IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA

CORAM: **AKUFFO (MS.), JSC (PRESIDING)**
ADINYIRA (MRS), JSC
YEBOAH, JSC
GBADEGBE, JSC
A. BAMFO (MRS.), JSC

CIVIL APPEAL
NO: J4/3/2011
27TH JULY,2011

THE REPUBLIC

Vs

1. OPANIN KWAME BOAMAH } **RESPONDENTS/**
2. OBAAPANIN BAAFI WUO } **APPELLANTS/**
3. NANA OWUSU ANSAH SIKATUO } **APPELLANTS**
4. NANA AKUOKU SARPONG II

EX-PARTE : KWAKU AMPONSAH :: APPLICANT/
RESPONDENT/
RESPONDENT

J U D G M E N T

ANIN-YEBOAH JSC:

This is an appeal from the judgment of the Court of Appeal that confirmed the previous decision of the High Court, Kumasi in a contempt application. For the sake of convenience, in this judgment, we refer to the applicant in the trial High Court as the respondent and the respondents in the trial court as the appellants. The circumstances in which the contempt application was taken out by the respondent in the High Court are these. Following the death of Nana Kwaku Affum, the Akwamuhene of Agogo Traditional Area, the stool became vacant and therefore it became necessary for the kingmakers to find a successor. In his capacity as the head of family, the respondent herein nominated one Nana Adu Asabre whiles the second appellant nominated the first appellant herein.

At a meeting held subsequently to elect the successor to the stool from the two nominees, the kingmakers agreed to determine their choice by the casting of votes. Out of the sixteen votes cast, the majority opted for Nana Adu Asabre, the nominee of the respondent while the other contestant, the first appellant herein had five votes. The victorious party thereafter performed the requisite customary rites by providing two bottles of schnapps and five hundred cedis, which was shared among the elders with the first and second appellants herein, however, refusing to accept their share. It appears that from this moment, the Asakyiri royal family was not at peace as subsequent events would attest to. In order to bring the family together, the respondent as head asked the queen mother of Asakyiri family of Adansi Akrokeri to intervene in the matter but she referred the matter to the chief of Morso, the third appellant herein.

Instead of resolving the impasse, the third appellant asked the queen mother to nominate one of the two contesting parties to occupy the stool. This she did by nominating the first appellant. Naturally, the other side felt aggrieved and resorted to legal action by taking out an action before the Judicial Committee of the Agogo Traditional Council claiming reliefs that were in their nature causes or matters affecting chieftaincy including a declaration that Nana Adu Asabre has been lawfully nominated and elected for enstoolment as the occupant of the Akwamu Stool of Agogo traditional Area and a declaration that the subsequent nomination and election of the first respondent herein (third defendant in the chieftaincy case) for enstoolment is void and of no legal effect. The petitioners also claimed the ancillary relief of perpetual injunction restraining the defendants their agents, servants and or privies from holding the first respondent out as the Akwamuhene elect of Agogo.

Whiles the said petition was pending before the Judicial Committee and before its determination, the first respondent herein who is the third defendant in the said case was enstooled as Akwamuhene of the Agogo Traditional Area. The respondent feeling overreached by his adversaries so to say, commenced contempt proceedings against the appellants herein for conspiring, colluding and collaborating to have the first appellant enstooled in the midst of tight security which enabled the swearing in to be done before the Agogohene who was cited as the fourth respondent.

The contempt proceedings were heard before the High Court, Kumasi and on 23 February, 2005, the learned trial judge convicted the appellants herein and sentenced them variously after acquitting and discharging the fourth respondent to the application. Having felt

dissatisfied with the conviction and sentences imposed on them, the appellants lodged an appeal to the Court of Appeal which after hearing the parties dismissed the appeals and affirmed the decision of the trial High Court in the matter. The appellants are before this court on a second appeal inviting us to set aside their convictions and the sentences founded thereon. Before the appeal could be heard by us, however, the second appellant embarked upon a journey to join her ancestors and as such is no longer a party before us in these proceedings.

