IN THE SUPERIOR COURT OF JUDICATURE,HIGH COURT OF JUSTICE SITTING AT SUNYANI ON FRIDAY, THE 24TH DAY OF MAY, 2019 BEFORE HIS LORDSHIP PATRICK BAAYEH J.

SUIT NO. C10/127/2017

THE REPUBLIC

VRS.

1. YAW TAWIA ASARE
2. KWAME BAAH
3. YEBOAH AFARI
4. NANA YAA ANSUAA
5. PHILIP ASUOKO
6. JOSEPH KORANTENG
7. DORA AMA TAMEA
8. STEPHEN YAW BARIMAH
9. HENRY YAW AFFUL
10. J.K.TAKYI
11. KAASEMAN RURAL BANK
12. APRAKU TANNO
13. NANA GYABAA ABABIO
14. KENNEDY KYEREMEH

- RESPONDENTS

EX PARTE: NANA AMOA ATURU NKONKONKYIA II - APPLICANT

MOTION FOR CONTEMPT OF COURT

RULING

The applicant is the Paramount Chief of Japekrom and occupant of the Mpuasu-Japekrom Paramount stool and brings the instant motion "praying for an order of this court committing the respondents to prison custody for contempt of Supreme Court and the Court of Appeal arising out of the Respondent's willful disregard for, intentional violation and deliberate disobedience of the order contained in the judgment of the court of Appeal dated 27th July, 2012 and which said judgment and orders therein contained was affirmed by the Supreme Court in its judgment dated 19th November 2015, that the

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Drobo Stool and all its subjects now in possession of any portion of the Mpuasu-Japekrom stool land seek grant of their respective lands within the Mpuasu-Japekrom Traditonal Area in their possession from the co-defendant stool (Akpplicant herein).

In his supporting affidavit the applicant deposed that as the occupant of the Mpuasu-Japakrom Paramount Stool, he institute this contempt proceedings in his capacity as the occupant of the stool and on behalf of the Mpuasu-Jamekrom Stool. That the applicant stool has vast lands. He described the land in issue as "all that piece of land at Gyaman including the township of Japekrom, New Drobo and Kwasi Bourkrom, sharing boundaries with Berekum Stool lands in the south at Nkwaduasuam, Dormaa Stool lands in the south-west, Awasu-Dwenem stool lands in the North-East; Awasu-Dwenem Stool lands in the East; Kwatwoma stool lands in the North at Adamasu and the Republic of Cote D'Ivoire in the North West".

It is the case of the applicant that the ownership of these lands became the subject matter of litigation at the High Court, sunyani in Suit NO. LS28/96 and which has been finally determined by the Court of Appeal in a judgment dated 27th July, 2012 and affirmed by the Supreme Court on 19th December 2015 between the applicant for and on behalf of the Mpuasu-Japekrom stool and the Drobo stool represented by Nana Bosea Gyinantwi IV (1st respondent herein) in Civil appeal NO. J4/49/2015.

Applicant attached copies of the judgments of the High Court, Court of Appeal and the Supreme Court as Exhibit HC, CA and SC respectively.

That the Court of Appeal in its judgment of 27th July, 2012 made the following order;

"That the Drobo stool and all its subjects now in possession of any portion of the Mpuasu-Jalpekrom stool land seek grant of their respective land within the Mpuasu-Japekrom Traditional Area in their possession from the co-defendant stool" (applicant herein). That this order was affirmed by the Supreme Court in its judgment dated 19th November, 2015.

Applicant says the 1st respondent has appropriated a large chunk of land near Japekrom and has built his palace and also reserved a large undeveloped portion for

himself as his durbar grounds. He has also appropriated part of Drobo secondary school land for himself and built his private residence thereon. He has also carved out a number of building plots to each of the 2nd to the 17th respondents who have all built their private residences on the said plots all of which are at Drobo and within the bounds of the land adjudged in applicant's favor.

Applicant proceeded to list the plot numbers allocated to the other respondents by the 1st respondent.

