IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT 11), LAW COURT COMPLEX HELD IN ACCRA ON WEDNESDAY, THE 27TH DAY OF MARCH, 2024 BEFORE HER LADYSHIP DR BRIDGET KAFUI ANTHONIO-APEDZI (MRS) J

SUIT NO. LD/0715/2020

LIFEGROUP OF COMPANIES LTD - PLAINTIFF/APPLICANT

VRS

1. **NOWAK DEVELOPMENTS LTD**
2. **LANDS COMMISSION**
3. **CAL BANK - DEFENDANTS**

IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT OF NOWAK DEVELOPMENTS LTD AND OKO NORTEI OMABOE

IN THE MATTER OF

THE REPUBLIC

VRS

1. **NOWAK DEVELOPMENTS LTD**
2. **OKO NORTEI OMABOE - RESPONDENTS**

RULING

On 12th December 2023, Life Group of Companies Ltd (Applicant), the Plaintiff in the substantive suit, filed an application of contempt, for the committal of Nowak Developments limited and Oko Nortei Omaboe, the 1st and 2nd Respondents, respectively.

Prior to that, on 7th May 2020, the Applicant issued a Writ against the 1st Respondent and Lands Commission (the 2nd Defendant in the substantive suit). This was for, *inter alia*, a declaration of title to land situate at Airport Commercial Centre, Accra, in the Greater Accra Region, (described as Plot 1A of approximate area of 0.97 of an acre). The alleged contemptuous act touched on the said Plot 1A. The reliefs sought also included an order directed at the Lands Commission to cancel and expunge from its records, all transactions related to Plot 1A, as between the Government of Ghana (GoG) and 1st Respondent, and to restore the lease; recovery of vacant possession of Plot 1A; and perpetual injunction restraining 1st Respondent and 2nd Defendant from dealing with the Plot 1A.

In addition to filing the Writ, the Plaintiff filed an application for an interlocutory injunction to restrain the 1st Defendant from going onto or dealing with Plot 1A, the "land". The Interlocutory application was served on the 1st Respondent. Incidentally, the 2nd Respondent is supposedly the sole director of the 1st Respondent-company. I shall not delve into whether or not this complies with the Company Act.

The Applicant says by a lease, dated 29th October 1981, it acquired the land from the Government of Ghana, for a term of 50 years commencing 1st day of February 1979. The Applicant says that, at all material times, it enjoyed quiet possession until it discovered the total encroachment by the 1st Defendant/Respondent, who used the land as a car park.

According to the Applicant, despite knowledge of the Writ and the pending injunction application, that on 22nd May, 2020, the 1st Defendant/Respondent-company, per the 2nd Respondent, wrote to the Lands commission (2nd Defendant). It sought consent to create a mortgage over the subject matter. The Applicant alleged that a further contemptuous act occurred when the 1st Respondent went onto the subject matter and continued to use it as a car park,

despite having been served with the court processes and the pendency of proceedings.

In an affidavit in opposition, deposed to on its behalf by the 2nd Respondent, the 1st Respondent claimed to have had a lease from the 2nd Defendant. This was said to be for a term of 50 years, from 1st June 2012 to the 31st May 2063, in respect of the subject matter. Also, the purpose of the lease was for the use of the subject matter, exclusively, for a multi-storey car park. Accordingly, on 5th February 2018 (that is, prior to the commencement of the suit), the 2nd Respondent procured a loan facility of USD 15,030,105.00 from the 3rd Defendant, a non-party to the suit then. An imposed condition of the loan was to use the car park and the land as collateral for a mortgage. The annual proceeds from the car park were to be assigned as security.

Accordingly, the Respondents submit that they have not willfully disobeyed any order of the court; they have not willfully committed any acts that bring the authority and administration of the law or the court into disrespect or disregard; and that they have not willfully committed any acts to interfere with or cause prejudice to the parties, litigants or their witnesses.

They claim that the instant application is not premised on any order of the court and that the interlocutory order granted by the court on 25th February 2023 was subsequently stayed by the same court on 5th June 2023.

