Dignity and Confidence in Our Courts: The Scope of Contempt of Court as Wrought by Ghanaian Precedential Laws

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Abstract— The very foundation of any democratic society entirely rest on the ability of the law courts to administer true justice and restore peace. The continuous maintenance of the dignity of the law courts and public confidence in their ability to perform these twofold vital duties makes the progress of every nation sustainable. And it is the exercise of the courts contempt powers that safeguard these dignity and public confidence in the outflow of the everlasting streams of justice. In consequence thereof, this work coherently elucidates on the scope of the laws on contempt of court as shaped through Ghanaian case laws, and offers skepticisms with evocative solutions to help invigorate our contempt laws to drastically reduce the many outrageous contemptuous conducts that poison the streams of justice. It discusses the nature, constituents and classifications of contempt of court in Ghana. It further illuminates the delineated line between the courts contempt power and ones' exercise of freedom of speech and expression, with a suggestion that, a comprehensive legislation should be made in this regard. The paper recommends that the prerogative of mercy power exercise by the President in criminal convictions should not be extended to cover criminal contempts initiated by the Superior Courts suo motu so as to effectively preserve their independence. It finally submits that, any amendment of the laws on contempt of court must be such as will explicitly leave the court with sufficient powers to enforce its orders, to protect itself from abuse of itself or its procedure.

Index Terms— Contempt of Court, Classifications of Contempt, Administration of Justice, Dignity of the Court, Public Confidence, Freedom of Speech and Expression, Prerogative of Mercy, Contempt Proceedings, Ghanaian Case Laws.

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1 Introduction

THE courts of law incontrovertibly have from their inception not only been existed primarily for the administration of justice, sustenance of the rule of law, custodian and bastion of the liberty and dignity of the people, but most importantly as the citadel and repository of true justice. Certainly, the judiciary duly bestowed with judicial power,[1] as one of the most essential institutions in any democratic set-up 'is expected to administer impartial justice in disputes between individual citizens or institutions and disputes between citizens and the State; and provide reliefs and remedies. …to declare the rights of citizens and to provide reliefs and remedies for the protection of human rights'[2] which in effect amicably settles disputes, ends conflicts and thereby restores peace. Thus, it is of utmost importance that the sanctity and integrity of the court and its judges are preserved to enable them to perform these sacred duties peacefully, fairly, impartially and independently free from any undue interference.[3] Admittedly, the courts must not only enjoy the respect and confidence of the people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority.[4] As such, any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice becomes an offence not only against the courts but against the entire community which the courts serve;[5] and the latter are vested with the power to commit for contempt to protect the whole administration of justice and to maintain the 'blaze of glory' round the courts.[6] For the policy rationale of the law is that the courts must not be interfered with, and those who strike at it,

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[1] The Constitution 1992, Art. 125(3) vest *the judicial power of Ghana in the Judiciary, which has the sole right of exercising the final judicial power*. See: Akainyah v. The Republic [1968] GLR 330 (HC), per Azu Crabbe J.A at pp. 349-350; Judicial Service Staff Association of Ghana (JUSAG) v. Attorney-General & Ors [Writ No: J1/5/2015] dated 23/06/2016 (unreported), per Dotse JSC at pp. 25-26; SA Brobbey in his book the 'Law of Chieftaincy in Ghana' 2008, said at p. 479 that: "*Judicial power is the authority given to courts to decide any dispute referred to it by disputants*."

[2] Republic v. Mensah-Bonsu & Ors; Ex parte Attorney-General [1995-96] 1 GLR 377 (SC), per Bamford-Addo JSC at p. 471; The Constitution 1992, Art 125(1) provides that, *justice emanates from the people and shall be administered in the name of Ghana by the Judiciary*. Dr. Date-Bah JSC in his seminal book 'Reflections on the Supreme Court of Ghana', at p. 208 stated: "*Judges are anointed so to speak, by the people to do justice on their behalf*." The Holy Bible, New International Version, Zechariah 7:9 also states inter alia: "*…This is what the Lord Almighty said: 'Administer true justice…'*"

[3] Mensah-Bonsu case (n 2); In Abu Ramadan & Anor v. Electoral Commission & Anor [CM No: J8/108/2016] dated on 27/07/2016 (unreported), Sophia Akuffo JSC said at p. 5 that: "*…it is only in respect of the Judiciary that the Constitution has in plain words commanded every State authority and persons in Ghana to accord assistance in protecting its independence, dignity and effectiveness. … The Court is, therefore, deserving of the utmost respect and reverence if our democratic enterprise, as a nation, is to succeed…*"

[4] Republic v. Liberty Press Ltd & Ors [1968] GLR 123 (HC), per Akuffo-Addo C.J at p. 135; In the Mensah-Bonsu case (n 2), Bamford-Addo JSC further said: "*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…*"

[5] Liberty Press case (n 4); Republic v. High Court, Ex parte Hansen Kwadwo Koduah (Paragon Investment Ltd - Interested party) [CM No. J5/10/2015] dated 04/06/2015 (unreported), Akoto-Bamfo JSC at p. 8.

[6] Mensah-Bonsu case (n 2); Ex parte Hansen Koduah (n 5).

strike at the very foundation of our democratic society; hence the necessity for the power given to the judges to commit summarily for contempt.[7]

The power of contempt of court has its ***fons et origo*** from the received English common law, where the superior courts of record have always exercised at common law the power to commit for contempt which is said to be inherent in their constitution and coeval with their institution.[8] Thus the English judges have the inherent power to exercise authority and control over judicial proceedings and punish conduct which brings the judicial process into disrepute.[9] Under Ghanaian law, this critical power of the courts to commit for contempt has even though received constitutional crystallisation and statutory emboldenment, is unlike many other countries which have specific contempt legislations regulating its exercise, still governed by case laws.[10] Authoritatively, **Article 126(2) of the Constitution 1992** empowers the Superior Courts to commit for contempt to themselves. In reaffirming this power, **section 36(1) of the Courts Act, 1993 (Act 459)** provides that, the Superior Courts of Judicature shall have the power to commit for contempt to themselves. Indeed, as would be shown, contempt of court has been tritely held to be either a criminal offence or quasi criminal in nature and therefore would have been expected to, in accordance with **Article 19(11) of the 1992 Constitution** and **Section 8 of the Criminal Offences Act, 1960 (Act 29)**, be defined in a written law with penalty prescribed. Be that as it may, **Article 19(12) of the 1992 constitution** emphatically states that, this shall not prevent a Superior Court from punishing a person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty is not so prescribed. Saving for contempt of court at common law,[11] **section 10 of Act 29** makes it clear that, the Act does not affect the power of a Court to punish a person for contempt of Court. Consequently, the power of contempt of court under Ghanaian law, since is discretionary[12]and in the absence of any statutory enactment for its regulation, is as delineated and regulated by judicial decisions.

Inexorably, the exercise of the power to commit for contempt of court is a ***condicio sine qua non*** for safeguarding public confidence in the administration of justice, maintaining the dignity and authority of the courts, and for sustaining our democratic governance. As astutely stated by a great jurist, this power 'provides a protective umbrella under which the litigant parties may fairly proceed to the determination of the issues between them free from bias and prejudice and free from any interference and obstruction of the due process of the court'.[13] The significance of this discretionary power have also been recognised in the case laws. Most notably is the case of ***Republic v. High Court; Ex parte Kennedy Ohene Agyapong (Susan Bandoh – interested party)***,[14] where **Kulendi JSC** (as he then was) said: "*[t]he sacred role of the judiciary cannot be sacrificed on the altar of ridicule, scorn, opprobrium or impudence of any individual to the disadvantage of society at large. … The citadel of justice (as Date-Bah JSC puts it) will not function properly, if it is not accorded the power to maintain its dignity and ensure that it is not treated with indignity, humiliation or discourtesy. … This is because the primary purpose of contempt proceedings is not to vindicate any particular judge but rather to ensure that the administration of justice, the primary duty of the court is not put to disrepute and public confidence in the Court, its officers and processes eroded*."[15] In a more elucidatory manner, **Baffoe-Bonnie JSC** (as he then was) in ***Republic v. Bank of Ghana & Ors; Ex parte Benjamin Duffour***,[16] profoundly indicated that "[i]*t is in the general interest of members of the community that the authority vested in the courts to protect them is not trampled upon. Any act which therefore seeks to emasculate the authority of the courts should not be countenanced. The members of the community must at all times have confidence and hope in the authority of the courts to deliver justice. The concept of contempt of court is to prevent unjustified interference in the authority of the court. It is also designed to prevent any act which seeks to damage the dignity of the court. Contempt of court is not there to protect the dignity of any one individual person but the overall dignity of the justice delivery machinery*." Likewisely, **Ackaah-Boafo J** (as he then was) poignantly pointed out in ***Republic v. Justice Hagan, Ex parte Kwadwo Kanpordima & Anor***,[17] that contempt of court "*serves the primary function of protecting the sanctity and integrity of the*

[7] Mensah-Bonsu case (n 2) 472.

[8] ibid 470; Asumadu-Sakyi II v. Owusu [1981] GLR 201 (CA), Apaloo C.J at p. 204; In Republic v. High Court; Ex parte Kennedy Ohene Agyapong (Susan Bandoh – interested party) [Civil motion No. J5/62/2020] dated 14/10/2020 (unreported), Kulendi JSC said at p. 18 that: "*…the powers of the Superior Courts to commit anyone for contempt have always been inherently recognized by the Courts at Common Law*."

[9] EK Quansah, "The Ghana Legal System" (Accra: Black Mask Ltd, 2014), at p. 227.

[10] Ex parte Kennedy Agyapong (n 8) 18; In Republic v. Numapau & Ors; Ex parte Ameyaw II (No. 2) [1999-2000] 1 GLR 283 (SC), Acquah JSC stipulated at p. 305 that: "*Contempt of Courts is the only common law offence still known to our law, as same is saved by Article 19(12) of the 1992 Constitution and section 10 of the Criminal Code 1960 (Act 29). And unlike other countries where the offence is codified like the English Contempt of Court Act of 1981, ours is still case law*."

[11] In Justice Paul Uuter Dery v. Tiger Eye P.I. & Ors (Writ No. J1/29/2015) dated 04/02/2015, at p. 16, Benin JSC said: "*Common law is part of our laws, per Article 11(1)(e) of the Constitution, 1992. Thus in the absence of legislation, this common law remedy [of punishing for contempt] is available*."; In Republic v. Numapau & Ors; Ex parte Ameyaw II [1997-1998] 2 GLR 368 (SC), Kpegah JSC in his dissenting opinion said at p. 381 that, "*…the common law, by article 11(1) (e) of the Constitution, 1992, is part of the laws of Ghana*."

[12] In Ex parte Kennedy Agyapong (n 8); Ex parte Hansen Koduah (n 5) 7, the courts power to punish for contempt was described as discretionary.

[13] Sir I.H. Jacob, "The Inherent Jurisdiction of the Court" Current Legal Problems, Volume 23, ISSUE 1 (1 January 1970) at page 29.

[14] [Civil motion No. J5/62/2020] dated 14/10/2020 (unreported); Coram: Baffoe-Bonnie (Presiding), Appau, Pwamang, Amadu and Kulendi JJSC.

[15] ibid 17-22.

[16] [CA: No. J4/34/2018] dated 06/06/2018 (unreported); Coram: Ansah (Presiding), Adinyira (Ms.), Dotse, Yeboah and Baffoe-Bonnie JJSC.

