Neutral Citation Number CC17 {2018) C2 (General Civil Division)

Case No: CC 17/2018

IN THE HIGH COURT OF JUSTICE
HOLDEN AT FREETOWN
GENERAL CIVIL DIVISION

Law Court Building
Siaka Stevens Street
Freetown
Date: 20 January 2023

Before:

THE HONOURABLE MR JUSTICE FISHER J

Between:

The State

-and-

Edmund Abu Jnr **Contemnor**

VI Lansana Esq and MPH Sesay for the contemnor

Hearing date: 19 January 2023

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APPROVED ORDER

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I direct, that copies of this version as handed down may be treated as authentic.

THE HONOURABLE MR JUSTICE FISHER

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The Honourable Mr Justice Fisher J:

Introduction

1. In pending proceedings before me in which the contemnor made a number of comments and allegation which were calculated to bring the judiciary into disrepute, cast aspersions on the integrity of the Hon Chief Justice and the entire judiciary including myself as the trial judge and disrespected the court in the face of the court by walking off before being allowed to leave, it was considered that these utterances by the contemnor were calculated to interfere with ongoing proceedings before me, thereby interfering with the administration of justice. The contemnor has applied by way of an ex parte notice of motion, dated the 19th day of January 2023, seeking a number of orders as prayed for on the face on the notice of motion. In summary, the contemnor prayed for the following orders:

    1. That leave be granted to the contemnor/applicant to move this application notwithstanding two clear days' notice not having being given.
    2. An order to have the contemnor brought before the court to purge his contempt.
    3. That an opportunity be given to the contemnor to apologise before the court for his conduct.

2. The application is supported by the affidavit of Jessie M Jengo, sworn to on the 19th day of January 2023, with one exhibit attached. In that affidavit he swears to the fact at para 6 of the affidavit that he is reliably informed that the contemnor made a number of utterances that were deemed to be demeaning of the court and the interpreters of the

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law and that these utterances had the potential to bring the judiciary into disrepute in the eyes of right-thinking members of society.

3. He further avers at para 12 that the contemnor refused to apologise even when given an opportunity to do so and consequently he was committed to prison for 21 days. Mr Jengo further averred that the contemnor was now regretful of his conduct, and he was ready to make amends for his conduct and has assured them he would not repeat his conduct. They as solicitors take a dim view of his conduct prior to the 10th January 2023.

Contempt proceedings

4. On the 9th January 2023, I decided to dispense with personal service and issued an arrest warrant for Mr Abu in accordance with Order 51 rule 2 sub rule 2 of the High Court Rules 2007, for him to show cause why he should not be committed to prison for contempt of court.

5. On the 10th January 2023, when the arrest warrant was executed, Mr Abu proceeded to make further comments which were captured on video and published on social media, which were calculated to bring the judiciary into disrepute. After the judgement was pronounced in the pending proceedings, Mr Abu was brought into the court room and Mr VI Lansana and Mr MPH Sesay of counsel, proceeded to plead on his behalf for his release. After listening to the pleas in mitigation, I offered Mr Abu an opportunity to purge his contempt.

6. Mr Abu's demeanour showed clearly that he had no remorse for his actions and showed a determined posture to continue act in a discourteous manner in the face of the court as well as outside of the court. His conduct was condescending, and he clearly was not prepared to listen to the advice of his lawyers who told him in open court to purge his

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contempt. Mr Abu remarked that "he did not know what he had done wrong and as far as he was concerned, he had not done anything. But if the judge feels he did something wrong, then he is sorry".

7. It became obvious to me that the flinging of his arms whilst casually stating he was sorry was further disrespect for the authority and dignity of the court. I decided that Mr Abu needed to be committed for contempt in the face of the court. At that point, Mr Abu turned his back and walked out of the courtroom in a vexatious manner before the proceedings were concluded.

8. I decided that Mr Abu had shown gross disrespect to the court and in the light of that contempt in the face of the court, a period of 21 days committal to prison ought to be imposed upon him.

9. It must be noted that Mr Abu is not only guilty of contempt in the face of the court for which he was committed to prison for 21 days, there were far more serious allegations of contempt against him, for which he was served with papers to prepare for the trial of the contempt proceedings..

10. When this matter came before me on the 19th January 2023, JM Jengo of counsel for the contemnor pleaded on his behalf and informed the court that the contemnor was desirous of apologising for his conduct, which he now recognised ought not to have taken place.

11. Following pleas in mitigation by Mr Jengo, I gave Mr Abu a further opportunity to do so. He described himself as an activist for 27 years with no criminal record and he was a professional and an accountant. He said he was hurt by the fact that the matter took a long time to be completed but recognised that I was the only judge (out of three

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previous judges) that took on the matter and completed it. The public pressure was on him and the Native Consortium. Most importantly, contrary to his utterances, he was never aware of the contents of the judgement. For all the comments he made, prior to the delivery of the judgement, he just wants to apologise and say sorry for any hurt caused by his actions. They want to see more class actions in Sierra Leone and he never intended to cause hurt and upset.