The Respondents further argued that they cannot be said to have willfully disobeyed the court's order when there is no pre-existing order. They assert that the act of 1st Respondent, in requesting for the consent of the 2nd Defendant, was to formalize a mortgage transaction, the 1st Respondent entered into in 2018 and that this does not amount to willful conduct. Also that, the mere pendency of a suit and application of interlocutory injunction does not translate into an actual order.

The Respondents argue that the 1st Respondent only acted (accidentally, and innocently) in compliance with the terms and conditions of the loan facility, and upon the prompting of the 3rd Defendant/non-party. This was with the sole purpose of formalizing the said transaction. The 1st Respondent was legally obliged to do this, in compliance with and pursuant to the Loan's terms, an undertaking and the deed of mortgage. The Respondents stated that the 1st Respondent's consent request was not done willfully, for a bad purpose, with evil intent or to prejudice/interfere with the fair trial of the instant suit. Neither is it meant to bring the authority and administration of the law or disrespect the Honourable Court or to cause disrepute.

The Respondents state that given the material facts and the relevant circumstances, to hold the 1st and 2nd Respondents guilty of contempt on the grounds alleged, would equate the mere pendency of an application with an actual court order for interlocutory injunction, regardless of its merits or otherwise.

Contempt defined.

Contempt is classified into types of: civil and criminal. Civil contempt emanates from the wilful disobedience to a judgment, orders or decrees issued by a court. On the other hand, criminal contempt, relates to acts done in respect of the Court or its processes, which obstruct the administration of justice or tend to bring the administration of the court into disrepute. The object of the proceedings is punitive, through the use of the Court's coercive powers.

In RE EFFIDUASE STOOL AFFAIRS (NO.2): REPUBLIC v ODURO NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS & OTHERS: EXPARTE AMEYAW II (NO.2), (1998-1999) SCGLR 639, the Supreme Court, in defining contempt of court, differentiated the two types of contempt, as follows:

"Contempt of court was constituted by an act or conduct that tended to bring the authority and administration of the law into disrespect or disregard or to interfere with, or prejudice parties, litigants or their witnesses in respect of pending proceedings ... civil contempt are those quasi – contempt which consist in the failure to do something which the party is ordered by the court to do for the benefit or advantage of another party to the proceedings before the court, while criminal contempt are acts done in disrespect of the court or its process, or which obstruct the administration"

Therefore, the absence of a court order may constitute contempt, where a disrespectful act to the court or its process, is shown to exist. Further, notice or knowledge of the proceedings in 'court of competent jurisdiction,' or its processes or the existence of case, invite criminal contempt. This is more so if the outcome of an impugned act or omission, is likely to cause prejudice or interfere or undermine the court or its remit - this, suffices to sustain a committal for contempt. RE EFFIDUASE STOOL AFFAIRS (NO.2): REPUBLIC v ODURO NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS & OTHERS: EXPARTE AMEYAW II (NO.2), [supra]

There are two types of contempt; (a) where a party willfully disobeys an order or judgment of a court, and (b) where a party knowing that a case is sub judice, engages in an act or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an order of the court.

The above is also termed intentional contempt. See also REPUBLIC V. MOFFATT AND ORS; EX PARTE ALLOTEY [1971] 2 GLR 391. *"... Acts by a party or privy that prejudices the res litiga, are maintainable."* Also see OPOKU V LIBHERR FRANCE SAS [2012] 1 SCGLR 159, per Atuguba JSC.