[17] [Suit No: CR/568/2018] dated 11/04/2019 (unreported). Also, in Republic v. Gloria Akuffo & Ors; Ex parte Agbleze & Ors [Writ No. J1/28/2018] dated 24/10/2018 (unreported), Adinyira (Mrs.) JSC said: "*One of the main objectives of the offence of contempt of court is to protect the dignity of the court and the justice delivery machinery. The concept of contempt of court is to prevent unjustified interference in the authority of the court*."

court and court proceedings and it also serves to sustain the rule of law, a check on conduct that potentially renders civilized society vulnerable to the dynamics of a Hobbesian state of anarchy and chaos. … Without contempt as a Sword of Damocles, bullies in our society will run roughshod over the marginalised." And also, as lucidly articulated by **Bamford-Addo JSC** (as she then was) in ***Republic v. Mensah-Bonsu & Ors; Ex parte Attorney-General***,[18] that the courts are given power to commit for contempt in order "*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. … Committal for contempt is a necessary power given to the courts themselves, and which they are in duty bound to exercise to preserve and maintain the dignity and authority of the courts.*"[19]

Nonetheless, without prejudice to the apparent indispensability of the courts' contempt powers as canvassed above, the courts are mindful of the fact that this power is wide and could be employed in a manner which is almost arbitrary; and thus calls for circumspection in its exercise.[20] As to how this is to be done, it has been suggested that the power 'should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised'.[21] After outlining conducts that invites the courts' contempt power, **Akuffo-Addo C.J** (as he then was) proclaimed in ***Republic v. Liberty Press Ltd & Ors***,[22] that "*the courts are vested with the power of dealing with it in a manner that is almost arbitrary. For this reason, the power is rarely invoked and only when the dignity, respect and authority of the courts are seriously threatened.*"[23] Her Ladyship, **Bamford-Addo JSC** (as she then was) has also advised in the ***Mensah-Bonsu case*** (supra) that the courts' contempt power "*is indeed an effective but very powerful tool which must wielded only in very clear cases. …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.*"[24] Furthermore, **Atuguba JSC** (as he then was) said in ***Ransford Opoku & Ors v. Libherr France SA & Anor***,[25] that "*the courts should be anxious to contain the power to punish for contempt of court, (which has been castigated as wide and arbitrary), within the narrowest possible confines in order to safeguard the fundamental constitutional right of the individual to liberty.*" Demonstratively, in exercising the courts' contempt powers in concomitant with these fundamental principles, the Supreme Court unanimously and unequivocally stated, per **Sophia Akuffo JSC** (as she then was) in the ***Abu Ramadan Case*** (supra) that "*[i]n an effort not to be seen as stifling public debate on the work of the Judiciary, this Court has, by and large, been very circumspect and reticent in the exercise of its power to punish for contempt and, has in recent times, restrained itself from reacting to certain commentaries on proceedings pending in this court, some of them patently prejudicial and bordering on contempt of court. We have been compelled to act in the instant matter because of its gross nature in that it bore all the marks of a calculated attack on the Judiciary, which is detrimental to the administration of justice, and we would have been reneging on our Constitutional duty if we failed to act.*"[26] Concisely, a court vested with power to punish for contempt must do so on clear grounds, as it is meant to preserve the sanctity and integrity of the court, so must it be used judicially in order that public confidence in the courts would not erode.[27]

Awkwardly, there have been soaring deteriorating conditions prevailing and bedeviling the nation where there is apparently no respect for law and order. Reckless attacks on judges and the Judiciary in general have become rampant in recent times and appear to be escalating in outrageousness and temerity.[28] For instance, where politicians and some media users have under the guise of freedom of speech and expression wantonly and contumaciously incite the public to treat the courts, its officers and proceedings, as well as its orders with disdain. Also, many are instances where some members of political parties willfully attacked the Chief Justice and threatened to deal with the judges if in a pending suit, the Court delivered a verdict that displeased them.[29] In fact, as would be seen shortly, the law reports are replete with cases dealing with similar contemptuous conducts which have the effect of undermining and eroding the very foundation of the Judiciary by shaking the confidence of the people in the ability of the court to deliver independent and fair justice. Thus *in one word, indiscipline and in a few words disrespect for the law from the top of the pyramid to its base*; *For the law may be an ass but certainly is a*

[18] [1995-96] 1 GLR 377 (SC).
[19] ibid 471 & 480. In the Abu Ramadan Case (n 3), Sophia Akuffo JSC further said at p. 4 that, "*Our sole focus in this matter is on protecting the paramount public interest in maintaining the independence, dignity and effectiveness of the administration of justice*."
[20] In the Abu Ramadan Case (n 3), Sophia Akuffo JSC stated at p. 10 that, "*…we are mindful that the summary power of the court to punish for contempt of court that has been preserved by Article 126 (2) of the Constitution is almost arbitrary and such awesome power calls for circumspection in its exercise*."
[21] lzuora v. R (1953) 13 WACA 313 at 316 (PC), per Lord Tucker.
[22] [1968] GLR 123 (HC).
[23] ibid 135.
[24] (n 16) 471.
[25] [Civil Appeal No. J/4/35/2011] dated 23/11/2011 (unreported); Coram: Atuguba (Presiding), Dr. Date-Bah, Ansah, Bonnie, and Akoto-Bamfo JJSC. Also see: Republic v. High Court (Fast Track Division) Accra; Ex parte PPE Ltd & Anor (Unique Trust Financial Services Ltd - Interested Party) (2007-2008) SCGLR 188.
[26] (n 3) 7.
[27] Republic v. Nana Kwasi Adu & Ors; Ex parte John Osei Kusi [CA No. H1/225/07] dated 17/04/2008 (unreported), per Marfo Saul JA.
[28] Abu Ramadan case (n 3) 11.
[29] ibid 3; In his dissenting opinion in Elikplim Agbemava & Ors v. Attorney-General [Consolidated Writ Nos. J1/20/2016; J1/21/2016 and J1/23/2016] dated 21/11/2018 (unreported), Dotse JSC commented that, "*Apart from being insulting, these species of conduct by the Montie 3, should be considered as highly intimidating and calculated to bring fear, panic into the Judiciary and the Court, as well as bring the court into disrepute, ridicule and thereby bring the entire administration of justice to its knees.*" Four persons had earlier made contumacious statements about the courts during the Presidential Election Petition hearings in 2013. See also Ex parte Kennedy Agyapong (n 8), where a Member of Parliament used uncomplimentary words against a judge presiding over his pending suit.

respecter of none.[30] Therefore, the Superior Courts are required to utilise the contempt power effectively in order to make it universally unattractive for any person to indulge in such contumacious and farcical conducts.

Vociferously, this paper aims to coherently offer, as far as feasible, a more accurate and comprehensive statement of the scope of the laws on contempt of court as shaped via Ghanaian judicial decisions. The work further critiques and provides evocative solutions to address various identified setbacks, thereby invigorating our contempt laws to reduce drastically the devastating contemptuous conducts obstructing the courts and the whole administration of justice. In setting out to achieve these, this preliminary section has sought to outline the need for committal for contempt of court, the manner in which the contempt powers are to be exercised, the severity of contemptuous conducts in Ghana, and an overview of the entire work. The core discussion begins with the elucidation of the nature, constituents and classifications of contempt of court in Ghana. It then follows with a juxtaposition and an illumination of the limits of committal for contempt of court and exercising ones' freedom of speech and expression to prevent overlaps. The article further reconsiders the President's power to exercise prerogative of mercy in contempt of court cases and offers skepticisms with robust recommendations in that regard. It also exposits succinctly the nature of the courts contempt proceedings in Ghana. Lastly, it concludes with a profound summary of the entire work as well as possible valuable lessons that could be drawn therefrom.

2 NATURE AND CONSTITUENTS OF CONTEMPT OF COURT

'*Contempt of court*' is a generic term descriptive of conducts which tend to undermine the judicial system established for the proper administration of justice by the courts of law and the maintenance of public confidence in it.[31] It is a creature and development of the common law, and applied in all common law jurisdictions including Ghana. Since contemptuous conducts does not necessarily have to be defined in a written law with penalty prescribed before it could be punished, '*contempt of court*' is said to be an offence ***sui generis***, a peculiar or special type of offence.[32] And it has been judicially described in varying terminology that, '*contempt of court*' is an '***offence***'[33], '***criminal offence***'[34] or '***quasi-criminal***'[35] in nature.[36] For it is noteworthy that, the power to commit for contempt exercised by the Superior Courts essentially seeks to prevent conducts that interfere with the due exercise of the judicial power vested in the judiciary.[37] The word '*court*' in this sense, means the Judges who constitute it and who had been entrusted with competent jurisdiction by law.[38] '*Contempt of the Court*' involves two ideas; ***contempt of their power***, and ***contempt of their authority***.[39] The word '*authority*,' is frequently used to express both the right of declaring the law, which is properly called *jurisdiction*, and of enforcing obedience to it, in which sense it is equivalent to the word *power*.[40] However, the word '*authority*' does not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.[41] It is homage and obedience rendered to the Court, from the opinion of the qualities of the Judges who compose it.[42] It is a confidence in their wisdom and Integrity, that the power they have is applied to the purpose for which it was deposited in their hands.[43] That authority acts as the great auxiliary of their power, and for that reason the law gives them this compendious mode of proceeding against all who shall endeavour to impair and abate it.[44]

'*Contempt of court*' like many legal terminologies does not lend itself to an easy definition. In fact, it is almost difficult if not impossible to purport to give certain definition that comprehensively encapsulates the numerous contemptuous conducts, and therefore the Ghanaian courts have sought to outline how '*contempt of court*' may be constituted rather than to be defined properly so called. Generally speaking, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation.[45] Thus,

[30] Osei Kwadwo II v. The Republic [2007-2008] SCGLR 1148, p. 1172, Kpegah JSC.
[31] The Constitution 1992, Arts. 125(1) & 126(1); Attorney-General v. Times Newspaper Ltd [1973] 3 All ER 54 (HL), Lord Diplock at p. 71.
[32] The Constitution 1992, Art. 19(11) & 12; Elikplim Agbemava Case (n 29) 12, per Benin JSC.
[33] Liberty Press Case (n 4) 135, Akuffo CJ; British Airways v. Attorney General [1997-98] 1 GLR 55; Republic v. Boateng & Anor; Ex parte Agyenim Boateng & Ors [2009] SCGLR 154, Dotse JSC at pp. 160-161; Ex parte Hansen Koduah (n 5), Akoto-Bamfo JSC. See: Elikplim Agbemava Case (n 29).
[34] Asumadu-Sakyi Case (n 8) 205, Apaloo CJ.
[35] Ex parte Ameyaw II (n 10), Hayfron-Bengyamin JSC at p. 295, Acquah JSC at p. 310; Ex parte Kennedy Agyapong (n 8) 28, Kulendi JSC; Republic v. Edward Acquaye @Nana Abor Yamoah II; Ex Parte Charles Kweku Essel & Ors [SUIT NO. CA J4/11/2008] dated 10/12/2008, Dotse JSC at p. 2; Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC; Republic v. Justice Hagan, Ex parte Kwadwo Kanpordima & Anor [SUIT NO: CR/568/2018] dated 11/04/2019 (unreported), Ackaah-Boafo J.
[36] Ackah v. Acheampong & Anor [2005-2006] SCGLR 1, p 13, Atuguba JSC.
[37] The Constitution 1992, Arts. 125(3) & 126(1) & (2).
[38] R v. Almon (1765) Wilm 243, Wilmot CJ's undelivered judgment published posthumously by his son, at p. 256. This English case was heavily relied upon by the majority in the Mensah-Bonsu Case (n 2) 473, 520 & 528-529.
[39] ibid
[40] ibid
[41] ibid
[42] ibid 257.
[43] ibid
[44] ibid
[45] Republic v. Bank of Ghana & Ors, Ex parte Benjamin Duffour [CA: No. J4/34/2018] dated 06/06/2018, per Baffoe-Bonnie JSC; Republic v. Amandi [2001-2002] 2 GLR 224 at p. 231, Ansah JA; Ex parte Ameyaw II (No. 2) (n 10), per Hayfron-Benjamin JSC at p. 298 & Ampiah JSC at p. 304, Acquah

in other words, any act or omission done to prejudice the fair trial or outcome of a case, or likely to bring the administration of justice into disrepute or interfere with any pending litigation and or to scandalize a court even after the trial of a case is contemptuous of the court.[46] In ***Republic v. Numapau & Ors; Ex parte Ameyaw II (No. 2)***,[47] It was held briefly that, contempt is constituted by 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. Descriptively, **Adade JSC** (as he then was) in his dissenting opinion in the ***Mensa-Bonsu Case*** (supra) accurately said that underlying all the different forms of contempt "*is one basic notion, that the roadways and highways of public justice should at all times be free from obstruction. Conduct which tends to create such an obstruction constitutes contempt. Thus interfering with witnesses or jurors; frightening off parties to litigation; refusing to answer questions in court; commenting on pending proceedings in such a manner as to prejudice the outcome; running down the courts and the judges; refusing to obey an order of a court any of these, if calculated to, or tend to, impede or obstruct the course of justice will constitute contempt. And conduct complained of therefore must be viewed and assessed against the backdrop of this basic principle.*"[48]

There are conglomerations of specific conducts that have been held to constitute or otherwise not constitute '*contempt of court*'. *Firstly*, it could be contempt of court to stipulate in a statement of case that, a court's decision was tainted by bias. Hence, the use of bad and intemperate language brings the court into disrepute and ridicule and that in itself could be the subject of contempt against the legal practitioner who employs such language, albeit under the guise of submitting a statement of case to the court.[49] In ***Nana Yeboah-Kodie Asare II & Anor v. Nana Kwaku Addai & Ors***,[50] where in an application for review, the applicant had stated in his statement of case that the previous majority decision was tainted by bias. The majority of the Supreme Court held that, this could be a subjectmatter of contempt of court. *Also*, it is sufficient to constitute contempt, if the conduct in question amounts to treating the judgment of the court with impunity, either as a result of ignorance or a deliberate contemptuous disregard.[51] In ***Republic v. Buabin II; Ex parte Nana Kuffour I***,[52] it was held that, the catalogue of acts, conduct and utterances of the appellant as manifesting an outrageous disrespect or disregard of the order of the High Court quashing the purported destoolment of the respondent constitute contempt of court. *Thirdly*, statements that attempt to dictate the orders or other dispositions that a Court should make or should not make constitute contempt of court, since they are calculated to interfere with and obstruct the course of justice and thereby bring the authority of the court and the administration of justice into disrepute.[53] In the ***Abu Ramadan Case*** (Supra), where the contemnors stated that they will not accept the decision of the court on the voters' register and they incited listeners in the general public to reject it. They further threatened to deal with the judges if, in the pending suit, the Court delivered a verdict that displeased them. The Supreme Court unanimously held that, these statements constitute contempt of the court. *Also*, in the proceedings of the ***2013 Presidential Election Petition Case***,[54] Kwadwo Owusu Afriyie on Oman FM had said that, any final verdict of the Supreme Court, apart from the declaration of Akuffo Addo as winner of the elections would amount to stealing. The Supreme Court unanimously held that, this constitute contempt of court. Fourthly, making a false statement deliberately or recklessly in an affidavit supporting a claim to frustrate a fair trial in a pending suit amounts to contempt of court. In ***Republic v. Acquah & Anor; Ex Parte Perko II***,[55] **Asiamah J** (as he then was) held that, the false statements made by the respondents before the Supreme Court that the applicant had been destooled, when they well knew they were lying, were made to frustrate a fair trial in that case, and hence constitutes contempt of court. *Similarly*, knowingly making or verifying a false written or verbal statement under an oath before the court may constitute contempt of court.[56] *Also*, lack of authority to sue amounts to contempt of court by virtue of **Order 1, r. 4 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47)**. This provision is said to afford the only avenue whereby the defendant may cross check with the real claimant whether or not he has authorized the plaintiff to sue, and if not to bring a charge of contempt against the plaintiff.[57] *In the same way*, where an order made against the client of a lawyer is served on the lawyer and the lawyer fails without reasonable excuse to give notice of it to the client, the lawyer shall be liable to committal for contempt.[58]

However, failure to prosecute a counterclaim as directed by the court is not a contempt of court. For that order by the court is only a direction to continue with the counterclaim and not a mandatory order which a person has to comply with or be liable for contempt.[59] In ***Republic v. High Court, Ex parte***

JSC at 305-306; Rose Amele Saka v. Akutey Azu & Anor (AP No. 173/2011) dated 01/07/2012 (unreported), at p. 3, Derry J; Republic v. Nkansah (unreported, November 1995), Hayfron-Benjamin JSC; Ex parte Hansen Koduah (n 5) 8, Akoto-Bamfo JSC.

