IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: AKAMBA, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

NO.J8/96/2014

30TH OCTOBER 2014

THE REPUBLIC

VRS.

NII ACHIA II - - - RESPONDENT

ACHIAMAN MANTSE

EX PARTE: 1.JOSHUA NMAI ADDO - - - APPLICANTS

2. EMMANUEL KWATEI QUARTEY-PAPAFIO

RULING

AKAMBA JSC:-

Joshua Nii Nmai Addo and Emmanuel Kwatei Quartey-Papafio the joint Applicants (hereinafter simply referred to as Applicants) are head and representative respectively of the Nii Kwatei Quarty-Papafio family.

The Applicants had on 18th December 2008 issued a writ in the High Court, Accra, against one Kwasi Owusu and the Nii Achia family in suit No. AL 44/2009 claiming a piece of land situated at Achiaman, near Amasaman in the Greater Accra Region of Ghana. Judgment was entered by the court presided over by Justice S.K Asiedu, on 5th September 2012 in favour of the Applicants herein.

The Applicants subsequently filed entry of judgment and same was served on the losing party i.e. the Defendants/Judgment Debtors.

The Defendants/Judgment Debtors filed an appeal on 2nd October 2012 against the decision. This was followed by an application for stay of execution pending the hearing of the appeal. The trial court on 29th October 2012 refused to grant the stay hence the application was repeated before the Court of Appeal which also refused same on 21st May 2013.

The Respondent in this application is Nii Achia II, Achiaman Mantse. Following the dismissal of the application for stay of execution, the respondent filed an interlocutory appeal to this Court on 5th June 2013 against the Court of Appeal's refusal to grant the stay.

In this application, the Applicants contend that the Respondent herein, Nii Achia II, Achiaman Mantse committed contempt of this honourable court before which they have an interlocutory appeal pending. The circumstances of their contention are well deposed in paragraphs 9 to 22; and 28 to 35 of the affidavit in support of the motion dated 22/8/14. In summary, the Applicants recap an earlier application for contempt brought before the High Court arising out of the Respondent's disobedience of the trial court's orders and also disrespect of the Court of Appeal before which latter court an appeal and an application for stay of execution filed by his family were pending.

The High Court declined to grant the contempt prayed for. The Respondent, who refused to learn a lesson from the failed application for contempt continued with

his utter disregard, scorn and contempt for the authority of the courts by continuing to enter, encroach upon, devastate and alter the face of the Applicants land, subject of dispute.

The Applicants further alleged that following the failure of the earlier contempt application based upon respondent's denials and in order to verify or ascertain the true identities of the encroachers to the land, some members of Applicants family were dispatched to the land on 28 January 2014. They were also mandated to stop any encroachers from further destruction of the land, compel them to remove any footings, foundations and structures being constructed.

On their return journey home from the site they were accosted by (8) eight or more weapon wielding macho men who, they believe were sent by the respondent. The men literally dragged them to the Respondent's palace where they were subjected to beatings with weapons such axes, on the Respondent. They suffered various injuries and lost various items including monies, phones, a camera, wrist watches and land documents. The Respondent thereafter sent for the Police from Amasaman and handed the applicant's family members over to them alleging that they had destroyed the properties of his grantees on the land, which land the Applicants had been given judgment.

The Respondent for his part, in a sixteen (16) paragraph affidavit denied all the allegations of disrespect for the orders of the court given per the judgment of the trial court (See paragraph 3 of affidavit of 30/9/14)

The Respondent filed a search report, exhibit JA 9A which confirms that Form 6 (under rule 14 (1) of CI 16) has been served on the Defendant/Appellant, the Applicant herein. By this state of affairs, this court is seized with jurisdiction to deal with the present application notwithstanding the 1981 Practice directive par. 6 that where a cause of matter could be determined by a superior court other than the Supreme Court, the jurisdiction of the lower court should first be invoked (See Edusei vs Attorney General (1996-97) SCGLR 1).

The instant application seeks an order of this court to commit the respondent for contempt of court. Without doubt, a contempt application is a quasi-criminal relief. Section 13 (1) of NRCD provides that: "13 (1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt."

The bone of contention in this application is whether or not the Respondent carried out or caused to be carried out the act alleged by the Applicant in defiance of the orders of the court.

Black's Law Dictionary 8th Edition defines contempt as "conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment." The Oxford Advanced Learner's Dictionary of Current English By A.S. Hornby (7th Edition) defines contempt of court as "the crime of refusing to obey an order made by a court; not showing respect for a court or judge."

The judgment of trial court per Asiedu J of 5th September 2012 which has triggered the present application states as follows:

"I will therefore make an order in favour of the plaintiffs to recover possession of the portion of its land trespassed upon by the 1st defendant herein. Consequently, the court will grant an order of perpetual injunction restraining the Defendants, their grantees, licensees, workmen, servants, successors in title and privies whatsoever from entering, remaining on or in any way encumbering the land or any part thereof or undertaking any construction or other work thereon inconsistent with the absolute ownership, possession and or enjoyment of the Plaintiffs…"

The burden is on the Applicants to establish or prove the allegations raised against the Respondents beyond reasonable doubt. In the present application, all the depositions of fact made by the Applicant were denied by the respondents. This therefore enjoins the applicants to lead further evidence or point to other evidence already deposed to that point to a conclusion in their favour beyond a reasonable doubt. The Respondent's counsel submitted that the Applicant's family members were on their way home when they were attacked by a group of people. The Police moved in to arrest the persons who were alleged to have gone on the land for investigations. They were not attacked on the land. In view of these obvious conflicting narrations can it be said that the Applicants have proved beyond reasonable doubt that the Respondent has committed the offence for which this application has been brought? The Applicants have the burden to prove that acts alleged against them were committed by the Respondent in breach of the orders of the trial court and also that he willfully disobeyed the

order. What report was made to the Police to trigger their investigation into this matter? Certainly the applicants could have led evidence that could resolve this uncertainty about the scene of occurrence of the events, such as providing extracts from the Police diary of action. The Applicants merely filed exhibits JA8A to 8H which are Police Medical Forms which establish that the persons named therein suffered various physical injuries. Those exhibits do not prove the venue or where the incidents occurred. It is unfortunate that one error was not enough to have put the Applicants on their guard as to the high demands in terms of proof of this quasi criminal relief and for which reason they have to suffer a second lapse. I can only come to the conclusion that the Applicant did not meet the evidential burden on them. The motion fails and is dismissed.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

NANA OFFEI DJAN ESQ. FOR THE APPLICANTS.

BABA AVIO ESQ. FOR THE RESPONDENT.