IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA AD 2015

CORAM: ATUGUBA JSC (PRESIDING)
ANSAH JSC
GBADEGBE JSC
AKOTO-BAMFO (MRS) JSC
AKAMBA JSC

CIVIL MOTION
No.J5/21/2015

17TH JUNE 2015

THE REPUBLIC
VRS,
HIGH COURT ACCRA
EXPARTE:- ROSEMARY ASIEDU
EUGENE KWAKU QUAYSON - APPLICANTS

CATHERINE PANYIN QUAYSON - INTERESTED PARTY

RULING

GBADEGBE JSC:

We have before us a notice of motion that seeks an order of judicial review in the nature of certiorari in respect of the order of the High Court presided over by Owusu Gyamfi J that allowed in favor of the interested party an application for attachment for contempt of the

bodies of the applicants herein. Before us in these proceedings, several grounds were urged in support of the instant application as follows:

1. That the court below had no jurisdiction to utilize the process of a motion for contempt of court to grant an order of ejection or recovery of possession of the property in question against the applicants herein when the substantive matrimonial cause between the 1st applicant herein and the interested party herein is still pending before another court of co -ordinate jurisdiction.
2. The court below had no power to use the process of contempt of court to make a substantive order of ejection against the applicants herein in respect of the premises owned by the 1st applicant herein.
3. The reliefs of ejection from the premises and an order for the applicants herein to remove all their belongings from the residential property in question sought by the interested party in her application for contempt (*which were granted by OwusuGyamfi J*) were substantially the same as reliefs 2, 3, and 4 sought by the same interested party in an earlier application for interim relief in the court duly constituted for the hearing of the matrimonial cause presided over by Merley Wood J,

and, which had been dismissed. The court thus had no jurisdiction to grant the order of ejection.

4. The court below had no jurisdiction to either prejudice the hearing of the substantive matrimonial cause, viz. Suit No. BDMC 3146/2013 - CATHERINE PANYIN QUAYSON V EUGENE KWAKU QUAYSON currently pending before Merley Wood J or prejudice the rights of the 1st applicant herein to the property in question pending the hearing of the substantive matrimonial cause by another court of coordinate jurisdiction.

5. The proceedings of the court below in the contempt application were void as same were in violation of Article 157 of the Constitution of the Republic.

We have carefully considered the processes before us in the application herein and had regard to the submissions urged on us in open court and have come to the conclusion that of the several grounds raised in support of the application, the only ground of substance is that formulated and numbered as 2, which touches and concerns the absence of jurisdiction in the court below and accordingly we shall in our ruling limit ourselves to the consideration of that ground only. We, however, wish to observe of the formulation and in particular the utilization of the word “power" in reference to the authority to decide, which is exercisable

in relation to disputed questions of fact and or law and is properly described as jurisdiction as distinct from the authority conferred on other bodies and o persons such as agents of the executive or designated public officers.

Having said so, we further observe about the other grounds that as the only document before us which was certified by the court below is the ruling on which this application is grounded, we are in a difficulty as to the competency of grounds 1, 3, and 4 which are derived from matters which strictly speaking do not come within the designation of the record for the purposes of certiorari. It is trite learning that the record includes documents initiating the action such as the pleadings and or charge sheet and the ruling and or judgment or conviction. Where the order sought to be quashed relates to an interlocutory decision, then by analogy the record might include in addition to the processes initiating the action, the notice of motion and or objection and the ruling founded thereon. See: *Republic v High Court, Kumasi, Accra Ex-parte Abubakari (No 2)* [1998-99] SCGLR 904 at 916. As it is, we are not certain in our minds if the matters referred to in the other grounds such as the pending matrimonial cause before Merley Wood J, were part of the materials before Owusu Gyamfi J which resulted in his decision the subject matter of this application. Although, the decision on which this application turns referred to the pendency of a matrimonial cause

between the parties, it is not sufficient for the purpose of satisfying us that the processes in that action were actually part of the documents before the learned trial judge in the contempt application; the applicant is required to satisfy us in accordance with the settled practice that it is indeed, part of the record on which the instant application is based.

We also note that to make any process and or document come within the designation of the record for the purpose of this application, the same should have been part of the processes filed in the matter on which the ruling sought to be quashed is based and additionally exhibited to the proceedings and certified by the court below as a certified true copy. It is important to bear in mind that the jurisdiction of judicial review exercisable by us by way of supervision is in its nature limited to the matters which were the subject matter of proceedings resulting in either a judgment, ruling and or order and we should always endeavor not to go outside the record else we would ourselves be straying into areas outside our jurisdiction

In our view, none of the grounds numbered as 1, 3 and 4 either by themselves or cumulatively considered with the others disclose a point that goes to either jurisdiction , error of law or bias such as to be a good ground for certiorari. In regard to ground 5, we say straightaway that we are unable to comprehend its relevance to the

issues which turn on the instant application for our determination as contempt proceedings though arising from pending causes or matters are independent and need not be placed necessarily before the judge trying the cause or matter in which the contumacious conduct is alleged to have occurred.

Now, since the application on which the ruling is based was for an order of contempt of court, the only orders that the court was entitled to make is a fine and or conviction but unfortunately the learned trial judge veered into error when he purported to make order of ejectment which is a relief that can only be obtained in civil proceedings after the requirements of due process have been met. We add in line with the caution of Mathew J in the case of *In Re Davies* (1888) 21 QBD 236 at 239 that:

"Recourse ought not to be had to process of contempt in aid of a civil remedy where there is any other method of doing justice."

In the course of these proceedings, learned counsel for the interested party sought to justify the orders on the ground that the conduct of the applicants herein was an affront to the administration of justice but interesting though the said submissions are, we are not persuaded that the court below acted within its jurisdiction and we are in agreement with the applicants that the orders made by the learned trial judge beyond the

authorized sanctions were without jurisdiction and proceed to sever "the bad from the good" – by striking out the offending part of the judgment by which an order of ejectment was made by the learned trial judge. We are of the view think that the offending part of the judgment, which was an instance of absence of jurisdiction, was not of such nature as to have destroyed the jurisdiction which the court below had in the matter.

In regard to the order for ejectment which was made without jurisdiction, reference is made to the statements contained in Volume 10 of Halsbury's Laws of England (Fourth Edition) paragraph 87 at page 5 as follows:

"*Criminal contempt of court is punishable by a fine or by an order to give security for good behavior.*

Civil contempt of court is punishable way of committal or by way of sequestration. The writ of sequestration though in its nature a process for dealing with contempt is a form of civil execution and is not applicable to criminal contempt. The effect of the writ of sequestration is to place, for a temporary period, the property of the contemnor into the hands of sequestrators, who manage the property and receive the rents and profits. A writ of sequestration may also issue with leave of the court.

Civil contempt may also be punished with a fine or an injunction may be granted against the contemnor."

See: *Order 50 of the High Court (Civil Procedure) Rules 2004, CI 47*

As the question of the guilt of the applicants was properly within the jurisdiction of the court and the parties have by the manner in which they have presented their cases to us deprived us from considering whether the objections raised before us were properly before the court below, we are unable to accede to the application in relation to that determination and the sentence of fine imposed on the applicants.

For these reasons, the application is acceded to in part only.

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

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EKOW DADSON ESQ. WITH HIM DAVID AMETEFE THE INTERESTED PARTY.