[46] Ex parte Kwadwo Kanpordima (n 35), per Ackaah-Boafo J.

[47] [1998-99] SCGLR 639, at p. 660, Acquah JSC.

[48] (n 16) 403.

[49] Nana Yeboah-Kodie Asare II & Anor v. Nana Kwaku Addai & Ors [No. J7/20/2014] dated 12/02/2015 (unreported), at p. 6, per Benin JSC.

[50] ibid.

[51] Republic v. Buabin II; Ex parte Nana Kuffour I [1992-93] GBR 1663 (CA), Forster JA.

[52] ibid

[53] Abu Ramadan Case (n 3) 3.

[54] In Re Presidential Election Petition; Akufo-Addo, Bawumia and Obetsebi-Lamptey (No. 4) v. Mahama, Electoral Commission and National Democratic Congress (No.4) [2013] SCGLR Special Edition, 73.

[55] [2003-2005] 1 GLR 135.

[56] Criminal Offences Act, 1960 (Act 29), s 211; Criminal & Other Offences (Procedure) Act, 1960 (Act 30), s 152.

[57] Standard Bank Offshore Trust Company Limited v. National Investment Bank Limited & Ors [Civil Appeal No. J4/63/2016] dated 21/06/2017 (unreported), at p. 11, Benin JSC.

[58] High Court (Civil Procedure) Rules 2004 (C.I. 47), Order 21, rule 14(3).

[59] Republic v. High Court, Ex parte Asakum Engineering and Construction Ltd. & Ors. [1993-94] 2 GLR 643 (SC), per Bamford-Addo JSC at p. 659.

Asakum Engineering and Construction Ltd. & Ors.,[60] where in a previous decision, the Supreme Court ordered that "*the counterclaim of the defendant will stand and is to be tried by the High Court*." The applicant alleged that, since the second respondent had failed to pursue his counterclaim at the High Court as directed by the Supreme Court, he was in contempt of the Supreme Court. But the Supreme Court unanimously held that, unless the rules said so, the failure of a party to take a step in a proceeding could not amount to contempt of court. Hence, the failure of the second respondent to pursue his counterclaim at the High Court did not constitute contempt of the Supreme Court. *Also*, committing a person to prison for default in paying a civil debt arising from a default to produce a bailed person does not amount to contempt of court.[61] *Lastly*, in general, the faithful and dutiful discharge and performance of a statutory duty is not one of the grounds that can give rise to contempt of court.[62]

3 CLASSIFICATIONS OF CONTEMPT OF COURT

Contempt of court may be classified based on its purpose (i.e., obedience to courts order, protecting parties' rights to litigation, protecting the sacrosanctity of the judicial system, preserving public confidence in the courts, etc.); the manner in which it was committed; the place where it was committed; the substance of the proceedings and the character of the reliefs. In Ghana, it is essential to classify contempt into various forms, since even though they may have common features, different categories of contempt may carry different procedural safeguards and punishments. Ultimately, there are about six main classifications (types, forms or kinds) of contempt of court in Ghana. They include: '***Criminal and Civil Contempt***';[63] '***Direct and Indirect Contempt***'[64]or '***Contempt in Facie Curiae and Contempt Ex Facie Curiae***'[65]; and '***Intentional and Unintentional Contempt***'[66]. These identified forms of contempt of court are expounded upon below in ***extenso***.

3.1 Criminal Contempt

Criminal contempt consists of words or acts which tend to obstruct or interfere with the due administration of justice or tend to bring the court or its process into disrespect.[67] It usually arises when a party or stranger (third party) to the proceedings exhibits conducts which bring the administration of justice into disrepute.[68] It may be committed before the actual hearing of a case, or while it is pending in court or when the hearing is concluded.[69] In the ***Liberty Press Case*** (supra), **Akuffo CJ** (as he then was) stated what constitute criminal contempt as: "*…any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere in any way with the course of justice becomes an offence not only against the courts but against the entire community which the courts serve. Such conduct constitutes the offence of contempt of court… It is contempt of court by deed or word to scandalise the courts. It is contempt of court to make statements amounting to abuse of the courts. It is contempt of court to make statements which tend to expose the courts or parties who resort thereto to the prejudice or hatred or ridicule of mankind.*"[70] Mostly, it is the Attorney-General or somebody else at his direction or the court on its own motion that initiate the criminal contempt proceedings.[71] Criminal contempt is a crime and is punishable as a criminal offence; the punishment is punitive, and in the interest of the public in protection of the authority and dignity of the court.[72] It is an offence and attracts criminal penalties as a misdemeanour.[73] Since conviction and sentence result from criminal contempt are final, the contemnor cannot purge his contempt; and the only remedy available is for the contemnor to appeal against either or both conviction and sentence.[74] There are at least three main forms of criminal contempt which include: (i) *Physically interfering with the course of justice* ("***contempt in the face of the court***"); (ii) *Publication of matters undermining public confidence in the administration of justice* ("***scandalising the court***"); and (iii) *Publishing matters likely to prejudice a fair trial* ("***Breaching the sub judice rule***").[75] These various forms of criminal contempt

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[60] ibid.
[61] Martin Kpebu v. Attorney-General [Writ No. J1/7/2015] dated 01/12/2015 (unreported), p. 19, Dotse JSC.
[62] Republic v. Food and Drags Authority & Ors, Ex parte Cosmetics Association of Ghana [Suit No. CR/290/2019] (unreported); Republic v. Awuku, Ex parte Adiaku [1999-2000]1 GLR 645 (CA); Republic v. Justice Anin Yeboah & Ors, Ex parte Francisca Serwaa Boateng [Suit No. CR/760/17] dated 29/03/2018 (unreported).
[63] Ex parte Ameyaw II (n 10) 306, per Acquah JSC; Nene Dugbartey Tetteyga II v. Sappor [1973] 2 GLR 277 (CA); Atta & Anor v. Mohamadu [1980] GLR 862 (HC); Mensah-Bonsu Case (n 2) 471-472, Bamford-Addo JSC; Ackah v. Acheampong & Anor [2005-2006] SCGLR 1, Atuguba JSC at p. 13; Elikplim Agbemava Case (n 29), per Benin JSC at p. 12-15 & Yeboah JSC at p. 72; Republic v. Okyere Darko, Ex parte Lufus Owusu [Civil Appeal No. J4/48/2019] dated 03/02/2021 (unreported), per Dotse JSC at p. 11; Republic v. George Odiase & Ors, Ex parte Agyemang-Duah & Anor [Suit No. MISC/22/2019] dated 6th July 2019 (unreported), Osei-Hwere J.
[64] Ex parte Ameyaw II (n 10) 306, per Acquah JSC; Ex parte Benjamin Duffour (n 45), per Baffoe-Bonnie JSC.
[65] Liberty Press Case (n 4) 135, per Akufo-Addo CJ; Mensah-Bonsu Case (n 2) 392-394, per Bamford-Addo JSC; Elikplim Agbemava Case (n 29) 61-62, per Dotse JSC; Ex parte Kennedy Agyapong (n 8) 30, Kulendi JSC.
[66] Ex parte Benjamin Duffour (n 45), per Baffoe-Bonnie JSC.
[67] Ex parte Ameyaw II (n 10) 307, Acquah JSC; Mensah-Bonsu Case (n 2) 471, Bamford-Addo JSC; Republic v. Alhassan, ex parte Abbey (1989-90) 1 GLR 139 (HC), Benin J at p. 143; Ex parte Agyemang-Duah (n 63).
[68] Elikplim Agbemava Case (n 29) 72, Yeboah JSC.
[69] Mensah-Bonsu Case (n 2) 471-472, Bamford-Addo JSC.
[70] (n 4) 135-136.
[71] Elikplim Agbemava Case (n 29), Benin JSC at p. 16 & Yeboah JSC at p. 72.
[72] ibid 12, 15 & 17, per Benin JSC delivering the majority decision.
[73] ibid, Benin JSC at p. 23 & Adinyira JSC at p. 42; In the Tetteyga II Case (n 63) 283, Azu Crabbe CJ speaking on criminal contempt, observed that: "*…for an order of sentence upon conviction can only be made in the case of contempt which is punishable as a misdemeanour by indictment, as for example, contempt by interference with the course of justice.*" Also affirmed in the Mohamadu Case (n 63) 865.
[74] Atta v. Mohamadu [1980] GLR 862 (HC), pp. 865-866, Roger-Korsah J.
[75] Elikplim Agbemava Case (n 29) 14, Benin JSC; Home Office v. Harman [1983] 1 AC 280, Lord Scarman at p. 310; Michael Chesterman, "Contempt:

share a common characteristic, in that they all involve an interference with the due administration of justice.[76]

The first type of criminal contempt is "***contempt in the face of the court***" (***contempt in facie curiae***), also known as "***direct contempt***," and which is committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings.[77] Thus, when a person misbehaves in the court, or utters insulting behaviour in the court or misconducts himself within the court whilst the court is in session, it is *contempt in facie curiae*.[78] It is always dealt with "*on the spot*" without any intervention by the Attorney-General applying for writs of attachment.[79] In most cases of direct contempt such as insulting the judge or a party to a proceeding, or committing acts of violence in court, the judge has the advantage of having a firsthand view of the act constituting the contempt.[80] And since the judge himself is a witness to the offending conduct, no further proof may be required.[81] According to **section 224 of the Criminal Offences Act, 1960 (Act 29)**, a person commits a misdemeanour who in the presence of a Court commits a contempt of court by an insulting, opprobrious or menacing acts or words. In ***Anoe & Anor v. Antwi & Anor***,[82] the Supreme Court unanimously held per **Pwamang JSC** (as he then was) that "*[t]his court further ordered the 1st Respondent who was present in court to purge himself of the contempt and report back to the court today to enable the court take a decision on the sentence to impose on him. This morning, the 1st Respondent arrogantly informed this court that he cannot vacate the land as the land belongs to Ghana Atomic Energy Commission and that he has nowhere to go to. The court considers the attitude and conduct of the 1st Respondent as gross disrespect and affront to the dignity and integrity of the Judicial process further compounding his contempt. In our minds, nothing can be more contemptuous than what the 1st Respondent has done.*"[83]