It is the case of the applicant that the 14th respondent (now 12th respondent (Apraku Tano) allocated a building plot to himself without obtaining any grant from any authority whatsoever. That the area is unapproved and so there is no layout covering the area, hence his plot is undocumented and unnumbered. That the 14th respondent (12th respondent presently) commenced his building after the Supreme Court judgment. Though he has been informed of the judgment he has failed to attorn tenant to the applicant, and has even on several occasions threatened applicant's messengers with harm or death.

Applicant exhibited the site plans of the respondent plot except 14th and 15th respondents (now12th and 13th respondents respectively) Nana Gyabaa Abadio II, the chief of Baanfo) whose land is a whole township and its surrounding undeveloped lands as Exhibit SP. Series.

Plaintiff avers that the 15th respondent (now 13th respondent) is the chief of Baanafo which said town lies within the boundaries described in his endorsement in his writ of summons in the original suit over which judgment was delivered in his favour. It is the case of the applicant that the predecessor of the 15th (13th) respondent who was known as Nana Amponsah was one of his witnesses who testified in his favour at the High Court; Sunyani. That after the Supreme Court judgment, applicant caused a letter to be written to the 15th (13th) respondent with copies of the judgment and invited him to attorn tenant to the applicant but he responded that Baanafo Township is not on Japekrom stool land but rather on Dwenem stool land and urged applicant to redirect all his concerns to the Dwenem stool. This the applicant views as a deliberate and willful violation of the order of the Court of Appeal as affirmed by the Supreme Court. (See Exhibit LIBC and RBC).

Applicant says in addition to his refusal to attorn tenant to him, the 17th respondent (now 14th respondent) Kennedy Kyeremeh, who was recently sworn in as youth chief of Drobo has been inciting Drobo subject and all grantees of his stool land by the Drobo stool never to heed to his invitation to them to proceed to attorn tenant to him (applicant) in accordance with the dictates of the judgment referred to above.

Applicant avers that after the judgment of the Supreme Court, his counsel filed entry of judgment which was served on all the respondents in addition to copies of the judgments of the Court of Appeal and Supreme Court for their information and compliance under a covering letter inviting them to attorn tenant to applicant's stool and seek grants of the lands they occupy (Exhibit C.L. series, EJ and CPD).

In addition public announcements were made on two FM stations namely KISS FM and ANIDASO FAM, all Twi broadcasting stations at Drobo and Japekrom respectively informing all grantees of 1st respondent to proceed and attorn tenant to his (applicant's) stool (Exhibit PAFM) but all the respondents refused to appear before the applicant to attorn tenant to him and seek grants of their lands. This the applicant considers to be a willful disregard of the orders of the Court of Appeal and the Supreme Court.

Applicant says while preparing to levy execution of the judgment, the Brong Ahafo Regional Security Council invited applicant and the original 1st respondent and tasked the Brong Ahafo regional House of Chiefs to ensure a smooth implementation of the judgment and orders of the Supreme Court. In furtherance of this, the Brong Ahafo Regional House of Chiefs set up a special Ad hoc Committee to resolve the matter. At the committee, applicant was asked to put all his demands on paper which he did (Exhibit WDJPK) but when a copy was served on 1st respondent for his comments, the comments of the 1st respondent as exhibited in (Exhibit WRDS) shows clearly that he was not ready to obey the orders of the Supreme Court. Indeed 1st respondent actually stated that he would not obey the order of the Supreme Court ordering him to attorn tenant to applicant and even added that he would continue to allocate and sell lands to prospective developers.

It is the case of the applicant that all the respondents have willfully disobeyed the orders of the Court of Appeal and the Supreme Court and ought to be held liable for contempt of court and punished accordingly.

