

IN RE: CONTEMPT PROCEEDINGS AGAINST HONOURABLE EMMANUEL O. GARDINER, Director- General, Bureau of the Budget, and MESSRS. MOLLY O. SHERIFF, Assistant Director-General, A. M. DIXON, Principal Analyst, and W. W. GORNIE, Analyst.

**In re Contempt, Gardiner et al [2000] LRSC 18; 40 LLR 170 (2000) (21 July 2000)**

## CONTEMPT PROCEEDINGS

Heard: May 8, 2000. Decided: July 21, 2000.

1. No agency of the government should belittle, disregard or disrespect the dignity, integrity, and authority of the judiciary, or disobey its mandates, orders, or precepts, or embarrass and disrupt its administration of justice.
2. Obedience of the judiciary's mandates, orders, and processes, and the preservation of its unity, integrity, and authority are sine qua non an integral part of the democratic system of government in Liberia.
3. The Court may on its own motion institute proceedings to punish individuals for offenses committed against the court's dignity and authority, although the contempt was not, strictly speaking, committed in the presence of the court.
4. The Supreme Court has the authority and can therefore punish offenders for offenses committed against its dignity, integrity and authority.
5. Any improper act or conduct which tends to disregard, disobey, or disrupt the administration of justice, or which impairs the respect due the court, is contemptuous.
6. Government officials who disobey the court's orders are subject to punishment for contempt to no less degree than are other citizens.

The respondents were cited for contempt by the Supreme Court because of their failure to respond to communications sent to the Bureau of the Budget regarding the allotments of the Judiciary. The respondents were also reported to have refused to sign the precepts from the Court. The Director-General of the Budget apologized to the Court for the acts of his subordinates and said that he took full responsibility for their conduct. Following apologies by the respondents to the Court for their acts and conduct, and upon a hearing had, at which they, their counsel, and the amicus curiae prayed the Court to show mercy and purge them of contempt, the Court limited its punishment to fines of the respondents. The Court opined that the acts of the respondents brought embarrassment to the Court and constituted offenses against the dignity and authority of the Court and its administration of justice for which contempt would lie.

David A. B. Jallah appeared as amicus curiae. A Wallace Octavius Obey, Solicitor General of the Republic of Liberia, appeared for the respondents.

**MR. JUSTICE MORRIS delivered the opinion of the Court.**

The Republic of Liberia, one of the oldest African countries, has a republican form of government. Pursuant to chapter 1, article 3 of the Constitution, the Republic has a government which comprises three (3) separate and distinct but coordinate branches of government. The Branches are the Legislature, Executive, and Judicial. Under the 1986 Liberian Constitution, these three equal, but coordinate branches of government perform separate and distinct functions in co-ordination with each other. They are therefore equal under the Constitution, and no one branch of the government is inferior to either of the other two branches. Consistent with the principle of separation of powers and check and balance enunciated by the Constitution, no person serving in one branch of the government can exercise the power and authority delegated to any of the other branches.

The Liberian Judiciary, which is constitutionally the third branch of the government is not an agency within the Executive Branch of Government. It is imperative therefore that all ministries and agencies of the government treat the Judicial Branch with the necessary courtesy with which they treat either of the other two branches of the government. The judiciary upholds the democratic ideals of any civilized sovereign nation-state. As such, no agency of the government should belittle, disregard and disrespect its dignity, integrity and authority, disobey its mandates, orders and precepts, or embarrass and disrupt its administration of justice. The obedience of the judiciary's mandates, orders and processes, as well as the preservation of its unity, integrity and authority, are sine qua non an integral part of our democratic system of government.

The records in these contempt proceedings reveal that Her Honour Gloria M. Musu-Scott, Chief Justice of the Honourable Supreme Court of Liberia, addressed a letter dated April 12, 2000, reference no. 2041/SCI-3CJL/2000 to Honourable Emmanuel O. Gardiner, Director General of the Bureau of the Budget, advising his agency to defer the application of the bulk purchasing system against all allotments of the judiciary pending instruction from the Supreme Court, and that the appropriations in the approved budget covering the period January 1, 2000 to June 30, 2000, remain under the exclusive control of the judiciary.