The second type of criminal contempt is the "***contempt of scandalising the court***"[84] which consists of any act done or writing published calculated to bring a court or judge into contempt, and which has the tendency of impairing public confidence in them.[85] Thus, it consists of scurrilous abuse of a judge or impugning the integrity or impartiality of a court or a judge.[86] This type of contempt is committed usually when proceedings have been terminated and a judge is subjected to scurrilous abuse in his capacity as a judge.[87] As has been held by the majority in the ***Mensah-Bonsu Case*** (supra), scurrilous abuse of a judge in his capacity as a judge amounts to the contempt of scandalising the court. And since in the instant case, the respondents in their published articles called Justice Abban a liar, a criminal, a biased and partial judge and one who used political and judicial chicanery to judge cases, those words were scurrilous abuse of the judge in his capacity as a judge and therefore amounted to the contempt of scandalising the court. In the proceedings of the ***2013 Presidential Election Petition Case***, Sammy Awuku had in a publication described the decision of the court as bias, hypocritical and selective. Also, Kwadwo Owusu Afriyie on a talk show on Oman FM described Justice Atuguba as a hypocritical joker who pampers NDC counsel Tsikata, but habitually scolds NPP counsel Addison and habitually frowned like a voodoo deity. The nine Justices of the Supreme Court unanimously held that, these acts and utterances amount to contempt of scandalising the court. Also, in the ***Abu Ramadan Case*** (supra), where the 3rd and 4th contemnors willfully attacked the Chief Justice, whom they mentioned by name, and accused her and the rest of the court of favoring the plaintiffs in the pending suit while exhibiting bias against the Electoral Commission. They further alleged that the Court was motivated by a desire to assist the opposition NPP in the forthcoming elections. The Supreme Court unanimously held that these acts of the contemnors constitute the contempt of scandalising the Judiciary. In the words of **Sophia Akuffo JSC**, "*[t]he attacks, which was directed at the Chief Justice of the Republic of Ghana and the Apex Court of the land, amounts to criminal contempt of the Judiciary.*"[88] In ***Ex parte Kennedy Agyapong***, the Applicant threatened the court and described the judge over whom his case was pending as "*stupid*". The Supreme Court unanimously held that, these uncomplimentary words used against the judge constitute the contempt of scandalising the court. For the avoidance of doubt, truth is not a defence when a publication scandalises the court. As was noted by **Bamford-Addo JSC** (as she then was) in the ***Mensah Bonsu Case*** (supra), to wit: "*Once the matter published scandalises the court, truth is no defence nor is justification. The reason is that the contempt of scandalising the court is committed against the administration of justice itself not against an individual judge, qua judge. The mischief in publishing "scurrilous abuse" about a judge is its tendency to bring the administration of the law into disrepute, to lower the authority of the court and impair public confidence in the judiciary.*"[89]

The final type of criminal contempt is the "***contempt of breaching the 'sub judice'***[90] ***rule***" which states that, no one should interfere with legal proceedings which are pending

In the Common Law, but Not the Civil Law" International and Comparative Law Quarterly, Vol. 46, No. 3 (July, 1997), p. 522.
[76] Mensah-Bonsu Case (n 2) 472, Bamford-Addo JSC; Attorney-General v. Leveller Magazine Ltd. [1979] AC 440, at p. 449, Lord Diplock.
[77] Ex parte Ameyaw II (n 10) 306, Acquah JSC.
[78] Elikplim Agbemava Case (n 29) 61, Dotse JSC.
[79] Liberty Press Case (n 4) 135, Akuffo CJ.
[80] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC.
[81] Mensah-Bonsu Case (n 2) 393-394, Adade JSC.
[82] [CA.137/99] dated 13 June 2008 (unreported).
[83] ibid pp. 1-2.
[84] Ex parte Kennedy Agyapong (n 8) 12, Kulendi JSC said: "…*scandalizing the Court and for that matter the administration of justice amounts to criminal contempt and when satisfactorily proven, will attract punishment*."
[85] Mensah-Bonsu Case (n 2) 472, Bamford-Addo JSC.
[86] Abu Ramadan Case (n 3) 3, Sophia Akuffo JSC.
[87] Mensah-Bonsu Case (n 2) 472, Bamford-Addo JSC.
[88] (n 3) 4.
[89] (n 2) 478.
[90] The term **sub judice** is the Latin for "*under a judge*" and is derived from the Latin phrase **adhuc sub judice li est**, which means "*the matter is still under consideration*".

before the courts. Contempt of court may arise 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.[91] Thus, any act or omission calculated to prejudice or interfere with the fair determination of a pending suit constitutes contempt of the court where the proceedings are pending.[92] The rationale of the law is that, 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; and that, the state of affairs before the court which was seized with the matter must be preserved until the court delivers its judgment.[93] In the locus classicus of the ***Liberty Press Case*** (supra), the respondents printed and published an article entitled "*Justice delayed is justice denied*" about a criminal appeal pending before the Court of Appeal. In finding the respondents guilty of contempt, the court held that, proceedings were actually pending in court and to seek to bring pressure to bear on the state to discontinue the proceedings properly before the court is a clear case of contempt of the worst type. **Akufo-Addo CJ** (as he then was) advised that to avoid contempt actions, "*[o]ne of the surest ways of doing so is to refrain from commenting on proceedings which are pending in the courts. For these constitute some of the most fruitful fields of contempt*."[94] The principle was made clearer in the ***Republic v. Moffat; Ex parte Allotey***,[95] when **Abban J** (as he then was) brilliantly held that: "… *once the respondents had become aware of the pendency of the motion before the High Court, and which motion gave them notice in clear terms of the court's intention to inquire into the matter and to decide whether or not they should be prohibited from outdooring their said candidate, any conduct on their part which was likely to prejudice a fair hearing of that motion or was likely to interfere with the due administration of justice, would amount to a contempt of court, absence of an interim order for stay notwithstanding*."[96] In this case, where the applicant's motion for leave to apply for an order of prohibition against the respondents was granted and duly served on the first three respondents, the latter nevertheless, carried out the outdooring which was sought to be prohibited with the fourth respondent. The Court held that, the fact that the fourth respondent was served with the motion after the outdooring ceremony, which was in contempt of court, could not provide any defence to him since the circumstances of the case indicated that he knew, at the time of the ceremony, that the applicant had been granted leave to apply for a prohibition order. He was therefore convicted for contempt with the other three respondents. In the ***2013 Presidential Election Petition Contempt Case***, whiles the matter was pending before the Court, Atubiga vowed on radio that the governing NDC will not hand over power even if the Court ruled so at the end of the election petition hearing. Hopseson Adorye published in Newspaper that "*we shall cut the head of NDC supporters if…Supreme Court declares Prez Mahama winner*" and further said that, "*NPP will not accept the verdict of the Supreme Court if Akufo-Addo is not declared winner*." Kwadwo Owusu Afriyie had also said on Oman FM that, "*Any final verdict of the Supreme Court, apart from the declaration of Akufo-Addo as winner of the elections … would amount to stealing*." It was unanimously held that, each of these conducts and utterances amounts to intentional criminal contempt of the court. In the ***Abu Ramadan Case*** (supra), the 3rd and 4th contemnors threatened to deal with the judges if, in a pending motion filed by the applicants, the Court delivered a verdict that displeased them. They cruelly and callously reminded the justices of the murder of three High Court Judges on 30th June, 1982 while threatening to do same to them if the pending suit does not go as they want. It was unanimously held that these conducts and attacks of the contemnors constitute criminal contempt of the judiciary.

The ***sub judice*** rule also means that, 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; but the conduct must be one which has the effect of prejudging or prejudicing the case even before a judgment is given.[97] Thus, practically speaking, if a party knowing of the existence of a case (a writ, a petition or a motion) pending before an adjudicating body seeking to restrain an act, makes a decision himself to deal with and grant the very remedy to himself without giving opportunity to the adjudicating body to hear the matter, he commits contempt.[98] In ***Balogun v. Edusei***,[99] where the respondents notwithstanding they knew that the applications for writs of habeas corpus were still sub judice, deported the four men, before notice of the motion was actually served on them. It was held that, because the respondents knew the facts of the service, actual service of the motion is not necessary before there can be a committal for contempt. The deportations amounted to contempt, because they interfered with the parties litigant, summarily put an end to the court proceedings, and brought the administration of the law into disregard. Also, in ***In re Onny (Contemnor)***,[100] where pending the determination of the dispute, the High Court made an interim order suspending the operation of the lottery. The respondent wrote a letter suspending the license of the society and implying that the applicant had misappropriated funds belonging to the society. It was held that, the action of the respondent amounted to contumeliously questioning the conduct of the court. It was aimed at prejudicing the fair trial of the substantive case and thus to interfere intentionally with the administration of justice. He was convicted for contempt of court and it was upheld on appeal to the Court of Appeal.

[91] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC; Ex Parte Agbleze (n 17) 3, Adinyira (Mrs) JSC.
[92] Ex parte Ameyaw II (n 10) 314, Acquah JSC.
[93] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC.
[94] (n 4) 137.
[95] [1971] 2 GLR 391.
[96] ibid 396.
[97] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC.
[98] Republic v. Eha II & Ors; Ex parte Togobo & Ors [2003-2005] 1 GLR 328 (CA), at p. 334, Asare Korang JA.
[99] (1958) 3 W.A.L.R 547 (HC).
[100] [1967] GLR 386 (HC); (1968) CC 51 (CA).

Likewisely, in ***Dombo v. Narh***,[101] where the applicant's case was effectively killed frustrated, prejudiced and rendered purposeless when the applicant was bundled out of Ghana and removed from the jurisdiction before the court could hear the case. It was held that, this was calculated to prejudice the fair trial of the case and an attempt to poison the stream of justice, therefore amount to contempt. In ***Republic v. Akenten II; Ex parte Yankyera***,[102] where the matter pending before the Judicial Committee of the Offinso Traditional Council was the determination of the rightful person among the three claimants to occupy the Gyasiwa Stool. The respondent abolished the Gyasiwa Stool completely, thus rendering the final decision of the judicial committee otiose or of no moment since there would be no stool for the would-be successful claimant to occupy after the litigation. Therefore, the respondent was held to be in contempt of the Judicial Committee. In ***Republic v. Eha II & Ors; Ex parte Togobo & Ors***,[103] there were petitions and motions pending before the Judicial Committee of the Volta Regional House of Chiefs challenging the validity of the installation of the 4th Appellant. However, the Appellants pressed forward and completed the final act of the installation process, that is, outdooring the 4th Appellant, the very act which the applicant's petitions and motion seek to avert and halt. It was held that, since the Appellants were present and knew of the pending litigation, and yet deliberately and willfully participated in the outdooring of the 4th Appellant, they were all guilty of contempt of the court and were sentenced accordingly. In ***Rose Amele Saka v. Akutey Azu & Anor***,[104] the court restrained both parties from undertaking any development on the disputed land pending the hearing of an application for interlocutory injunction. It was held that, any of the parties would be bringing the authority and administration of the law into disrespect or disregard if that party went onto the land in dispute and did any work; and this would amount to contempt of court. In the ***Ex parte Benjamin Duffour Case*** (supra), where the High Court had granted the appellant an interlocutory injunction to restrain the respondents from proceeding against him in any Disciplinary Committee pending the determination of the suit. The respondent Bank however summarily dismissed the appellant from its employment for gross misconduct. It was held that, this summary dismissal amounted to contempt of court.

There are however some defences available to the contempt of breaching the sub judice rule. *Firstly*, where it is shown that, the respondent's alleged conduct does not prejudice the pending court action, there would be no breach of the sub judice rule and therefore no contempt. In ***Ransford Opoku Case*** (supra),[105] where after the appellant had filed a suit claiming for his redundancy pay, the respondents terminated his employment. It was held that, the respondents are not guilty of contempt since in the circumstances of the case it cannot be said that the appellant's dismissal destroyed or hampered the resolution of the res litiga. There was nothing in the facts of the case to entitle the appellant to any reasonable apprehension that he would be prejudiced in any way by prosecuting his action in the trial court. *Secondly*, where the proceedings which was alleged to be prejudiced or interfered with does not exist at the time the alleged contemptuous conduct was made, the sub judice rule could not apply to found an action for contempt. In ***Republic v. Nana Osei Bonsu II, Mamponghene & Ors; Ex parte Obaapanin Afua Amadie***,[106] **Brobbey JSC** (as he then was) held that: "*…by time the motion for contempt was filed on 23 February 2000, the installation had already been completed. To be guilty of contempt of court or contempt of the Regional House of Chiefs, there must be conduct, action or omission on the part of the person charged with contempt which tends to undermine the authority of the court or tribunal by interfering with process pending in that court or tribunal. Since the proceedings to be undermined in the instant case did not exist at all at the time when the installation took place, that instillation could not ground a charge of contempt of the Ashanti Regional House of Chiefs.*"[107] *Lastly*, since the respondent must have intended to prejudice or interfere with the pending action when the act complained of was made, if it is shown that the respondent did not genuinely intended, this could be a defence to the sub judice rule. In ***Republic v. Gloria Akuffo & Ors; Ex parte Agbleze & Ors***,[108] **Adinyira (Mrs.) JSC** (as she then was) delivering the unanimous judgment of the Supreme Court held that: "*[a]s it turned out that the Chairperson of the Electoral Commission had no notice of the application until she was served with this application to commit her for contempt; and her counsel got her a copy from the Court's registry. In the circumstances it cannot be said that the Electoral Commissioner and her two deputies knowingly engaged in acts which tend to prejudice or interfere with the fair trial of the case. It is for these reasons that we did not find the Commissioners in contempt of court hence a dismissal of the application.*"[109]

3.2 Civil Contempt

Civil contempt consists in wilful disobedience to the judgment or order or other process of a court.[110] It is a quasi-contempt consisting 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.[111] Indeed **Order 39, rule 5(4) of the High Court (Civil Procedure) Rules, 2004 (CI 47)** provides that, "*[a] person who wilfully disobeys any order made against him under this rule shall be liable to committal for contempt of court*." Civil contempt will usually arise when a