I must put on record that the present proceedings began with 17 respondents but during the pendency of the matter, counsel withdrew against 3 of the respondents. These are the original 1st respondent, (Nana Bosea Gyinantwi IV @ Major Asiedu Tieku (RTD) who is deceased. Counsel also withdrew against the 16th respondent (Joseph Kwasi Crenstil) and the 4th respondent (Kwame Dapaa). Consequently there was a rearrangement of the position of the respondents with the original 2nd respondent now appearing as 1st respondent and Kennedy Kyeremeh who originally was the 17th respondent now appearing as the 14th respondent. Accordingly any reference to any of the respondents henceforth will be according to the new order in which they appear.

The respondents have all fitted their defences by way of affidavits in opposition. A careful reading of the affidavits in opposition of the respondent with the exception of 11th respondent (Kaaseman Rural Bank) which did not file any defence and the 13th respondent (Nana Gyabaa Ababio II) show that they filed virtually the same defences with the exception of their names and some minute details like their residential addresses.

In their affidavits in opposition, the defendants (except 13th defendant) deposed that neither the Drobo stool nor any of the respondents were parties in the case which ended at the Supreme Court in favor of the applicant except the original 1st respondent who represented the Drobo Traditional Council and for that matter it was wrong for applicant to serve the respondents with the entry of judgment. The respondents therefore believe that this application has been brought in bad faith.

Respondents have also complained that the decision reached between the parties when they appeared before the Brong Ahafo regional House of Chiefs at the instance of the Regional security Council has not been conveyed to the Regional Security Council because of the change of Administration. That the New administration is yet to be briefed of the outcome by the Regional House of Chiefs. That the letter written by respondents (Exhibit WRDS) in response to the applicant's specific demands

to the Brong Ahafo Regional House of Chiefs was without prejudice. That after the Supreme Court judgment, applicant has issued a fresh writ of summons and statement of claim against the respondents claiming recovery of possession of all the lands occupied by the respondents and their structures on Japekrom stool lands adjudged by the Supreme Court to belong to the applicant. Applicant is also seeking an order to pull down and demolish the respondents' structures and injunction to restrain the respondents from entering the land. That the instant application is brought in bad faith due to the pendency of the suit referred to above.

It is the case of the respondents that the applicant has failed to establish that the respondents are agents, privies or assigns of the defendant in the suit. That in the Court Appeal judgment as affirmed by the Supreme Court, the Supreme Court refused to grant the applicant recovery of possession to the parcel of land described therein. It is the believe of the respondent that the applicant is seeking to compel the court to allow him to forcibly recover possession using fear and intimidation against the respondents which is what the Court of Appeal judgment as affirmed by the Supreme Court refused to do by not granting the relief of recovery of possession.

That applicant is estopped from using this approach as same was denied by the Court of appeal and the Supreme Court.

Respondents say that the instant proceedings initiated by the applicant is mischievous due to the pendency of the writ of summons instituted by the applicant for recovery of possession.

In the case of the 13th respondent (Nana Gyabaa Ababio II) Chief of Baanafo his defence is that the land claimed by the applicant and for which he got judgment is not the land or part of the land he is occupying. That his stool land forms part of the Dwenem stool land and that Baanafo forms part of Dwenem stool land and for that matter, he could not attorn tenant to the applicant especially as the occupant of Dwenem stool was not part or privy to the suit to be bound by the judgment therein.

It is the case of the 13th respondent that his response to the applicant's demand to attorn tenant to him that the demand be directed to Dwenem Paramount Stool could

not be said to be contemptuous because he is not occupying Japekrom stool land neither was he nor the Dwenem Paramount stool a party to the judgment of the Court of Appeal as affirmed by the Supreme Court.

It is common knowledge that contempt of court is a quasi criminal action in that it is a civil wrong with criminal consequences because the punishment may include a fine or imprisonment. The purpose of contempt proceedings is to protect the dignity of the court and the integrity of the administration of justice and is constituted by any act, conduct or omission that tend to undermine the authority of the court.

See REPUBLIC VRS. OSEI BONSU II MAMPONGHENE & ORS; EX PARTE AMADIE & BUOR (2007-2008) SCGLR 566.