Further, the Supreme Court of Ghana case of REPUBLIC V MENSA-BONSU [1995-96] 1 GLR 377 addressed the scandalising of the court and its bearing

on contempt. Their lordships considered the scope and limits of their contempt power. Bamford-Addo JSC expressed herself thus, at 471:

> *"This is the reason why the courts are given power to commit for contempt, that is to punish any acts which tend to interfere with the proper administration of justice, or which 'scandalises' the courts, by eroding public confidence in them or by weakening and impairing their authority. The power to commit summarily for contempt is indeed an effective but very powerful tool which must be wielded only in very clear cases. It must be noted however that it is not to be used from a tenderness of feeling or to vindicate any particular judge, it is used to protect the whole administration of justice and to keep the 'blaze of glory' round the courts for obvious reasons. The public must have confidence in the law and the courts, and any attempt by any one calculated to erode such confidence must be viewed very seriously and must be punished swiftly to restore the integrity of the courts which administer the law."*

Further, the ambit of the court's power to punish for contempt is contained in Article 14(1)(b) of the 1992 Constitution, in particular and parts of Article 19. The relevant part of Art. 14(1) states as follows.

> *"Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law*
>
> *b. in execution of an order of a court punishing him for contempt of court".*

Still further, Article 126(2) and (4) of the 1992 Constitution has relevant provisions regarding the contempt power of the superior courts. It provides as follows:

2. *The Superior Courts shall be superior courts of record and shall have the power to commit for contempt to themselves and all such powers as were*

vested in a court of record immediately before the coming into force of this Constitution.

3. ...
4. *In the exercise of the judicial power conferred on the Judiciary by this Constitution or any other law, the Superior Courts may, in relation to any matter within their jurisdiction, issue such orders and directions as may be necessary to ensure the enforcement of any judgment, decree or order of those courts.*

Standard of Proof

The contempt of court is quasi-criminal. For an action of contempt to be sustainable, an Applicant must prove beyond a reasonable doubt that the alleged contemnor, despite being aware of judgment or order, purposely failed to comply with the terms of that judgment or order. See REPUBLIC VRS HIGH COURT ACCRA, EX PARTE MENSAH LARYEA [1998-1999] SCGLR 360.

I hold that the above pronouncement in *ex-parte* Mensah Laryea [supra], which related to civil contempt, also applies to criminal contempt. The two proceedings are pursued where there exist a conscious disobedience or wilful blindness. Proof beyond reasonable doubt demands of the Applicant to prove that there is no other reasonable explanation that can come from the evidence presented. Something more than a probable guilt is required. 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."

The facts of this application place the matter within the ambit of criminal or intentional contempt - there was no specific order. Rather, the Respondent's had actual knowledge of the court case and the request for an interim injunction.

In THE REPUBLIC vs. BANK OF GHANA AND 5 OTHERS EX PARTE: BENJAMIN DUFFOUR (J4/34/2018) [2018] GHASC 37 (06 June 2018); the Supreme Court per Baffoe-Bonnie, JSC held that:

The judicial power of Ghana, by article 125(3) of the 1992 Constitution, has been vested in the Judiciary. This power cannot be fettered by any person, agency or organ including the President and Parliament. Any conduct that contravenes this provision is clearly unconstitutional and as such null and void. When a court is seized with jurisdiction to hear a matter, nothing should be done to usurp the judicial power that has been vested in the court by the Constitution of Ghana. In effect, the state of affairs before the court was seized with the matter must be preserved until the court delivers its judgment. This is so whether or not the court has granted an order to preserve the status quo or not. A party to the proceedings will be in contempt if he engages in an act, subsequent to the filing of the case, which will have the effect of interfering with the fair trial of the case or undermine the administration of justice. The conduct must be one which has the effect of prejudging or prejudicing the case even before a judgment is given.

Hence, contempt of court does not consist only in the disobedience of a court order but includes every conduct that tends to bring the authority and administration of the court into disrespect or disregard or to interfere with or prejudice parties, litigant, or their witnesses. Per Ampiah JSC. See also REPUBLIC V MOFFAT; EX-PARTE ALLOTTEY;

The Respondents did not deny their actions but rather proffered a litany of justifications. The argument of the 2nd Respondent that there was no express order is untenable and departs from the law of criminal contempt. From the above principles, contemptuous act is not only disobedience of an order of the court. Also, any act that renders the administration of the court redundant is fixed with contempt. An act which undermines the authority of and/or the public's confidence in the administration of justice, attracts the chagrin of the court. In essence, the Respondents may have acted brazenly, in the mistaken belief that since there was no order, their willful acts were not punishable. This is the long and short of what motivated the Respondents. I am not impressed with their attempts to skirt the edges of their willful acts.