[101] (1970) CC 68 (CA), Azu Crabbe Ag. CJ.
[102] [1993-94] 1 GLR 246 (CA).
[103] Ex parte Togobo (n 98).
[104] [AP No. 173/2011] dated 01/07/2012 (unreported), Uuter Paul Derry J.
[105] Also see: Republic v. Amandi [2001-2002] 2 GLR 224, p. 231, Ansah JA.
[106] [CA No. J4/18/2006] dated on 14/01/2007 (unreported), Coram: Atuguba, Mrs. Wood, Brobbey, Ansah, Mrs. Adinyira, JJSC.
[107] ibid 8.
[108] Ex parte Agbleze (n 17).
[109] ibid 7.
[110] Mensah-Bonsu Case (n 2) 471, Bamford-Addo JSC; Republic v. Sito I, Ex parte Fordjour [2001-2002] SCGLR 322, at pp. 338, Adzoe JSC; Ex parte Agyemang-Duah (n 63).
[111] Ex parte Ameyaw Case (n 10) 307, Acquah JSC.

party to any proceedings forms the view that an order of a court of law has been disobeyed or interfered with.[112] It is quasi-criminal and where the contempt is civil, no offence or crime is involved.[113] The punishment for civil contempt is remedial in favour of a complainant, in vindication of private rights.[114] The contemnor can purge his contempt by obeying the court's order or performing the undertaking given to the court.[115] In ***Republic v. High Court; Ex parte Laryea Mensah***,[116] **Bamford Addo JSC** (as she then was) explained that, "…*a person commits contempt and may be committed to prison for willfully disobeying an order of court requiring him to do any act other than the payment of money or abstain from doing some act; and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned. The reason is that a court will only punish as contempt a wilful breach of a clear court order requiring obedience to its performance. Therefore, disobedience which is found not to be wilful cannot be punished.*"[117] The locus classicus case of ***Republic v. Sito I; Ex parte Fordjour***,[118] is very instructive, where **Adzoe JSC** (as he then was) enunciated the **essential elements of civil contempt** as follows: "*(1) There must be a judgment or order requiring the contemnor to do or abstain from doing something. (2) It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing. (3) It must be shown that he failed to comply with the terms of the judgment or order, and that his disobedience is wilful.*"[119] This litmus test was reiterated in ***Ex parte Benjamin Duffour Case*** (Supra) per **Benin JSC** in the following words: "*The applicant must establish that there is indeed a judgment or order in force giving rise to the issue of contempt. He must then go further to show the court that the contemnor had knowledge of the said order and the duty on him to do or abstain from doing a particular act. Lastly the petitioner must establish that the contemnor intentionally or willfully disobeyed the order or judgment of the court*." These requirements are dealt with below ***ad seriatim***.

This threshold requirement was aptly exemplified in ***Republic v. Boateng & Anor; Ex parte Agyenim Boateng & Ors***,[120] where the Court of Appeal had granted the 1st Respondent the right to withdraw the disputed money on 22nd May. The Applicant filed the motion for Stay of Execution in the Supreme Court on 28th July. The Respondents had begun drawing on the account from the 6th June. At the time the major and huge withdrawals were done, there was no order of stay of execution inhibiting or prohibiting the 1st Respondent from receiving the compensation. On attachment for contempt, the Supreme Court unanimously held that, the Applicant has not met the litmus test required of him to succeed in contempt against the Respondents. **Dotse JSC** (as he then was) concluded that: "*…there was no judgment, order or pending application duly served on the Respondents requesting them to do or abstain from doing something which they have wilfully flouted. This is an essential ingredient of proof of contempt. Once this crucial ingredient is lacking the application must fail. … under the circumstances the contemnor does not know what he is expected to do or abstain from doing and this has made the order or service of the process complained of highly ambiguous. Finally, the Respondents cannot be deemed to have wilfully disobeyed an order, judgment or a pending process of this court which they had no knowledge about. In the premises, this application for contempt against the Respondents is dismissed as being entirely without any merit whatsoever.*"[121]

The first essential element of civil contempt is that, ***there must be a judgment or order requiring the contemnor to do or abstain from doing something***. In ***Kangah v. Kyere***,[122] the applicant obtained an order restraining the first and second respondents from enstooling the third respondent as Omanhene, there was no further prohibitive order against the third respondent from doing anything or holding himself out as the omanhene. It was held that, since no prohibitive orders were issued under that judgment, the respondents who had not enstooled the third respondent cannot be held to have committed contempt if the third respondent so conducts himself as omanhene. In ***Ex Parte Laryea Mensah*** (supra), where the High Court's only order to bury the deceased had been carried out, the applicant published inter alia that the disputed land is vested in a named family. It was held that, this does not amount to contempt since there is no prohibition order of court or any other order against the applicant and no evidence at all of a wilful breach of such an existent order. In ***Ex parte Fordjour*** (supra), where the only order in the judgments relied on by the respondent for contempt was the order to return the stool to the Petelli house, which had been duly carried out. It was held that, the respondent commenced the contempt proceedings after the order, having been complied with, became discharged and no longer operative. Whatever the appellant did could not be said to amount to a disobedience of any order for him to be convicted of contempt. Likewisely, in ***Republic v. High Court, Ex parte Hansen Kwadwo Koduah (Paragon Investment Ltd - Interested party)***,[123] where the trial court made interim orders for the preservation of certain machinery until the final determination of the suit. It was held that, with the final judgement given the interim order accordingly lapsed. Therefore, at the time the motion for contempt was filed, there was no existing order capable of being disobeyed so as to ground an application for contempt.

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[112] Elikplim Agbemava Case (n 29) 72, Yeboah JSC.

[113] Acheampong Case (n 63) 13, Atuguba JSC; Elikplim Agbemava Case (n 29) 12, Benin JSC said: "*civil contempt does not attract a criminal tag even if imprisonment results therefrom*."

[114] Elikplim Agbemava Case (n 29) 15, Benin JSC.

[115] Quansah (n 9) 228.

[116] [1998-99] SCGLR 360.

[117] ibid 368. Also, in Ex parte Kwadwo Kanpordima (n 35), Ackaah-Boafo J said: "*…a person commits contempt of court if he has willfully and/or intentionally disobeyed an order of Court requiring him to do an act other than the payment of money or to abstain from doing some act*."

[118] [2001-2002] SCGLR 322.

[119] ibid 339; Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC; Ex parte Agyenim Boateng (n 33), Dotse JSC.

[120] [2009] SCGLR 154.

[121] ibid 161-162.

[122] [1979] GLR 458.

[123] [CM No. J5/10/2015] 04/06/2015 (unreported).

The next requirement is that ***the contemnor must know what precisely he is expected to do or abstain from doing***. Since an application for committal for civil contempt is based on the premise that the alleged contemnor has willfully disobeyed an order of the court, it is vital that the applicant establishes that the contemnor was aware of the court's order and despite the said knowledge, willfully disregarded the order.[124] Thus, the order must be as definite, clear and precise in its terms as possible, so that there may be no reason or excuse for misunderstanding or disobeying it.[125] In ***Ex parte Kwadwo Kanpordima Case*** (supra), it was held that, to hold a party liable in contempt, the rule is that the order sought to be enforced should be unambiguous and the party must be aware of the order and must be clearly understood by the party concerned. In ***Okai v. Mawu***,[126] the court held that the alleged contemnor could not be convicted for breach of an order of injunction when he had no knowledge of the existence of the order. In ***Republic v. Bekoe & Ors; Ex parte Adjei***,[127] It was held that it is a legitimate defence to a charge of contempt that the person charged has had no notice of the order; a person cannot be guilty of an order of the court of which he has had no notice. The applicant has failed to satisfy the court that all the respondents have notice of the order of the judicial committee prior to the date of the alleged contempt, either because they were present in court when the interim orders were made or that they were subsequently served on them. Hence the respondents could not be guilty of contempt. In ***Republic v. George Odiase & Ors, Ex parte Agyemang-Duah & Anor***,[128] it was held that, civil contempt focuses on disobedience of court orders and in our law such orders must have been served on the respondents before they could be rightly convicted for their disobedience. Therefore, since the 2nd, 3rd and 6th Respondents were not served with the injunction order, they cannot be held liable for contempt. In ***Republic v. Edward Acquaye @Nana Abor Yamoah II; Ex parte Charles Kweku Essel & Ors***,[129] it was held that, upon evaluation and assessment of the order of Woanyah J, it is ambiguous and unclear. There is absolutely nothing in the entire order to suggest remotely that the Respondent was not to hold or style himself as a chief of Gomoa Fetteh. The orders of the court do not require compliance or abstention from the doing of an act, to wit holding himself out as a chief of Gomoa Fetteh at the given time. Therefore, the conduct of the Respondent cannot constitute contempt in terms of the orders made by Woanyah J. Also, in ***Deepsea Division of the National Union of Seamen & Ors v. Trade Union Congress of Ghana & Ors***,[130] it was held that the court would only punish as contempt a breach of injunction if it was satisfied inter alia that the terms of the injunction were clear and unambiguous, and the defendant had proper notice of the terms. Lastly, in ***Republic v. Domelevo; Ex parte Osafo-Maafo & Ors***,[131] it was held that, in general, the law has always been that a person cannot be held in contempt of an order unless he had notice of the Order.

The final requisite ingredient is that ***the contemnor must have wilfully disobeyed the said judgement or order***. For an act of a party to amount to contempt of court, it must be established that he has been guilty of wilful disobedience or to have wilfully violated a specific order of a court.[132] The law is that, failure to comply with a court's order is prima facie contempt of court but to be punishable there must be contempt which involves an intentional or wilful defiance or disobedience of the court's order.[133] In ***Agbleta v. The Republic***,[134] where a circuit court registrar failed to prepare a record of proceedings in a case and also failed to appear before the judge to explain the cause of the delay as ordered by the judge. The judge found his explanation unsatisfactory and committed him for contempt. It was held that in so far as the judge failed to make an express finding of wilful disobedience of his order, he erred in law in finding him guilty of contempt. Also, in ***Ex Parte Laryea Mensah*** (supra), it was held that one could not be punished in the absence of a wilful breach of order to do or refrain from doing some act. In ***Luguterah v. Northern Engineering Co. Ltd***, the Respondents were found liable in contempt but were not punished because their conduct was not found to be wilful or intentional, for the Respondents had acted contemptuously upon negligent legal advice, giving rise to the contempt proceedings. Another principle of law ***vis-à-vis*** the wilful requirement is that, mere inability to pay a judgement debt for lack of money is not contempt of court; For there to be contempt, there must be an intentional unwillingness to do what the court has ordered to be done even though one has the ability to do.[135] In ***Asumadu-Sakyi II v. Owusu***,[136] where it was found as a fact that, the applicant was not or at any rate not in funds now to meet the payment of the sum ordered by the court. It was held that, he was adjudged guilty of contempt because he was thought wilfully

[124] Ex parte Agyemang-Duah (n 63).
[125] Ex parte Fordjour (n 110) 339; Collins v. Wayne Iron Works, 76 US 24 (1910).
[126] [1976] 1 GLR 265.
[127] [1982-83] 1 GLR 91.
[128] Note 63.
[129] [SUIT NO. CA J4/11/2008] dated 10/12/2008 (unreported).
[130] [1982-83] GLR 941.
[131] [SUIT NO. CR/0407/2020] dated 12/05/2020 (unreported) (HC).
[132] In Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068, Prof. Ocran JSC stated at p. 1108 that: "*'willful' may be used to describe an act which is done not only deliberately or intentionally, but in circumstances where the doer must also have intended or at least foreseen the probable consequences of their non-action.*" In Republic v. Ibrahim Adam & Ors [2003- 2005] 2 GLR 661 (HC), Afreh JSC said: "*(i) A wilful act is one done or suffered of one's own free will and choice it is voluntary; or (ii) It is done on purpose, with knowledge or awareness of what one is doing, consciously, deliberately, or intentionally. … it may imply awareness of foresight of the consequences of the act*."
[133] Agbleta v. The Republic [1977] 1 GLR 445 (CA), p. 447, Azu Crabbe CJ; Gbadamosi v. Mohammadu [1991] 1 GLR 283 (HC), p. 292, Benin J; Luguterah v. Northern Engineering Co. Ltd. [1980] GLR 62 (HC); Kangah v. Kyere [1979] GLR 458 (HC).
[134] [1977] 1 GLR 445.
[135] Baah v. Baah & Anor [1973] 2 GLR 8 (HC), p. 12, Annan JA.
[136] [1981] GLR 201 (CA), p. 205, Apaloo CJ.

to have disobeyed that order. If it was shown that he did not at that date have that money, then there could be no case of wilful disobedience meriting attachment for contempt. Also, in ***Gbadamosi v. Mohammadu***,[137] it was held that, a judgment-debtor could be said to have wilfully disobeyed a court's order to pay a judgment debt so as to make him liable in contempt where he had been served with the court's order which constituted a demand and he must have failed or neglected to comply with it even though at the date of the order the judgment-debtor had money to pay the debt. In ***Republic v. High Court; Ex Parte PPE Ltd and Paul Jurik (Unique Trust Financial Services - Ltd Interested Parties)***,[138] **Atuguba JSC** (as he then was) stated as obiter that even if committal would lie in respect of a decree for money, the judgment-debtor could not be committed to prison unless the applicant establishes willful default on his part.