Usually the impugned conduct is in disregard of the judgment or orders of the court. Contempt of court may also be constituted when during the pendency of a matter before the court, a party or privy of the parties scorns the orders of the court or disregards such pendency. Here the offence is against the court itself for it brings the authority and administration of justice into disrespect or disrepute.

See IN RE EFFIDUASE STOOL AFAIRS NO. 2, REPUBLIC VRS. NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS & ORS, EX PARTE AMEYAW (1998-99) SCGLR 630.

Even where there is no order of the court to be obeyed, contempt of court may be constituted simply by conduct which interferes with pending litigation as was held in the case of THE REPUBLIC VS. MOFFATT & ORS; EX PARTE ALLOTEY (1971) 2 GLR 391. This is where a party or privy does an act that prejudices the res litiga.

In the case of THE REPUBLIC VS. SITO; EX PARTE FORDJOUR (2001-2001) SCGLR 322, the Supreme Court summed up the ingredients of contempt that for a party to be guilty of contempt of court, there must be conduct action or omission on his part which tends to undermine the authority and dignity of the court by interfering with the process pending in court or disregard of a court's order. In this regard there must be an order requiring the contemnor to do or abstain from doing a particular act. It must be proved that the contemnor knows exactly what he is expected to do

or abstain from doing and that he failed to comply with the exact terms of the order or judgment and that his failure or disobedience was willful and not just accidental.

In the present case the respondents have been accused of willfully violating the court of Appeal's order as confirmed by the Supreme Court that;

> "The Drobo stool and all its subjects now in possession of any portion of Mpuasu-Japekrom stool land seek grants of their respective lands within the Mpuasu-Japekrom Traditional Area in their possession from the Co-defendant stool" .

The applicant herein is the paramount chief of Mpuasu-Japekrom stool (the co-defendant stool) referred to in the Court of Appeal's judgment and affirmed by the Supreme Court. The court of Appeal judgment is dated 27/07/2012 and the Supreme Court's judgment is dated 19th November 2015 (Exhibit CA and SC respectively.

The applicant has exhibited documents showing that these judgments were served on all the respondents and requested them to attorn tenant to the applicant by serving them with individual letters. This was followed by radio announcements.

The respondents do not deny that the applicant got the judgment from High Court, Court of Appeal and the Supreme Court. They also do not deny that the Court of Appeal made the order stated above and that this was affirmed by the Supreme Court.

The main defence of the respondent is that the applicant instituted a fresh action at the High Court for recovery of possession, a claim which was denied by the Court of Appeal and the Supreme Court and for that matter the applicant is not entitled to bring the instant application until the determination of that suit.

Secondly that the respondents were not parties to the suit and for that matter it was wrong for the applicant to serve them with the entry of judgment.

Indeed the opening paragraph of the Supreme Court judgment (Exhibit SCJ) states that;

> "The central issue in this appeal is whether it is the Drobohene or Japekromhene who has allodial title to the land in dispute....." Besides the order of the Court

of Appeal as affirmed by the Supreme Court is clear that "we further order that the Drobo Stool and all its subjects now in possession of any portion of the Mpuasu-Japekrom stool land seek grants of their respective lands within the Mpuasu-Japekrom Traditonal Area in their possession from the Co-defendant stool"

In my view for as long as the respondents are not denying that they occupy portions of the Mpuasu-Japekkrom stool lands, and they are also not denying that they are subjects of Drobo stool, it does not lie in their mouths to argue that they were not parties to the suit or that they were not privies to the parties. Drobohene who represented the Drobo Traditional Council was a party and as the Supreme Court stated the dispute was in fact between Drobohene and Japekromhene.

What is more the respondents admit that they were all served with the judgments of the Court of Appeal and the Supreme Court. They were also individually written to inviting them to attorn tenant to the applicant.