This appeal has been argued on several grounds, perhaps the most arguable of the grounds was the first which was expressed as follows:

> **"The learned judges failed to consider that the respondent had not established a case of contempt against the appellants."**

In support of the said ground, learned counsel for the appellants urged on us that the contempt proceedings being quasi-criminal in nature, the standard of proof required to secure a conviction is that of proof beyond reasonable doubt and that on the affidavit evidence that was placed before the learned trial judge of the High Court, the evidence in its totality was insufficient to satisfy the burden of proof in such cases as provided for in sections 11(3) and 13(2) of the Evidence Act, NRCD 323 of 1975. Several cases were cited to support this contention among which are the following:

(1) HEATONS TRANSPORT (ST HELENS) LTD v TRANSPORT AND GENERAL WORKERS UNION [1972] 2 All ER 1214 CA

(2) REPUBLIC v NUMAPAH, PRESIDENT NATIONAL HOUSE OF CHIEFS 7 ORS; EX PARTE AMEYAW II (NO 2) [1998-99] SCGLR 639.

We would like to say at once that the basic principle that is discernible from a collection of cases regarding the standard of proof in contempt matters is settled and free from conflict of opinion and make reference to the pronouncement of Acquah JSC (as he then was) in the NUMAPAH case (supra) wherein he said at page 665 as follows:

> "**Now, since contempt is quasi-criminal and the punishment for it may take various forms, including a fine or imprisonment, the standard of proof required is that of proof beyond reasonable doubt**."

In making that speech, Acquah JSC echoed the opinion that is generally accepted as correct in such matters regarding the standard of proof. In the case of RE BRAMBLEVALE LTD [1969] 3 All ER 1062 at 1063, Denning L J said as follows:

> **"A contempt of court is an offence of a criminal character. To use the time honoured phrase, it must be proved beyond reasonable doubt. It must be satisfactorily proved. It is not proved by showing, that when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scales against him. But there must be some other evidence."**

On the evidence contained in the rival depositions there were two equally possible situations, either the respondents had wrongfully done that which was urged against them or they had not done so. The court must be satisfied beyond all reasonable doubt that they had done so based solely on the affidavit evidence. There is no room for conjecture and evidence was required to be placed before the court to enable it

comes to a decision on the matter. By evidence, we mean proof beyond the affidavits .We add that it was not enough for the purposes of the application with which we are concerned in this application to have left the serious depositions of fact at large as it was not possible to say which of the two versions of the matter was correct. In the absence of further evidence, the learned trial judge fell into error when he purported for no reason whatsoever that appears from the record to accept the case of the applicant as it did not satisfy the evidential burden of proof beyond reasonable doubt. In the face of the denial by the respondents to the contempt application, the applicant ought to have called further evidence in the matter or by seeking leave to have the deponent cross-examined on his deposition, which in such cases has the effect of evidence-in-chief and not having done so then the court was faced with an assertion and a denial that by the operation of the rules placed the burden of dislodging the effect of the denial on the applicant in order to sustain his application for contempt.

His failure so to do signaled the failure of his application as the respondents were entitled in the circumstances to have the benefit of the doubt. See - (1) IN RE ARYEEETEY (DECD); ARYEETEY v OKWABY [1987-88] 2 GLR 44; (2) THE REPUBLIC v BEKOE; EX PARTE ADJEI [1982-83] GLR 91.

We think that the learned justices of the Court of Appeal did not advert their minds to this aspect of the case and that their failure ought to be righted by us by allowing the appeal herein on this ground alone which we consider sufficient for the purpose of our determination in the proceedings herein .The result is that the convictions and sentences imposed on the appellants by the trial High Court are hereby set aside.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS.)
JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS.)
JUSTICE OF THE SUPREME COURT

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

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

COUNSEL;

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KENNETH AGYEMANG-ATTAFUAH, WITH HIM MARTIN KPEBU FOR THE APPLICANT/ RESPONDENT/ RESPONDENT.