The respondents failed to reply Her Honour's communication and disregarded the instructions contained in the said communication. Instead, the Budget Bureau's employees ran lines through the budgetary items of the allotment forms, serial numbers A-0123/03/2000 through A-0132/03/2000, which had been previously submitted by the Chief Justice under her signature as the administrative head of the Judicial Branch of Government. This act was done without any reference to the Chief Justice.

A writ of summons for contempt against the respondents was issued by this Court on April 25, 2000, commanding their appearance before this Court on Thursday, April 27, 2000 at 10:00 a. m. to show cause why, if any, they should not be held in contempt of this Court for the reasons stated supra. This Court, upon issuance of the writ of summons for contempt, appointed Counsellor J. Emmanuel Wureh, President of the Liberian National Bar Association, and Counselor David A. B. Jallah, Dean of the Louis Arthur Grimes School of Law, University of Liberia, as amicus curiae in the subject matter.

When these contempt proceedings were called for hearing on April 27, 2000, the lawyers appointed by the Court appeared in Court, accepted their appointments and announced representation as amicus curiae. Honourable Gardiner alone appeared in Court without the other defendants. This Court advised him of his constitutional right to be represented by a counsel, but he declined, informing the Court instead that as head of the Bureau of the Budget he was taking full responsibility for the other respondents. He apologized to the Court and appealed to it for mercy, assuring the Court that the acts for which he and the other respondents were cited in contempt would not reoccur. The Court then directed Honourable Gardiner to reduce into writing his apology and appeal for mercy, as well as his explanation of what had transpired regarding the matter. This case was re-scheduled for hearing on Thursday, May 4, 2000. On April 27, 2000, Honourable Gardiner addressed a letter to Her Honour Gloria M. Musu-Scott, Chief Justice of the Honourable Supreme Court of Liberia, which letter we hereunder quote verbatim for the benefit of this opinion

"April 27, 2006

Her Honour

Gloria Musu Scott

Chief Justice and the Honourable

Supreme Court Bench of Liberia

Your Honours:

With reference to the issue of Bulk Purchasing System (BPS) and its application to the Judiciary Branch of the Government of Liberia, and the overall handling of budgetary matters as they relate to the Judiciary Branch, I have the honour to respectfully submit as follows:

I. After consultation with the Director-General of the GSA, the Minister of State for Presidential Affairs, and the Director of the Cabinet, I am delighted to inform you that the Judicial Branch is excused from the BPS until such time as the Judiciary is ready to participate in the system.

II. The Bureau of the Budget, especially the Director-General, shall make every effort to first consult and in-form the Judicial Branch regarding any and all actions which may affect appropriations contained in the budget of the Judiciary of government before such actions are effectuated.

III. The Bureau of the Budget will henceforth be especially sensitive to the problems of the Judiciary, especially as they relate to fiscal and budgetary issues. As a result, the Director-General shall personally review said issues to ensure that junior staff conform to this sensitivity.

The Director-General of the Budget should have, as is customary, acknowledged immediately the communication from the Chief Justice. However, this was not done. The Director-General apologizes most sincerely and profusely for this breach, but would like to submit that this was not done out of disrespect for that hollowed branch or disinterest in its smooth operation, as far as fiscal matters are concerned. The reply was not sent instantly because we wanted to be

comprehensive and positive in our response. We wanted to be sure that we could inform the Judiciary of an exemption from the BPS without creating problems for the Bureau. Thus the delay. We are sorry and promise to not let it happen again during our tenure here.

Respectfully submitted,

Emmanuel O. Gardiner

Director General"

A notice of assignment was issued on May 1, 2000, assigning the case for argument on May 4, 2000. It was served by the Marshal of this Court and returned served. The returns on its face show that Honourable Gardiner intentionally and with premeditation refused to sign the assignment, and also instructed Co-respondents Messrs. Molly O. Sheriff and W. W. Gormmie definitely not to sign the assignment. However, notwithstanding the instructions of Honourable Gardiner, Mr. A. M. Dixon did sign the assignment emanating from this High Court.

The amicus curiae filed a brief, but the respondents in these contempt proceedings did not file a brief. At the call of the case, Counselor David A. B. Jallah, one of the amici curiae, and Counsellor A. Wallace Octavius Obey, Solicitor General of Liberia, appeared along with the respondents.