Again, the fact that the 1st Respondent entered into the loan facility agreement 2 years and three months prior to the commencement of instant suit and the tardy request for a much-desired consent, does not help the Respondents. It rather shows the motivation for engaging in the contemptuous act. The crux of the matter is that the acts of the Respondents were presumptively contemptuous – that is the issue this court is called upon to determine.

Admittedly, the peculiarity of loan transactions demands an adherence to the specified terms and conditions and, the timelines. However, the operation of Clause 14 (Security) of the said loan facility should not be basis for an attempt to overreach the decision of the court. The loan was secured in 2018. Granted that the consent sought was in furtherance of creation and registration of the mortgage, the *Borrowers and Lenders Act 2020* (Act 1052) stipulates that security interest shall be registered within twenty-eight days after its creation. [See section 22 of Act 1052. Same provision is at Section 25 of its predecessor Act, *Borrowers and Lenders Act, 2008* (Act 773)] Accordingly, the sudden rush to have the consent to mortgage, a day after the 1st Respondent caused an appearance to be entered on its behalf, smacks of overreaching and an attempt to instil a *fait accompli*. The Respondents good faith would have been enhanced if they gave

Notice of the pending suit and the injunction application, to the attention of CAL Bank. As it turned out, the Bank was eventually joined to the suit on 13th July as 3rd Defendant, being a necessary party.

The loan facility stipulates that the business shall be conducted with regard to all applicable laws and regulations of the Republic of Ghana. The administration of justice is part of the legal regime of the country. Granted that, at the time of the injunction application, the 3rd Defendant was not a party to the suit, notice of the injunction application could have served as sufficient notice, consistent with the operation of the Default Clause (paragraph 17.0) of their own loan facility agreement.

The said Consent letter (written on the 22nd May 2020) is reproduced here for ease of reference:

> Dear Sir
>
> ***CONSENT TO MORTGAGE PROPERTY SITUATE AND BEING AT PARCEL NO 11703 BLOCK 13 SECTION 005, AIRPORT COMMERCIAL CENTRE (ALSO KNOWN AS UNNUMBERED PLOT AT ACCRA AIRPORT COMMERCIAL AREA) IN THE CITY OF ACCRA IN THE GREATER ACCRA REGION OF GHANA (FILE NO.AC 12487)***
>
> ***NOWAK DEVELOPMENT LIMITED*** *applied to this Bank for a Long-Term Loan Facility.*
>
> *To secure these facilities, we have offered our property mentioned above which is the subject matter of a Lease Agreement dated 31st July, 2015 between The President of the Republic of Ghana (acting by Nii Okaija Adamafio, Chairman of the Greater Accra Regional Lands Commission) and Nowak Development Limited (Now Land Title Certificate -GA 61675) to be used as security.*
>
> *In line with the requirements of the Head-Lease between the Government of Ghana Nowak Development Limited, we hereby request for your consent for the creation of a mortgage over the above-mentioned property in favour for the facilities granted to our Company.*

Yours faithfully

SGD

OKO OMABOE
MANAGING DIRECTOR

The Consent letter was so worded by the Respondents, despite the knowledge of the operative words of the Applicant's injunction application - it reads:

> *An order of interlocutory injunction restraining the 1st Defendant, its assigns heirs, successors or any person or persons claiming under or in trust for the 1st Defendant from* ***going onto and dealing with the parcel of land known as Plot 1A*** *measuring an approximate area of 0.97 of an acre situate at Airport Commercial Centre, Accra in the Greater Accra Region of the Republic of Ghana, pending the final determination of the instant suit.*

The Respondents, by their own showing, had acted in a way that will render an order of injunction nugatory; this had the effect of undermining the court's authority and created an unfair disadvantage to the other party. The injunction request was to restrain them from going onto the land and dealing with the land. They used self-help and determined the Applicant's request for the court - this must be deprecated, which I do. This should ordinarily attract the pain of punishment.