Contempt of Court.

12. It is sad to say that in recent times it has become the trend for certain persons in society to make frivolous and vitriolic comments against the judiciary and judges of the superior courts of judicature on social media, without any justification. Many of these comments are borne out of ignorance and in some instances sheer bigotry. Those who act in such a manner do so without any attempt to ascertain the facts but they feel they have a right to sully the reputations of judges for their own personal aggrandisement.

13. The national constitution of Sierra Leone Act 1991, recognises the tendency for elements in society to act in this way by launching vitriolic attacks on the judiciary, and it was for this reason whilst also enshrining the independence of the judiciary in section 120(3) of the Constitution Act no 6 of 1991, also made provision for the Superior Court of Judicature to have the power to commit for contempt to themselves, in section 120(5) of the 1991 Constitution.

14. As some misguided elements have claimed that the judiciary has held on to Mr Abu for "no reason", the Judiciary does not hold any person "for no reason". There is always a legal reason for detention which is only

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exercised as a last resort where all else fails. The detention of Mr Abu was not without reason but for breaches of the court order of February 2021 and misconduct during court proceedings. The courts act in accordance with the law and its constitutional mandate. It is perhaps appropriate that I say a few words on the availability of contempt proceedings for those who have made it a habit to scandalise and politicise the courts.

15. Contempt of court is an offence. Scandalising the court is a form of contempt of court. It consists of the publication of statements attacking the judiciary (for example accusing a court or judge of being corrupt) and likely to undermine the administration of justice or public confidence therein. The statements need not have been published for that purpose; but criticism in good faith, as part of a discussion of a question of public interest, does not fall within the offence. This offence marks out the boundaries of acceptable behaviour.

16. It may be defined as publishing material or doing other acts likely to undermine the administration of justice or public confidence therein, and usually takes the form of scurrilous abuse of the judiciary or imputing to them corruption or improper motives. It is distinct from other forms of contempt, such as: (1) publications likely to impede or prejudice particular proceedings; (2) misbehaviour in court.

17. The rationale for an offence of scandalising the court derives from the need to uphold public confidence in the administration of justice. In many ways, this need is particularly acute in a democracy, where the power and legitimacy of the judicial branch of government derives from the willingness of the people to be subject to the rule of law. In consequence, the public must have faith in the judicial system.

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18. Judges are not against criticisms of their decisions in a democratic state. The line is drawn where comments aimed at the judiciary has the tendency to undermine the wider administration of justice. It exists solely to protect the administration of justice rather than the feelings of judges. There must be a real risk of undermining public confidence in the administration of justice. The field of application of the offence is also narrowed by the need in a democratic society for public scrutiny of the conduct of judges, and for the right of citizens to comment on matters of public concern. Balancing this right to freedom of expression with the importance of upholding public confidence in the administration of justice is at the heart of the debate about the offence of scandalising the court.

19. In Bennett v London Borough of Southwark Neutral Citation Number: [2002] EWCA Civ 223, scandalous conduct as *consists in the allegation of anything which is unbecoming the dignity of the court to know, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause: to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous."*

20. As a matter of principle, because of the judiciary's special role in society, there is a need for special rules to control those who unjustifiably attack and undermine either the institution generally or individual judges. It must be purposefully stated as a warning to members of the public that those who take it upon themselves to unjustifiably scandalise the courts or make unfounded and unjustified allegations against judges and the judiciary stand a significant risk of being subjected to contempt of court proceedings. In Gray 1900 2 QB

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36, the offence of scandalising the court was described by Lord Russell of Killowen CJ as follows:

"Any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority, is a contempt of court.

21. I have listened carefully to the pleas in mitigation by Mr Jengo and taken into account, the apology tendered by the contemnor and upon his undertaking not to repeat the conduct for which he was committed and in accordance with Order 51 rule 6 sub rules 1 and 2 of the High Court Rules 2007, I shall make the following orders:

    1. That the order of committal of Mr Edmund Abu Jnr to prison for 21 days is suspended for a period of twelve months from the date of this order, on condition that Mr Edmund Abu Jnr does not repeat his conduct. Should there be any further conduct amounting to contempt of court, additional contempt proceedings would be instituted against Mr Abu for this contempt in addition to the new occurrences of contempt.

    2. That the undersheriff of the High Court shall serve a copy of this order on the contemnor Mr Edmund Abu Jnr, forthwith and prior to his release from custody, in accordance with the provisions of Order 51 rule 6 sub rule 2 of the High Court Rules 2007.

    3. There shall be no orders as to costs.

Hon Mr Justice A Fisher J

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