Contrastingly, it is noteworthy that unlike a wilful disobedience of a court's judgement or order by a party to the suit which always amounts to a civil contempt, a wilful disobedience of a court's judgement or order by a stranger (non-party or third party) to a suit constitutes criminal contempt. For it is trite law that, 'the court has jurisdiction to punish for contempt a person, who, though not a party to the action, chooses to assist others in the doing of that which he well knew was prohibited by an order of the court. Such wilful disobedience to the court's order by a stranger to the litigation constitutes criminal contempt. The party to the proceedings that results in the restraining order against him commits civil contempt, if he disobeys the order.'[139] The pertinent issue that calls for redress in the first place is: *can a non-party to a suit be found guilty for contempt of court?* This receives a positive answer that, even though an order of a Court ordinarily binds the parties to the action, a third party can be found guilty of contempt, if with knowledge of the order, he aids or abets a party in breaking the order, or in other ways do anything that obstructs or frustrates the said Order.[140] In ***Seaward v. Paterson***,[141] an injunction was granted against Mr. Paterson alone but he violated the order with other persons who were not parties to the suit. Paterson and the non-parties were all convicted of contempt. In ***Nene Dugbartey Tetteyga II v. Sappor***, it was held that, the defendant was guilty of civil contempt because he was a party to the proceedings in the substantive action; and the respondents-appellants each was guilty of criminal contempt because each was a stranger to the proceedings in which the order of injunction was made. Similarly, in ***Interim Executive committee of Apostolic Divine Church of Ghana v. Interim Executive council & Ors (no. 2)***, the respondents who were not parties to the pending suit in which the order was made, were nevertheless held to be in contempt of wilful disobedience of the court's order. However, the law further states that, for the stranger to be punished for this criminal contempt, it must be established that he had knowledge of the existence of the order. In ***Okai v. Manu***, it was held that, a court would convict a stranger for breach of an order made by it only if he had knowledge of its existence. Therefore, since the plaintiff failed to prove that the stranger knew of the order he could not be held to have been in contempt of the order of interim injunction. Also, in ***Ex parte Kwadwo Kanpordima Case*** (supra), it was held that, because the Respondent was not a party to the suit, the law requires that he be made aware of the order and the consequences for disobeying same. Therefore, since Mr. Hagan, a stranger to the suit was not served with the interlocutory injunction Order together with a penal notice, he was not guilty of contempt.

3.3 Indirect Contempt (Contempt Ex Faciae Curiae)

Indirect (or constructive) contempt or ***contempt ex facie curiae*** consists of contempts committed outside the court. They are those contempts which arise from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, and the term is chiefly used with reference to the failure or refusal of a party to obey a lawful order, injunction, or decree of the court laying upon him a duty of action or forbearance.[142] ***Contempt ex facie curiae*** encompasses all the forms of criminal contempt except ***contempt in facie curiae***. Thus, the criminal contempt of scandalising the court, breaching the sub judice rule, and a stranger wilfully disobeying an order of a court are examples of indirect contempt. Illustrative case laws include: The ***Liberty Press Case*** (supra) where article was published about a criminal appeal pending before the Court of Appeal; the ***Mensah-Bonsu Case*** (supra) concerning publications scurrilously abusing justice Abban; the ***Abu Ramadan Case*** (supra) concerning various utterances on radio that threatened the Chief Justice, other justices and interfered with the pending suit; the ***2013 Presidential election petition Contempt Case*** (supra) concerning various publications and utterances against Justice Atuguba, prejudicing the pending suit and the parties to the action; etc. ***Contempt ex facie curie*** also comprises of the civil contempt of wilful disobedience to a court's order for something to be done outside the court by a party to the suit. Illustrative case laws include: ***Atta & Anor v. Mohamadu***;[143] the ***Tetteyga Case*** (supra); ***Ex parte Fordjour*** (supra); ***Ex Parte Laryea Mensah*** (supra); etc. Where contempt is ***ex facie curia***, it is the duty of the litigants and in some cases the Attorney General to bring proceedings to commit the contemnor for contempt.[144] Also, with indirect contempt the court will have to rely on the testimony of third parties to prove the contempt charged.[145]

[137] [1991] 1 GLR 283 (HC).
[138] [2007-2008] SCGLR 188 at 197.
[139] Tetteyga II Case (n 63) 281; Interim Executive committee of Apostolic Divine Church of Ghana v. Interim Executive council & Ors (no. 2) [1984-86] 2 GLR 181 (HC), Headnote 3.
[140] Ex parte Kwadwo Kanpordima (n 35), Ackaah-Boafo J.
[141] [1897] 1 Ch. 545.
[142] Ex parte Ameyaw II (n 10) 306-307, Acquah JSC.
[143] [1980] GLR 862 (HC).
[144] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC.
[145] ibid

3.4 Intentional & Unintentional Contempt

Contempt of court may be committed *intentionally* or *unintentionally*.[146] Intentional contempt arises where the contemptuous conduct(s) was done intentionally, wilfully, deliberately, knowingly or recklessly. The civil contempt of wilful disobedience to a court's order is indubitably intentional contempt. In ***Ex parte Kwadwo Kanpordima Case*** (supra), it was held that, to establish contempt in Ghana the Applicant must prove beyond a reasonable doubt that the accused defied or disobeyed a court order, with intent, knowledge or recklessness as to the fact that the public disobedience will tend to depreciate the authority of the court. Also, criminal contempts may be committed intentionally, and the punishment in that regard is severer than those committed unintentionally. In the ***Mensah Bonsu Case*** (supra), the majority held that, the scandalous publications made against Justice Abban were deliberately and intentionally published. In the ***2013 Presidential Election Petition Contempt Case***, it was held that the various publications and utterances made on radio by the series of contemnors were deliberate and calculated to bring the administration of justice into disrepute, obstruct the pending petition and prejudice the parties to the action. Hence amounts to intentional criminal contempt of the court. In the ***Abu Ramadan Case*** (supra), the conducts of the contemnors were held to have been intended or calculated to interfere with and obstruct the course of justice.

Unintentional Contempt arises where the contemptuous conduct(s) was committed unintentionally or accidentally. So far, it is only criminal contempt that can be committed unintentionally. For it is trite law that, lack of knowledge of the pendency of an action is no defence, it could only be taken into consideration when passing sentence to mitigate punishment. In ***Re Onny (Contemnor); Ohene v. Tanko***,[147] **Akufo-Addo CJ** (as he then was) said: "*While it is possible that the appellant might not have known of the pendency of the proceedings before the court, such absence of knowledge is actually no defence … if his action was in fact in contempt of court, although the proved absence of knowledge would afford a mitigating circumstances when it came to assessing punishment.*" Likewisely, in ***Narh v. Dombo*** (supra), **Azu Crabbe Ag. CJ** (as he then was) stated: "*If therefore during the pendency of the suit the appellants did an act which would have the effect of interfering in any way with the trial of that case, they would be in contempt of court, and it would be of no avail to them to show that they were not served personally with the writ. For neither lack of knowledge of the pending suit, nor lack of an intention to commit contempt is a defence.*" In ***Ex parte Allotey Case*** (supra), it was held that, even if Codjoe had no knowledge of the pendency of the said motion, absence of such knowledge could not be a defence, if his conduct was in fact in contempt of court. Lack of knowledge of the pendency of the said motion could only be taken into consideration when passing sentence. Nevertheless, in ***Ex parte Agyemang-Duah Case*** (supra), where counsel for the Applicants argued that absence of knowledge of the pendency of a court proceedings or an order of the court is no defence to a contempt charge. It was held that, this submission is only applicable to criminal contempt where any conduct that tends to bring the dignity of the court into disrepute or obstruct the administration of justice is contemptuous whether the contemnor is aware of the pendency of a court proceeding or not.

4 CONTEMPT OF COURT AND FREEDOM OF SPEECH AND EXPRESSION

Irrefutably, freedom of speech and expression in any democratic society is the most prominent fundamental right, a lever upon which all other rights hinge.[148] As such, for its effective realisation, **the 1992 Constitution of Ghana** guarantees the right to freedom of speech, of expression and of the media including the press.[149] However, as was held in ***Republic v. Tommy Thompson Books Ltd & Ors (No. 2)***,[150] although **articles 21(1)(a) and 162(1) and (2) of the Constitution, 1992** conferred on every citizen and the media of Ghana the right of freedom of speech and expression, and the right to publish, respectively, those rights were not made absolute.[151] It is subject to reasonably limitations required in terms of **articles 12(2) and 164 of the Constitution, 1992**. Thus it is trite law that '*a right is correlative to responsibility*'[152] and therefore within the exercise and enjoyment of freedom of speech and expression, it is the duty of every Ghanaian citizen to uphold and defend the Constitution and the law that established the independent judiciary to administer justice and safeguard public confidence in itself.[153] This was noted by **Sophia Akuffo JSC** (as she then was) in the ***Abu Ramadan Case*** (supra), when she stated that: "*[w]e need to remind people who decide to criticize the Judiciary that within the right to publish and transmit, within the freedom of expression, there is a line that ought not to be crossed. This is encapsulated in the Directive Principles of State Policy, Article 41.*"[154]

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[146] ibid; In Ex parte Nana Kuffour I (n 51) 1667, Foster JA said: "*It is sufficient to constitute contempt, if the conduct in question amounts to treating the judgment of the court with impunity, either as a result of ignorance or a deliberate contemptuous disregard*."

[147] (1968) C.C. 51 (CA). See also, Interim Executive committee of Apostolic Divine Church of Ghana Case (n 139), Headnote (2).

[148] Ghana Independent Broadcasters Association v. Attorney-General & Anor [Writ No. J1/4/2016] dated 30/11/2016 (unreported), p. 2, Benin JSC.

[149] The Constitution 1992, Arts. 21(1) (a), 55(11) & 162-173.

[150] [1997-98] 1 GLR 515 (SC), Headnote (1).

[151] Attorney General of Antigua and Barbuda v. Hector (Civil Appeal 5/1986 St. V CA) dated 22/06/1987, at p. 12, Robotham CJ said: "*Absolute and unrestricted individual rights wholly freed from any form of restraint cannot exist in a modern democratic society. … the liberty of an individual to do as he pleases even in innocent matters is not absolute. It must frequently yield to common good.*" See also: Gitlow v. New York, 268 US 652 at 666 (1925).

[152] Mensah-Bonsu Case (n 2) 516, Hayfron-Benjamin JSC.

[153] The Constitution 1992, Art. 41(b) & (i).

[154] pp. 11-12.

The Ghanaian courts have over the years emphasised on the need to observe the line drawn between their power to commit for contempt and the exercise of one's freedom of speech and expression. This line was envisaged in the commentaries of **Blackstone**, the great English lawyer and oracle of the common law, when he wrote that: "*Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequences of his own temerity.*"[155] In fact, in the ***Elikplim Agbemava Case*** (supra), **Dotse JSC** advised that, "*[i]n these days of media pluralism and free expression, a delicate scheme must be maintained in striking a balance between where free expression ends and where the courts have been scandalized. Otherwise we run the risk of endangering the security of the state and its independent constitutional bodies, such as the Judiciary.*"[156] In the absence of any legislation to that effect, the courts themselves have endeavored to define the line or limit that has to be maintained between the two. In this regard, the ***Liberty Press Case*** (supra) is very instructive, when **Akuffo-Addo CJ** (as he then was) said that, the judiciary has never claimed to be above criticism, and indeed like any other democratic institution, the judiciary must justify its continued existence. Thus its actions and conduct must be subject to the same measure of public scrutiny as any other governmental institution. However, "*[i]t is contempt of court by deed or word to scandalise the courts. It is contempt of court to make statements amounting to abuse of the courts. It is contempt of court to make statements which tend to expose the courts or parties who resort thereto to the prejudice or hatred or ridicule of mankind. Within these limits and within the further limits set by the legitimate exercise of the freedom of thought and expression criticism of judicial acts is free. … The freedom which the press enjoys is no less and no more than the freedom of thought and expression which the humblest illiterate citizen of Ghana enjoys. … There is however no law which prohibits absolutely any such comments, but there is law which punishes if the limits set by law are transgressed... …the courts are not above criticism but the courts will not allow themselves to be subjected to pressures emanating from irresponsible and romantic criticisms.*"[157]

In an eminent and vigorous manner, **Bamford-Addo JSC** (as she then was) in the ***Mensah-Bonsu Case*** (supra) stated affectionately that: "*It is true that once a case has been concluded it is given over to criticism, and provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising their right of criticism and not acting in malice, they are perfectly entitled to criticise any judgment. … However, it should not be forgotten that there are limits to this freedom, and therefore even though one is in fact criticising, if imputation of improper motives are attributed to those taking part in the administration of justice calculated to interfere with the administration of justice, a publisher of such matter would not be immune from contempt. … Free speech carries with it duties and responsibilities and is subject to conditions and restrictions prescribed by law, including committal for contempt of court when this offence is committed. … The importance of a free press in any democratic society cannot be over-emphasised and this is because no society can thrive and progress if there is no freedom of expression, which is essential to the achievement and maintenance of a democratic society. That is why the press may criticise in matters of public interest but it must be remembered that this right is not absolute, but subject to the limitation that it does not violate the integrity of the court or present a threat to judicial authority. Criticism, however trenchant, is permitted, but criticism ends when "scurrilous abuse" begins, and there is a great difference between criticism of a judgment and imputation of unfairness and of partiality to a judge as a judge. This is contempt, not the permissible criticism recognised by the law. Nor would a mixture of "scurrilous abuse" and criticism make it fair and permissible criticism. The chaff would contaminate the wheat thereby converting fair criticism into "scurrilous abuse" amounting to contempt of court. … There is no doctrine of judicial infallibility. Judges are human beings capable of erring and making mistakes and when they do, they can be criticised, but then it is risky for anyone when criticising errors made by judges, to intentionally impute improper motives to them since such act could amount to contempt.*"[158] Also, **Ampiah JSC** (as he then was) added that: "*[t]he law permits some amount of criticism of a judgment, order or pronouncement of the court, but such criticisms must be made in good faith devoid of malice, and in temperate words.*"[159] Sincerely speaking, it is humbly submitted that, although the courts have made enormous effort to set out the frontiers, a comprehensive legislation should be made to explicitly delineate what constitutes the limits or the line that needs not be crossed between contempt of court and the exercise of freedom of speech and expression. This will deter and help reduce the many contemptuous conducts done through utterances and publications.