Even as non parties the order of the Court of Appeal and Supreme Court was that as grantees of the Drobo Traditonal Council or the Drobo stool, they should attorn tenant to the applicant was binding on them in the same way that it binds the actual parties and their refusal to seek grant from the applicant or Mpuasu-Japekrom Traditional council is a clear violation of the order of the Court of Alppeal as affirmed by the Supreme Court.

It is a fact that stools have litigated either by the name of the stool itself as a corporation sole or by the name of the occupant for and on behalf of the stool or by the name of the traditional council which is a creative of statute. In the instant case Drobo Traditional council joind the original suit as Co-plaintiff (represented by the then Drobo Paramount chief).

If a person who is not a party to a case disobeys, or flout the court's order or encourages others to do same he may be proceeded against for criminal contempt. This was part of the decision of the court of Appeal in the case of in INTERIM EXECUTIVE COMMITTEE OF THE APOSTOLLIC DIVINE CHURCH OF GHANA VS.

INTERIM EXECUTIVE COUNCIL (NO.2) (1984-86) GLR 181. In that case two members of the church who were not parties to the suit were convicted for contempt of court.

Counsel for the respondent's argument that applicant has failed to proof that respondent were parties or privies to the parties does not therefore hold water.

Counsel for the respondent also argued that the respondents cannot be held liable in contempt for declaratory reliefs and for that matter seeking grants cannot include existing people occupying the land but applicable to future grants. I must say that I find it difficult to understand this line of argument because the order of the court of Appeal as affirmed by the Supreme court is clear and unambiguous "the Drobo stool and all its subjects now in possession of any portion of the Mpuasu-Japekrom stool lands seek grants of their respective lands……"

This order cannot be said to be declaratory order or applicable to only future grants. The order was specific on existing subject of the Drobo stool who are in possession of Mpuasu-Japekrom stool lands.

The High Court's judgment is dated 17th June 2009. The Court of Appeal's judgment is also 27th July 2012 and this was affirmed by the Supreme court in its judgment date 19th November 2015. Thus the Supreme Court judgment is three and half years old. If the respondents were mindful of obeying the orders of the courts, they should have taken steps to do so. On the contrary they have exhibited a rather contemptuous posture especially looking at Exhibit WRDS which was a response to the applicant's demands presented to the Ad hoc Committee of the Brong Ahafo Regional House of Chiefs.

From the totality of evidence on record, I hold that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th, and 14th respondents are liable in contempt of the orders of the Court of Appeal as confirmed by the Supreme Court.

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In response to the demand of the applicant that "the Drobo stool and all its subject now in possession of any portion of the Mpuasu-Japekrom stool lands should seek grants of their respective lands within Mpuasu-Japekrom Traditional Area in their possession from Japekrom stool", the respondents per the Drobo stool stated that;

"This demand is unrealistic and impractical. Its acceptance and implementation will threaten havoc of gargantuan proportions. How do you expect people who have settle on land at least from 1896 to now apply for grants of the lands they have occupied for more then a century. . In any event what has happened to the rules relating to limitations and acquiescence in land matters? Did the Court of Appeal give any decision or orders about the status of palaces in the case?"

I admit that some of the demands presented to the Ad hoc Committee of the Brong Ahafo Regional House of Chiefs are overly beyond the judgment of the Court of Appeal as affirmed by the Supreme court, but the respondent could have put their case across politely without appearing to be questioning the decision of the court and in so doing creating the impression that there is no way they would accept or obey the decision of the courts.

The legal position is that where there was difficulty in complying with a court order, the proper course of action is to apply to the court for suspension of the oder but not to completely disregard it.

From the totality of the evidence on record, I hold that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 12th and 14th respondent are liable in contempt of the orders of the Court of Appeal as confirmed by the Supreme Court.

I now come to the 11th respondent (Kaaseman Rural Bank). It is noted that the bank failed to file any defence or affidavit in opposition. However this being a quasi criminal process the applicant is still required to proof its case against the Bank beyond reasonable doubt. Indeed a respondent in a contempt process just as in any criminal trial is not bound to offer a defence.