The reliefs sought in the substantive suit and the nature of the injunction request make the impugned acts of the Respondents reprehensible. It suggests a deliberate attempt to circumvent the authority of the court and to render the court's decision redundant. It is tantamount to trampling on the court and riding roughshod on it, in a pending matter. This is what a court must ward off.

Another fact standing in the path of the Respondents is their position that the court had stayed the execution of its own injunction order on the operation of the car. This stay seemingly emboldened them to proceed in the manner they did. The said stay had a purpose and it was not a license or permission for them to act in a vacuum. The injunction still pertained; its execution was fettered. But

the Respondents exploited the court's readiness to stay the execution of its injunction order. This was to enable the Respondents pursue an appeal of the order. But, they wilfully continued with the operation of the car park. Yet, they come to court and offer rather absurd reasoning and lame excuses. The *status quo*, as it existed at the time of the Writ and the sanctity of injunction application must be preserved. It is to ensure the sanctity of judicial administration and to proscribe the mockery of the judicial system.

The Respondents further position is that the *status quo ante*, to be maintained, must be anchored to their act of operating the car park since 2016. They argue that since this was prior to the commencement of the instant suit, it cannot be said to amount to willful conduct. Also, that, their act was without evil intent to prejudice or interfere with the fair trial or to bring the authority and administration of the law to disrepute. This argument is not only flawed but also misplaced - for instance, the relevant test does not require an evil mind.

I am keenly aware that the operation of the car park is a going concern. Yet, the Respondents adopted such a cavalier attitude such that, unless they are brought to order, the right-thinking public will shake their heads, regarding the justice that the court dispenses. Contempt of court is not solely about the preservation of the *status quo*; that element is only part of the probative analysis. Neither is it for assuaging the grievances of the litigants. The essence of the contempt proceedings is to protect the dignity of the court and to instil public confidence.

The Lands Commission, the 2nd Defendant, which was a party to the suit from its commencement, and despite knowledge of the case, rather went ahead and granted the Consent. This consent was not exhibited but all actions, contingent upon the consent, were carried out. Therefore, the court draws an inference that the consent was given. Under the circumstances, I shall not comment on the consequences that ought to have befallen the 2nd Defendant, who most likely played a pivotal role. This is especially so because the Lands Commission was also not cited for contempt.

The 2nd Respondent is liable for contempt in respect of his own act and acting on behalf of the 1st Respondent.

I sentence the Respondents jointly and severally, to a fine for GHS 50,000.0 or in default 3 weeks imprisonment. In evaluation the elements of sentencing, I have considered mitigating and aggravating factors. The fact that the Respondents operate an ongoing business is mitigating. However, their Consent dealings is aggravating; given the manner they strayed and "crossed the line" onto the turf of contempt. Accordingly, I considered whether the said consent should be said aside - it was granted during the pendency of the matter and its subsistence creates prejudice to the determination of the matter. During submissions, it turned out that the Respondents are using the said Consent, to register Notice, to the world under ACT 1052 – this is in bad faith. They benefited from the court's fairness only to turn around and undermine the court's justice. This must be halted, pending further orders of the court. Therefore, in reliance of the court's inherent jurisdiction and to do equity, I hereby set aside **any use of** the consent granted by the Lands Commission and suspend its effect, until the final determination of the matter. Otherwise, there will be no meaningful consequence for the contempt holding since I have not restrained the Respondents from using the car park, as a business.

(SGD.)

DR. BRIDGET KAFUI ANTHONIO-APEDZI (MRS)

JUSTICE OF THE HIGH COURT

COUNSEL:

1. **DR. KWEKU AINUSON FOR THE APPLICANT**
2. **GEORGE KOFI BEKAI FOR THE 1ST AND 2ND RESPONDENT**

CERTIFIED TRUE COPY

REGISTRAR
HIGH COURT, ACCRA
LAND DIVISION