5 CONTEMPT OF COURT AND PREROGATIVE OF MERCY

'*Prerogative of Mercy*' is defined as 'the limited discretionary power of a supreme authority, such as a state governor, national president, or sovereign, to commute a death sentence, change the method of execution, or issue a pardon, especially, for a person convicted of a capital crime.'[160] It originates from the common law and has been exercised in convicted offences including criminal contempt. Thus at common law, the prerogative of the Crown extends to the remission of a sentence for criminal contempt, but the Crown never interferes in the case of a contempt that is not criminal.[161] In Ghana,

[155] Sir William Blackstone, Commentaries on the Laws of England, 4 vol. (1765–69), pp. 151-152; Richards v. Attorney-General of St Vincent and the Grenadines [1991] LRC (Const.) 311, at 318.
[156] p. 62.
[157] pp. 135-138.
[158] pp. 479-483.
[159] P. 528; Also see: Republic v. Yeboah, Ex parte Nyemitei & Anor [1991] 1 GLR 587 (HC), where Lutterodt J said at p. 596 that: "*What the law frowns on and will use its machinery to punish is material which is not fair, temperate and with oblique motive, calculated to abuse a party for fighting for his rights.*"
[160] Black's Law dictionary (8th edition, 2004), p. 1220.
[161] Halsbury's Laws of England, 4th Edn. (reissue) vol. 9(1), para. 404 at page 242.

Articles 72(1) (a) of the Constitution 1992 provides that, the President may, acting in consultation with the Council of State, grant to a person convicted of an offence a pardon either free or subject to lawful conditions. This provision has been held to mean that, once it is established that a person has been convicted of an offence, the prerogative of mercy becomes exercisable by the President, acting in consultation with the Council of State.[162] Therefore, since criminal contempt is an offence and attracts criminal penalties as a misdemeanour, it is an offence within the meaning of **article 72 of the 1992 Constitution**; and the prerogative of mercy extends to persons convicted of criminal contempt.[163] The locus classicus on this law is the ***Elikplim Agbemava Case*** (supra), where after the contempt conviction and sentence in the Abu Ramadan Case (supra), the convicts wrote a petition to the President, urging him to exercise the prerogative of mercy under **article 72 of the 1992 Constitution** in their favour. The President upon the advice of the Council of State announced that he had exercised the prerogative of mercy in favour of the three convicted persons, by remitting part of the jail term. Wherein the plaintiffs challenged the constitutionality of the exercise of the prerogative of mercy in contempt convictions. The main issues include inter alia: (i) *whether or not the exercise of the prerogative of mercy extends to conviction for an offence founded on contempt of court*; and (ii) *whether the prerogative of mercy is an affront to the independence of the judiciary as conceived under the Constitution*. The 5 to 2 Majority of the Supreme Court (**Benin, Adinyira, Baffoe-Bonnie, Appau,** and **Pwamang JJSC**) dismissed the action and held inter alia that, *firstly*, since criminal contempt is an offence and attracts criminal penalties as a misdemeanour, the President's power to exercise prerogative of mercy under **article 72 of the Constitution** extends to and covers convictions for criminal contempt. *Secondly*, the exercise of the prerogative of mercy in criminal contempt cases does not interfere with the independence of the judiciary, which relates to its core mandate, that of administering justice, and with it its administrative support. Thus it is in the course of performing this core mandate that the judiciary is completely insulated against any external interference. In criminal matters, the process of adjudication ends in a trial court after sentence is pronounced. After the imposition of a jail term on a person, the execution of the sentence is by executive action, and not judicial. Consequently, the remission of sentence granted to the convicts cannot be questioned by the court as it followed due process.

This decision of the majority of the Apex Court, though sound in law and in accord with the common law position, should with tremendous respect be viewed with caution. Its effects have the tendency to render the work of the judiciary pointless. The dignity and public confidence in the courts for the proper administration of justice would be severely prejudiced if politicians can devastatingly treat the law courts with disdain and publicly demonstrate lack of respect for law and order, only to go scot-free. This is the case, especially as the members of the political party in power indulge in worst criminal contemptuous conducts and run to the president to be pardoned and freed after conviction and sentence. The check on the President's prerogative of mercy power (i.e. "*may acting in consultation with the Council of State*") is not enough, since the advice and recommendations of the Council of State are not binding on the president who may seek to please his political party and its members that brought him into power.[164] Thus, notwithstanding the fact that I agree with the reasoning and conclusions of the majority, it is my noble view that, the said decision should be modified to maintain the dignity and confidence in the courts. A more plausible solution which saves the authority of the judiciary is the conclusion reached by **Anin Yeboah JSC**'s dissenting opinion. Where his Lordship held that, if the contempt proceedings was initiated by the Attorney-General, the President, upon the conviction of the contemnor could exercise his powers under **Article 72 of the Constitution** as the initiation of the proceedings would be deemed to have been done on his behalf. But where the initiation of the criminal contempt proceedings was done by the Superior Court ***ex proprio motu*** under **Article 126(2)** which acknowledges the Superior Court's inherent power to commit for contempt, the powers of the President should be ousted. The rationale being that, this power of the Superior Courts should not be subjected to any interference from the President and other organs of state when it convicts any person for contempt summarily under it. This will safeguard the dignity and confidence of the ordinary Ghanaian in our law courts, being able to utilise its inherent contempt powers to quench the worst terrors of the oppressors that tend to obstruct the course of justice and bring the entire administration of justice to its knees.

6 CONTEMPT OF COURT PROCEEDINGS

This section does not purport to provide any detailed nature of contempt of court proceedings, as indeed, the entire contempt proceedings have been castigated as '*so nebulous and admits of no certainty*'[165], but attempts as far as possible, to provide a concise overview of what may entail in contempt of court proceedings in Ghana. As has been noted, the purpose of contempt proceedings is to maintain the dignity of the court and ensure public confidence in the administration of justice.[166] Contempt proceedings may be initiated by the Superior Courts suo motu, the Attorney-General or somebody else at his direction, or any of the parties to a suit. The power of the Court

[162] Elikplim Agbemava Case (n 29) 12, Benin JSC.
[163] ibid 23 & Adinyira JSC at p 41-42.
[164] Ghana Bar Association & Ors v. Attorney General & Ors [J1/26/2015] dated 20/07/2016 (unreported), the Supreme Court unanimously held that, the expression "*in consultation with the Council of State*" although connotes that the President must have consultations with the Council of State, he is nonetheless not bound by any such advice or opinion.
[165] Ex parte Agyenim Boateng (n 33) 9, Dotse JSC.
[166] Ex parte Kennedy Agyapong (n 8) 30, Kulendi JSC.

to punish for contempt of court is exercised by an order of committal.[167] The committal proceedings are commenced by an application to the Court which is supported by an affidavit outlining the grounds of the application or the Court on its own motion may make an order against a person to show cause why the said person should not be committed for contempt of court.[168] The person against whom an application or an order of committal for contempt is made is called the contemnor. Proceedings in an application for contempt cannot commence until the court satisfies itself that the respondent to the application has so been personally served.[169] It is therefore necessary to formulate the charges or allegations with particularity so as to give fair notice of the same to the respondent to enable him prepare to meet them.[170] Where the contempt is clear and unambiguous the procedure for trial has always been by summary trial, whereas in a case where the contempt is not all that clear and certain indictment has been the appropriate procedure.[171] In criminal contempt proceedings, '[a] charge is prepared and read to the contemnor in open court. The plea of the contemnor is taken. If he pleads guilty, the contemnor is convicted on his own plea and thereafter his sentence given. Even when the contemnor is convicted, his plea of mitigation is usually considered before a sentence is passed on him.'[172] Whereas in civil contempt proceedings which is quasi-criminal, an alleged contemnor who is thought of wilful disobedience of a court's order is presumed innocent until proven guilty.[173] The applicant must therefore first make out a ***prima facie*** case of contempt against the respondent before the Court can turn to consider the defences put up.[174] Thus the applicant has to adduce sufficient evidence, documentary or oral to establish the essential elements of the civil contempt.[175]

The standard of proof in contempt proceeding is well settled! Contempt of court is a quasi-criminal process which requires ***proof beyond reasonable doubt*** irrespective of whether the act complained of is criminal contempt or civil contempt.[176] In ***Republic v. Bekoe & Ors: Ex parte Adjei***,[177] **Osei-Hwere J** (as he then was) held that: "*Although this motion deals with a civil contempt, it partakes of the nature of a criminal charge. The respondents are liable to be punished for it and may be sent to prison. The principle of law is quite clear that where a person is charged with contempt of court, which involves his liberty, his guilt must be proved with the same strictness as that required in a criminal trial, that is, proof beyond reasonable doubt.*"[178] In ***Ex parte Benjamin Duffour Case*** (supra), **Baffoe-Bonnie JSC** held that: "*For the appellant to succeed in establishing contempt, he must adduce cogent and credible evidence to prove beyond reasonable doubt that his summary dismissal amounted to a willful disobedience of a court order. ... The appellant has demonstrated to this court with cogent evidence that the reason for his summary dismissal was due to his failure to relocate from the apartment. ... We will therefore hold that the act of the Bank in summarily dismissing the appellant was in contempt of court.*" In ***Republic v. Nana Kwasi Adu & Ors; Ex parte John Osei Kusi***,[179] **Marfo Saul JA** (as he then was) held that: "*In as much as no evidence was adduced to establish that the Appellants had failed to obey or comply with an order or decree contained in the ruling of Abrahams J. …, they could not have been guilty of contempt. The law is that contempt being quasi – criminal, the proof is beyond reasonable doubt...*" Lastly, in ***Ex parte Kwadwo Kanpordima Case*** (supra), **Ackaah-Boafo J** (as he then was) poignantly stipulated that: "*It is roundly agreed upon by the authorities that contempt of court being quasi-criminal, the standard of proof required is proof beyond reasonable doubt. …the reasonable doubt threshold does not require a fantastical suspension of disbelief. It is a doubt that logically arises from the evidence, or the lack of evidence based on common sense and reason.*"

The fundamental question of great importance that requires immediate response at this juncture is: *which court has jurisdiction in contempt of court proceedings?* It is trite law that, the power to commit for contempt and the power to release or otherwise pardon the contemnor was one of the inherent powers of the Superior Courts of record.[180] Thus, the powers of the Superior Courts to commit anyone for contempt have always been inherently recognized by the Courts at Common Law.[181] In Ghana, the Superior Courts of record have not only inherited this common law power, but also the said power has received statutory emboldenment and constitutional crystallisation.[182] Under **Article 126(1)(a) of the 1992 Constitution**, the Superior Courts of Judicature comprise of the *Supreme Court*, the *Court of Appeal*, and the *High Court and Regional Tribunals*; and who under Article 126(2) shall be the courts of record. **Article 126(2) of the Constitution** and **Section 36(1) of the Courts Act, 1993 (Act 459)** vest in all the Superior Courts with jurisdiction to commit for contempt to themselves.

