the dispute in the court below?* If at the end of the day, the trial court find in favour of the respondent and the others on all their reliefs, their victory would not be pyrrhic." (e.s)

This reasoning of Yaw Appau J.A. is substantially supported by the case of *Amaning alias Angu v. Angu II* (1984-86) 1 GLR 309 C.A. At pages 315 to 316 Abban J.A. (Osei-Hwere and Ampiah JJA concurring) stated thus:

> "A number of grounds were argued together, namely grounds 9, 10, 11, 12 and 13.Those grounds complained, among other things, that the learned trial judge erred in law in holding that the purported deposition of the plaintiff as head of family and the appointment of the co-defendant as the new head of family by a hostile section of the family was valid when notice for that purpose had not been served on all the members of the family and when there was an obvious split in the family. *It was argued that the deposition was at the instigation of and with the involvement of the defendant and at a time an action was pending against the defendant and that some of the charges which were alleged to have been brought*

against the plaintiff were matters which were to be gone into by the court. … … A careful examination of the charges which were levelled against the plaintiff as contained in exhibit 9 could not bear out the submissions of learned counsel. The charges accused the plaintiff of being litigious, of failing to perform the funeral of deceased members of the family, of preventing the defendant from performing his function as a chief, of seizing the chief's gong gong thereby making it difficult for the defendant to make announcements to the inhabitants of Fijai to undertake communal labour. Some of the charges referred to the behaviour of the plaintiff in organizing people from the neighbouring villages to undertake the weeding of Fijai cemetery. He was also accused of collecting several thousands of cedis from contractors operating quarries on the land of the family, from individuals to whom plots of family lands had been allocated and from the Lands Department. All these moneys the plaintiff was supposed to have collected in the name of and on behalf of the family and in his capacity as the head of family. But, according to the family, he had refused to render account.

In the suit before the High Court none of the charges listed above formed part of the issues to be tried as contended by learned counsel for the appellant. This is so plain if reference is made to the reliefs the plaintiff himself sought and the summons for directions filed by the parties. …

Surely the family was legally entitled to take steps at any time to protect its interest and the fact that there was an action pending before the court between the plaintiff and the defendant could not debar the family from exercising its right of calling upon the plaintiff to give account of his stewardship. Again, the fact that the plaintiff's failure to defend

himself against those charges would result in his deposition as head and thereby deprive him of the legal standing to maintain his action before the High Court was of no moment. It would be a sad day if the courts were to hold that once the head of a family is engaged in a litigation before the court, the family which made him the head in the first place should have no right to call upon him to render account of the family's funds which are in his hands or to answer charges of mismanagement of the affairs of the family." (e.s)

As demonstrated by this court *in Republic v. High Court (Fast Track Division) Accra; Ex parte P P E Ltd & Paul Juric (Unique Trust Financial Services Ltd Interested Party)* (2007-2008) SCGLR 188, the courts should be anxious to contain the power to punish for contempt of court, (which has been castigated as wide and arbitrary), within the narrowest possible confines in order to safeguard the fundamental constitutional right of the individual to liberty.

It is clear that in the circumstances of this case it cannot be said that the appellant's dismissal destroyed or hampered the resolution of the *res litiga*. There is nothing in the facts of the case to entitle the appellant to any reasonable apprehension that he would be prejudiced in any way by prosecuting his action in the trial court.

We therefore dismiss this appeal.

[SGD]: W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

[SGD]: DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

[SGD]: J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD]: P. BAFFOE BONNIE
JUSTICE OF THE SUPREME COURT

[SGD]: V. AKOTO-BAMFO (MRS.)
JUSTICE OF THE SUPREME COURT

COUNSEL

APPELLANT APPEARS IN PERSON.

KIMATHI KUENYEHIA (WITH HIM SIKA KUENYEHIA AND FRED AWINDAOGO) FOR THE RESPONDENTS.