In the instant case Kaaseman Rural Bank is a registered company and to cite a company for contempt, its officers ought to be named as contemnors eg. the Directors or even Managers (officers).

In the case of DEEPSEA DIVISION OF NATIONAL UNION OF. SEAMEN VS. TUC OF GHANA (1982-83)GLR 941, the court held (holding 1) "Any order against a corporation which has willfully disobeyed a court order might be enforced by attachment against the directors or officers of the corporation. The applicant ought to have cited the directors or officers of Kaaseman Rural Bank but not just the Bank as was done in this case. Consequently I am unable to hold Kaaseman Rural Bank liable for contempt. I now come to the 13th respondent (Nana Gyabaa Ababio II), the chief of Baanafo. His defence as can be discerned from his affidavit in opposition is that he is not occupying the applicant's stool land. He says he is rather occupying Dwenem stool land and for that matter any reference to the judgment ought to be referred to the Paramount Chief of Dwenem.

The applicant has deposed that the predecessor of the 13th respondent gave evidence in support of his case at the High Court. What the applicant failed to tell the court is the substance of the evidence he gave to the court. Applicant did not also exhibit the proceedings from the High Court to show the court what the 13th respondent's predecessor told the court. Did he admit before the court that his land forms part of Mpuasu-Japekrom stool land? Did he say his land shares a common boundary with Mpuasu-Japekrom stool land?. As it is, we cannot conjecture what the witness told the court. The fact that the predecessor of the 13th respondent gave evidence for the applicant is not enough without the substance of what he said.

In my view it is not enough to just describe boundaries of land verbally and conclude that the 13th respondent is occupying Japekrom stool land. The identity of the land occupied by the 13th respondent must be clearly proved.

This being a quasi criminal process the applicant is to proof the liability of each and every respondent beyond reasonable doubt and for as long as the 13th respondent has flatly denied that he is occupying Mpuasu-Japekrom stool land, it is for the applicant to lead cogent and credible evidence to rebut the denial of the 13th respondent. Sadly the applicant has failed to do this. In the circumstances, I hold that the applicant has failed to prove the liability of the 13th respondent beyond reasonable doubt. I therefore do not find Nana Gyaabaa Ababio II liable for contempt of the orders of the Court of Appeal as confirmed by the Supreme Court.

I now come to the punishment of the respondents I have found liable for contempt. It is a fact that the original 1st respondent, Nana Bosea Gyinantwi IV was the main actor in the case. He joined the original case as co-plaintiff for and on behalf of Drobo Traditional council or Drobo paramount stool. It is therefore understandable that the present respondents will follow his foot steps in disobeying the orders of the court. Sadly he is no more leaving his subjects who are respondents in this case without a head or leader. In deciding the punishment to give to the respondent I have taken this aspect of the matter into account. Besides this is a matter that affect a whole Traditional Area comprising of over 40 towns and villages. It would therefore be very difficult for any of the subjects affected to single handedly go to the applicant to seek grant of the land he/she is occupying without a clear directive from the Head. In the circumstances, I am unable to commit the respondents to prison. I therefore sentence each of the respondents, being (1) Yaw Tawia Asare (2) Kwame Baah (3) Yeboah Afari (4) Nana Yaa Ansuaa (5) Philip Asuako (6) Joseph Koranteng (7) Dora Ama Tamea (8) Stephen Yaw Berimah (9) Henry Yaw Afful (10) J.K. Takyi (11) Apraku Tanno and (12) Kennedy Kyeremeh to a fine of Gh₵3,000.00 each. However if they default in paying the fine they would each serve a prison term of 30 days.

(SGD)
PATRICK BAAYEH
(JUSTICE OF THE HIGH COURT)

COUNSEL

OBENG MANU JUNIOR FOR APPLICANT
RALPH AGYEPONG FOR RESPONDENT EXCEPT 13TH RESPONDENT
KWADWO ADU BOSOMPEM FOR 13TH RESPONDENT

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DISTRICT COURT SUNYANI
6/2/19