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[167] High Court (Civil Procedure) Rules 2004 (CI 47), Order 50 r 1(1).
[168] ibid rr 1(2), (3) & 2.
[169] Ibid r 1(4); Republic v. High Court; Ex parte Millicom Ghana Limited & Ors (Superphone Company Limited – Interested party) [Civil Motion No. J5/43/2008] dated 04/02/2009 (unreported), p. 6, Owusu (Ms.) JSC; Ex parte Agyemang-Duah (n 63), Osei-Hwere J.
[170] Ex parte Ameyaw II (n 10) 322, Atuguba JSC.
[171] Liberty Press Case (n 4) 132, Akufo-Addo CJ.
[172] Ex parte Kennedy Agyapong (n 8) 28, Kulendi JSC.
[173] Ex parte Agyenim Boateng (n 33) 7.
[174] Ex parte Ameyaw II (n 10) 310, Acquah JSC; Rose Amele Saka Case (n 45) 3, Derry J; Kangah v. Kyereh [1979] GLR 458, p. 463, Ansah-Twum J.
[175] Ex parte Agyenim Boateng (n 33) 7.
[176] Ex parte Benjamin Duffour (n 45), Baffoe-Bonnie JSC; Ex parte Ameyaw II (n 10) 312, Acquah JSC; Akele v. Coffie & Anor and Akele v. Okine & Anor (Consolidated) [1979] GLR 84, p. 87-88, Taylor J; Gbadamosi v. Mohammadu (1991) 1 GLR 283, p. 292, Benin J; Republic v. Amandi [2001-2002] 2 GLR 224, p. 231, Ansah JA; Ex parte Agyenim Boateng (n 33) 7, Dotse JSC; Ex Parte Charles Kweku Essel (n 35) 9, Dotse JSC; Ex parte Obaapanin Afua Amadie (n 106) 7, Brobbey JSC; Ex Parte Agbleze (n 17) 3-4, Adinyira (Mrs.) JSC; Elikplim Agbemava Case (n 29) 22, Benin JSC.
[177] [1982-83] 1 GLR 91.
[178] ibid 94.
[179] [Civil Appeal No. H1/225/07] dated 17/04/2008 (unreported).
[180] Asumadu-Sakyi II v. Owusu [1981] GLR 201, p. 204, Apaloo CJ.
[181] Ex parte Kennedy Agyapong (n 8) 18, Kulendi JSC.
[182] ibid; Mensah-Bonsu Case (n 2) 470, Bamford-Addo JSC; Elikplim Agbemava Case (n 29) 74-75, Yeboah JSC.

These provisions confer the powers to commit for contempt on the Superior Courts severally and not jointly and severally.[183] In ***Ex parte Hansen Koduah Case*** (supra), the Supreme Court unanimously held through **Akoto-Bamfo JSC** (as she then was) as follows: "*Article 126(1) clearly demonstrates that there are several designated superior Courts of Judicature; each court being vested with the power to commit for contempt to itself. This was clearly depicted the use of the word THEMSELVES as opposed to ITSELF that the power was not intended to belong collectively to the creature known as the superior courts but to each court that has the designation of a superior court. The words are clear and admit of no ambiguity that each of the courts set down under article 126(1) has the power to commit persons whose conduct tends to bring it into disrepute. If the orders complained were made by the Court of Appeal, which under Article 126(2) has the power to commit for contempt to itself; then it follows that the High Court which committed the applicant had no such power and therefore acted without jurisdiction and in contravention of the express provisions of the article 126(2) of the 1992 Constitution. The proceedings were therefore a nullity.*"[184] In ***Ex parte Kennedy Ohene Agyapong Case*** (supra), it was held that, the High Court, however differently constituted and/or designated, being a Superior Court, has the power to commit for contempt to itself. Nevertheless, **Kulendi JSC** (as he then was) enunciated certain exceptions to this law when he said: "*…when the circumstances that give rise to contempt proceedings are such that, a judge becomes personally interested in the matter, or that a judge's personality is attacked or that scandalous or insulting language has been used against a particular judge, and, where the contempt is committed ex facie curiae, that particular judge, where the circumstances permit, should not adjudicate on the matter. … Where a judge, in fairness to his conscience is of the opinion that the nature of contempt committed in facie curiae is such that he cannot impartially discharge his judicial oath, such a judge should recuse himself from sitting on the proceedings and cede the trial to the Court, differently constituted.*"[185] So in this case, it was further held that, the trial judge's use of the phrase 'severely punished' in the contempt summons and his conduct and disposition in the course of the proceedings before him amounts to bias, prejudice, and bad faith and disables him from being able to exercise his discretion fairly. Consequently, he was denied jurisdiction to continue with the contempt proceeding. It is also trite law that, the lower courts or tribunals and any other adjudicating bodies other than the superior courts of record do not have the power to commit for contempt to themselves, but have to submit to the Superior Courts to punish for the alleged contempt committed before it.[186] Hence, **Section 33(8) of the Chieftaincy Act, 2008 (Act 759)** and **Regulation 13(5) of the Chieftaincy (Proceedings and Functions) (Traditional Councils) Regulations, 1972 (L.I 798)** require the Judicial Committee to submit certificate of contempt committed before the House of Chiefs to the High Court to be punished or acquitted.[187]

The next issue to consider is: *Can a contemnor be personally heard?* Generally, the law is that a person in contempt cannot be heard until he has purged his contempt, for the reason is that having shown no respect for the orders of the court, it would not be proper for the court to exercise its discretion in his favour.[188] In ***Ababio v. Gyeabour III***,[189] on a preliminary objection raised by the plaintiff that the defendants were in contempt of the order of the trial court by leasing portions of the land in dispute and should therefore not be heard on the appeal. The Court of Appeal ordered the appellants to purge their contempt before they could proceed with their appeal. Similarly, in ***Dankwa v. Amartey & Anor***,[190] where the applicant was still in occupation of the disputed land in utter contempt of the order of perpetual injunction, he came to the court praying for stay of execution of the judgment. It was held that, the applicant should have purged his contempt before he could be heard on his application. He had shown no respect for court orders and it would not be proper for the court to exercise its discretion in his favour. The equitable maxim "*he who comes to equity must come with clean hands*" must apply. Also, in ***Ex parte Asakum Engineering and Construction Ltd Case*** (supra), **Bamford-Addo JSC** (as she then was) held that: "*Subject to certain exceptions, a party in contempt is deferred from being heard or taking steps in the same cause until he has purged his contempt. The second respondent was never an adjudged contemnor nor was he taking steps in the same cause, so that the High Court did not act ultra vires when he entertained the winding up petition.*"[191] Nonetheless, there are some exceptions to this general rule giving out certain rights of a contemnor to be heard. Most notably being that, a person who contests the regularity of the process or service by which he is in contempt can be heard in the absence of a purge. In ***Gordon v. Gordon***,[192] it was held that the principle that a person in contempt cannot be heard, prima facie applied to voluntary applications, i.e. when the party comes to the Court asking for something, but not when he is challenging the order that it was made without jurisdiction or in cases in which all that he is seeking is to be heard in respect of matters of defence. However, it is not in all matters of defence that the contemnor is entitled to an audience; where the allegation is that the court has exercised its jurisdiction wrongly, then he ought not to be heard.[193] In ***Ex parte Hansen Kwadwo Koduah Case*** (supra), it was held that, where it is suggested that the order may have been made without jurisdiction, and it is apparent on its face; the Court will ordinarily entertain the objection to the order even though the person making it is in contempt. In such a case, the fact that the

[183] Republic v. Dr. Kwame Duffour, Ex Parte Nicholas Edward Asare [CM No. J8/13/2008] dated 05/03/2008 (unreported), p. 4, Atuguba JSC delivering the unanimous judgment of the Supreme Court.
[184] At pp. 9-10.
[185] At p. 30.
[186] Ex parte Ameyaw II (n 10) 314-315, Acquah JSC.
[187] See: Ex parte Korkor & Ors [1982-83] GLR 1154, p. 1156, Twumasi J.
[188] Ex parte Hansen Koduah (n 5) 7, Akoto-Bamfo JSC.
[189] 27 June 1991 (CA), unreported.
[190] [1994-95] GBR 848 (CA).
[191] [1993-94] 2 GLR 643 (SC), p. 661, Bamford-Addo JSC.
[192] [1904] Probate Division 163.
[193] Ex parte Hansen Koduah (n 5) 7, Akoto-Bamfo JSC.

person is in contempt would not deprive him of his right to be heard.

The final consideration has to do with punishment in contempt of court cases. When it comes to punishment, the law draws a distinction between civil and criminal contempt. Whereas punishment for criminal contempt is punitive and requires conviction and sentence, punishment for civil contempt is remedial and the contemnor may be fined or committed to prison.[194] Thus the punishment for contempt may be by writ of sequestration, payment of a fine, giving of security for good behaviour, imprisonment, etc.[195] The ***locus classicus*** on punishment for contempt is the ***Nene Dugbartey Tetteyga II Case*** (supra), where **Azu Crabbe CJ** (as he then was) held as follows: "*What then are the orders which the court makes, or the sanctions which it imposes, in contempt proceedings? On the hearing of the motion the court may, in making the order for a writ to issue: (1) Inflict a fine or sentence the offender to a definite term of imprisonment or both, (2) Sentence the offender to an indefinite term of imprisonment, (3) Order sureties to be found for good behaviour, (4) Order the offender to pay the costs of the proceedings, (5) Impose only a fine and payment of costs. Where the contemnor is a corporation, the contempt is punished by the sequestration of its property, but the officers of the corporation responsible for the contempt and capable of remedying it may be committed, or the corporation, such officers, or both may be fined and ordered to pay the costs of the proceedings.*"[196] It is the majority decision that determines the committal or conviction for contempt.[197] Once a court has made a finding of guilt or otherwise on the same facts of contempt, another court cannot try the same person(s) on the same charge, it would amount to double jeopardy.[198] *Can a judgement or order which is void serves as a basis for contempt?* In ***Republic v. High Court; Ex parte Osafo***,[199] the Supreme Court set aside a committal for contempt because the judgment on which it was based was a nullity. However, in ***Republic v. Michael Conduah; Ex parte Supi George Asmah***,[200] it was held that, since the High Court had acted without jurisdiction, it vacated the order it had made over ten years earlier. But, as long as that decision had not been set aside the applicant had no reason to disobey it and so allowed the conviction for contempt to stand.

Another proposition of law is that, it is not necessary for an applicant wishing to purge his contempt to assign reasons why he disobeyed an order of the court; It is sufficient that he appreciates that he has done the wrong thing and takes the necessary steps to remedy his fault and apologise to the court.[201] So in ***Atta v. Mohamadu***,[202] the Court observed that, the contemnor has by his overtures exhibited sufficient penitence, and ordered his release from prison. In ***Ex parte Allotey Case*** (supra), it was held that, the first respondent at the very first opportunity, rendered his '*profound apology*' to the court; he repeated the said apology. These apologies should be sufficient to purge his contempt, and he is therefore cautioned and discharged. Prison sentences will be too harsh under the circumstances, and that token fines will be adequate to purge their contempt. In ***Asumadu-Sakyi II Case*** (supra), it was held that, the sixteen months the contemnor spent in prison is sufficient to vindicate the court's power and supremacy. Lastly, once a court makes a determination that the conduct of the respondent did not constitute contempt, the interests of the public and the administration of justice had been adequately served, and the role of the applicant as a faithful public servant, for the purposes of the protection of the judicial process, ceased.[203] Therefore, application for review is not available.

7 Conclusion

In a nutshell, the very existence of the courts of law and the entire judicial system remain futile, if bereft of their dignity and public confidence in the administration of justice. To raise awareness and safeguard the dignity and public confidence in our courts and their noble tasks called upon and anointed to perform, this work had astutely discussed and advocated for the need for effective utilisation of the contempt power to sanitise and eradicate the many contemptuous conducts that poison the outflow of the everlasting streams of justice. The nature and different classes of this power had been explicitly elucidated upon. The constituents of the line to be maintained between the contempt power and ones' exercise of freedom of speech and expression had also been illuminated. The paper had suggested that, the exercise of the prerogative of mercy power by the President in criminal convictions should not be extended to cover criminal contempts initiated by the Superior Courts suo motu, so as to retain the sacrosanctity of their independence guaranteed in the Constitution. An exertion had been made to outline what transpires in contempt of court proceedings in our legal system. It is my respectful ultimate submission that, notwithstanding the many divergent views on the call to jettison the courts' contempt powers, the conclusion of the ***Lord Shawcross Committee's Report*** is very instructive and should be followed. According to this Committee, "…*it is essential to the maintenance, and indeed to the very existence, of the*

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[194] Tetteyga II Case (n 63) 283, Azu Crabbe CJ; Elikplim Agbemava Case (n 29) 12, Benin JSC; Republic v. High Court, Ex parte Kofi [1999-2000] 1 GLR 61 (CA), Wood JA.
[195] High Court (Civil Procedure) Rules 2004 (CI 47), Order 50, rr 5(2) & 6.
[196] p. 282. See also, Anoe & Anor v. Antwi & Anor [CA.137/99] dated 13/06/2008 (unreported), p. 2, Pwamang JSC.
[197] Mensah-Bonsu Case (n 2) Bamford-Addo JSC at p 485, Ampiah JSC at p. 530.
[198] Republic v. Thompson & 10 Ors; Ex parte Aninakwah II [Civil Appeal No. J4/46/2010] dated 16/01/2014 (unreported), p. 23, Benin JSC.
[199] [2011] 2 SCGLR 966.
[200] [Civil Appeal No. J4/28/2012] dated 15/08/2013 (unreported); Ex parte Aninakwah II (n 198) 19, Benin JSC.
[201] Atta v. Mohamadu [1980] GLR 862 (HC), p. 866, Roger Korsah J.
[202] ibid; Baah v. Baah & Anor [1973] 2 GLR 8 (HC), the Court ordered the defendants to purge their contempt by lodging a suitably worded written apology to the court within 24 hours.
[203] Ex pater Ameyaw II (n 10) 638, Edward Wiredu JSC.

legal system of any State that the Court should have ample powers to enforce its orders to protect itself from abuse of itself or its procedure. …we recognise and accept this principle. In our view any alteration or amendment of the law of contempt of court must be such as will, without any doubt, leave the court with sufficient powers for these purposes."[204]

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[204] Justice (Chairman: Lord Shawcross), Contempt of Court (1959).