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LIABILITY OF LAWYERS: CONTEMPT PROCEEDINGS OVER ALLEGED ABUSE OF COURT CLAIMS

Case Title: REPUBLIC V. STEPHEN OBENG DARKO
Suit No.: SUIT NO: GJ/0373/2023
Court: HIGH COURT, GENERAL JURISDICTION “6”, ACCRA
Corom: KWEKU T. ACKAAH-BOAFO, JA
Date: 20TH MARCH 2023

A. RELEVANT FACTS IN SUPPORT OF THE APPLICATION

This contempt case arose out of the substantive case of *Afua Asantewaa v. Hansas Complex Limited & 3 Others*, Suit No: GJ/0373/2023, which is currently before the Honourable High Court. The Respondent to the contempt application is the lawyer for the Plaintiff. The case of the Applicant was that the Respondent, Mr. Stephen Obeng Darko Esq., had involved himself in conduct which was alleged to be unprofessional and deserving of imprisonment, by allegedly aiding and abetting his client to engage in what was claimed to be a pattern of impropriety, calculated to obstruct the course of justice contrary to the Legal Professions Act, 1960 (Act 32), and the Legal Profession (Professional Conduct and Etiquette Rules). The conduct complained of was that the Respondent had allegedly filed three separate suits, in respect of the same subject matter and in respect of which a judgment had allegedly been delivered against his client and that, by filing those three writs of summons, he had engaged in conduct which constituted an abuse of the lawful processes of the Honourable Court and therefore ought to be sentenced to prison for ten (10) days.

It was further contended that the alleged contumacious conduct of the Respondent had led to what was described as a “gross abuse of the judicial processes” by allegedly aiding his client to disrespect court orders and rulings, thereby making a mockery of the judicial system, and that this alleged misconduct of the Respondent was further in breach of the duty imposed on all lawyers, as officers of the Court to ensure that its orders and rulings are complied with. Finally, it was contended that the Respondent had ridiculed, undermined, and thwarted the enforcement of orders, rulings, and judgments of the Honourable Court by aiding his client to contemptuously disobey these orders, rulings, and judgments.

B. THE CASE OF THE RESPONDENT

The Respondent filed an affidavit in opposition and denied the factual basis

of the application and further contended that the application was frivolous, vexatious, prejudicial, and an abuse of the lawful processes of the Honourable Court and ought to be dismissed accordingly. The Respondent argued that he acted in his capacity as a lawyer, properly engaged by his client with firm instructions to conduct the case and that even if the Honourable Court were to take the view that the steps he took amounted to an abuse of court process, same could not be the basis for the invocation of the contempt powers of the Honourable Court as there are adequate legal remedies under the law to deal with abuse of court processes, which processes excludes contempt proceedings against the lawyer for the party. The Respondent concluded by denying that he had filed three separate suits in respect of the same subject matter and further that he had never disobeyed any order, ruling, or judgment of the Honourable Court.

C. ISSUE FOR DETERMINATION

The main issue raised for the consideration and determination of the Honourable Court was whether or not the Respondent could be convicted for contempt of court on the basis of the alleged misconduct, including the fact that he allegedly filed three separate writs of summons in respect of the same subject matter and in respect of which judgment had allegedly been delivered against his client by the High Court, differently constituted.

D. DECISION OF THE HIGH COURT

The Court held that the judgments, rulings, and orders relied upon by the Applicant to found the charge of contempt against the Respondent were all made and directed at the client, Afua Asantewaa as a party and not to the Respondent in his capacity as a lawyer. Also, the fact that the Respondent issued three different writs of summons in respect of the same subject matter, even if true, does not constitute contempt of court and so the application was without merit. **HIS LORDSHIP ACKAH-BOAFO JA** held in part that:

"...From the above definition by the Supreme Court, the closest one can come to if the instant application is to be sustained against the Respondent is "any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority" as was held in In re Effiduase Stool Affairs (No.2) SUPRA. But, then the basis for that conclusion against the Respondent would be for issuing the writ of summons as counsel and not because the Respondent has done anything to "obstruct" or "interfere" with the administration of justice or impair the Court's dignity based on the orders made in the listed cases. In my respectful opinion, all the rules of ethics relied on by Counsel, Mr. Sarblah shows that he is in the wrong forum and has directed his anger at the wrong person. The reference to Act 32 and the accompanying Legislative Instruments (LIs) point to the fact that in his view, Mr. Obeng Darko, a lawyer, has committed some misconduct and ought

to be punished for same. In my respectful opinion, even if that is the case, a complaint should be filed with the General Legal Council, which is the body mandated to regulate the professional conduct of lawyers in this country. The Court's contempt powers are not reserved for such allegations. The idea that the Respondent should be convicted for contempt and sent to prison for 10 days as prayed for by the Applicants just for issuing a writ of summons as a lawyer is unfathomable. The Applicants have not demonstrated how the issuance of the writ of summons has undermined the previous orders made except to say the Respondent is setting two courts of coordinate jurisdiction to collide and abuse the Court process...

The use of the Court's contempt powers should not be an obsession by litigants to settle personal scores. Contempt is against the Court and not the hurt or feelings of litigants. I am of the strongest view that a contempt proceeding is inappropriate and inapplicable to the situation presented in the instant case at bar. Overall, based on the law and the evidence in the instant case, I am satisfied that the instant application lacks merit and ought not to have been filed at all. Its only value is to weaponize the Contempt function against an officer of the court in the discharge of his duties. Considering the lack of merit of the application and the dangerous precedent the Applicants prayed the Court to set, I would award cost of GHS15,000.00 against the Applicants but direct that GHS10,000.00 out of the total be paid personally by learned Counsel Jonathan T. Sarblah, to the extent that I find his role to be quite concerning in bringing the application in the first place."

E. COMMENTS

1. It is important to note that the Court took the opportunity to affirm its commitment to applying the known principles of law governing contempt applications established through the case law including the oft-cited case of ***In Re Effiduase Stool Affairs, Ex Parte Ameyaw II [1998-1999] SCGLR 639***, and its line of kindred authorities which were all cited with approval by the Honourable Court. It is settled law that in order to establish a charge of contempt against a person, there must be clear and convincing evidence to support the claim which must be established by proving each of the constitutive elements of the offence.

2. It is apparent that on the facts of this case, there was no evidence to support the serious charge of willful contumacy leveled against the Respondent, and the invitation to the Honourable Court to exercise its awesome powers to imprison him for ten days for simply taking up instructions from a client to conduct a case for her was without any merit whatsoever. As noted by the Court, acceding to the Applicant's unlawful invitation would have had the undesirable consequence of weaponizing the contempt powers of the Honourable Court against an officer of the Court in the discharge of his duties and also create what his Lordship referred to as chilling effect on the kind of fearless advocacy that is at times necessary to advance a client's cause.

3. It is hoped that lawyers would be guided by this important decision and that the Honourable Court will continue to use its powers to regulate proceedings before it, especially the power to award cost, as was done in the instant case, to ensure that in all appropriate cases, lawyers and litigants do not highjack the otherwise lawful processes of the Honourable Court to intimidate their opponents by filing frivolous and clearly unmeritorious contempt cases.