The amici curiae argued substantially in their brief that the conduct of the Director of the Bureau of the Budget and his subordinates in disregarding the instruction of the Chief Justice as contained in her letter of 12 April 2000, and in refusing to acknowledge said letter, and their deliberate rejection of the precepts from this Honourable Court were contemptuous. They concluded that the respondents should therefore be held in contempt. The amici curiae also argued that common courtesy dictated that upon receipt of a communication relating to official matters from a superior, should be acknowledged prior to a formal response addressing the issues raised therein. However, the amici curiae appealed to this Court for mercy in these contempt proceedings due to the deportment exhibited by Honourable Emmanuel O. Gardiner since he received the citation, as well as his apology and appeal, and the explanation contained in his letter of 27th April 2000. They noted that the acts of the respondents were done out of ignorance, and were not deliberate attempts to belittle the Court. Hence, the amici curiae prayed the Court that the normal penalty for such an offense be significantly mitigated.

The counsel for respondents, on the other hand, appealed to this Court to accept the plea of the respondents and urged the Court to purge them of the contempt in these proceedings.

During the argument before this Honourable Court, the following question was propounded by the Bench to the respondents counsel, to wit:

Q. "Can you tell us the number of years each of the respondents has worked in the Government?"

A. "Honourable Gardiner has worked for a period of twenty-five (25) years, Messrs Dixon, and Sheriff have worked for forty (40) and twenty (20) years respectively. "

Then the following questions were put to Honourable Gardiner by the bench:

Q. Why did you obstruct the precepts of this Court?"

A. This was done out of pure ignorance. I didn't think that they should have been held responsible for my wrong-doings; I being the one that gave them the instruction. Again, I say, I am very sorry, sorry for the incident.

Q. Are the other respondents not responsible for refusing to sign the notice of assignment?

A. I should be held responsible, Your Honour. I am very sorry."

The Bench then put this question to Mr. Dixon, principal analyst of the Bureau of the Budget.

"Q. Why did you sign the assignment?

"A. I signed the document because I knew that it was from the Court. "

The first issue to be resolved is whether or not this Court without a complaint may on its own motion institute contempt proceedings to punish for offenses committed against its dignity, integrity and authority? The answer to this issue is in the alternative. In the case Gibson v. Wilson, 8 LLR 165 (1943), Syl. 1, this Court held that "[t]he Court, without complaint, may of its own motion institute proceedings to punish for of-fenses against its dignity and authority, although the contempt was not, strictly speaking, committed in the Court's presence." The Court, upon its own motion, instituted these contempt proceedings against the respondents for their acts and conduct, although not committed in the presence of this Court. The Court has the authority and can punish the respondents for offenses committed out of the presence of the Court against its dignity, integrity, and authority.

Having made the foregoing determination, we must now decide whether or not the conduct and acts of the respondents constitute contempt of this Court. We hold that they do.

The conduct and acts of the respondents in disregarding the instruction of the Chief Justice and the Honourable Supreme Court of the Republic of Liberia, and in refusing to sign for the notice of assignment originating from this Honourable Court indeed belittled the Court, disregarded its authority, integrity, and dignity; and embarrassed and disrupted its administration of justice. Any improper act or conduct which tends to dis-regard, disobey, disrupt the administration of justice, or impair the respect due to this Court is contemptuous. Furthermore, government officials who disobey this Honourable Court's orders are subject to punishment for contempt to no less degree than are other citizens. Dhaliwal International Trading Company (DITCO) v. King, [\[1977\] LRSC 35](#); [26 LLR 195](#), Syl. 7 (1977), text at 206 & 207; Watts-Johnson v. Richardson, [\[1954\] LRSC 13](#); [12 LLR 8](#), Syl. 2 (1954); In Re Cassell, [\[1948\] LRSC 5](#); [10 LLR 17](#), Syl. 3 (1948); White v. Russell, [\[1930\] LRSC 9](#); [3 LLR 198](#), Syl 2 (1930).

Wherefore, and in view of the foregoing, respondent Emmanuel O. Gardiner is fined L\$4,000.00, and the other respondents, Messrs Molly O. Sheriff and W. W. Gornmie, are fined L\$1,000.00, respectively, to be paid in government revenues within 72 hours. The respondents are required to exhibit receipts indicating payment thereof, failing which, the Clerk of this Court is ordered to issue a commitment to be placed in the hands of the Marshal

to imprison them at the Monrovia Central Prison until they comply with this opinion. And it is hereby so ordered.

Respondents adjudged in contempt.