

**IN RE: CONTEMPT PROCEEDINGS AGAINST MR. TOM KAMARA,
EDITOR-IN-CHIEF OF THE NEW DEMOCRAT NEWSPAPER**

HEARD: NOVEMBER 24, 2008 DECIDED: DECEMBER 18, 2008

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

Vol. 15, No. 222, Wednesday, November 19, 2008 edition of the New Democrat newspaper carried the front page headline: "Questionable US 65K to Supreme Court, Jurors". The photographs of Chief Justice Johnnie N. Lewis, and Associate Justices Francis S. Korkpor, Sr., Kabineh M. Ja'neh and Jamesetta Howard Wolokolie taken in their ceremonial robes were inserted under the front page headline.

We quote verbatim, the full story as published:

"An official Government audit shows that the National [Social] Security and Welfare Corporation (NASSCORP) dished out US65 000 ostensibly for members of the Supreme Court and for jurors selected to hear a 2006 case involving its former officials accused of theft. Auditors said there were no accompanying receipts or documents to prove the money was given to anyone at the Supreme Court. Of the amount, auditors say they could not account for US 45, 156, only US 19,844."

"In a September 4, 2006 note to NASSCORP Deputy Managing Director, Cllr. Cylil Jones of the Jones & Jones Law Firm wrote:"

"...We are arguing the Motion to set aside the verdict in the R.L. vs Gould et aL case. This is a very crucial stage of the case. It will determine whether or not we resume the case. Please therefore make available to us the amount of US\$4,000.00 to handle pleadings, filing and courts process in the matter."

"A note from the entity's lawyer asking for money to be paid for jury upkeep requested: "Kindly approve the disbursement of one thousand four hundred and sixty-two cents as assistance for the upkeep of jurors in the ongoing trial at the Criminal Court C, Monrovia... The note is dated July 25, 2006".

"In a memo to Mr. Francis Carbah, NASSCORP MD, from Mr. Geepiah Tikro Konton, further justification was given. As the prosecution of the aforementioned case progressed to the cross-examination of the very first defendant witness L.E. Orishall Gould, the prosecution counsels observed the Presiding Judge, James W. Zotaa, Jr. of the First Judicial Circuit Criminal Court "C, Temple of Justice, had left pending the resolution of a Writ of Prohibition in the same case at the

Honourable Supreme Court of Liberia when he (Judge Zotaa) was serving as the Ad Hoc Supreme Court Bench and sat as Ad Hoc Chambers Associate Justice. The prosecution counsels also observed that Judge Zota demonstrated manifest interest in the case in Criminal Court "C" in favor of the defendants, thereby sustaining most of the objections the defense counsel made against salient questions posed by the prosecution counsel on the cross-examination. In this connection, the prosecution counsel filed a Bill of Information to the Honourable Supreme Court to put a stay order on all further proceedings of the case in the First Judicial Court, Criminal Court "C" and to rerun proceedings of said case to the Criminal Court "C" at the time when Judge Zotaa will not. Hence, the Supreme Court ruled trial of the case de novo (anew as if it has not been tried before.) In this vein, the trial of the case has commenced anew in the First Judicial Circuit, Criminal Court "C", Temple of Justice with His Honour Blamo Dixon presiding as Judge. The prosecution counsel has made submission to sequester the panel of jurors in the case."

"The purpose of sequestration of jurors is to keep them together to avoid being prejudiced by any of the parties in the case in their deliberations and consideration of the facts of the case for a verdict. The presiding Judge, Dixon has denied and quashed [the] submission and request because of the destruction of the jurors' quarter at the Temple of Justice by the civil war. However, Judge Dixon maintained in his ruling that if the NASSCORP can provide habitable facility, the court will sequester the jurors convincingly believe that management takes advantage of the court's ruling to [avoid] tampering with the jurors in their service when they remain in their various locals.

In view of the fact that this case is now being tried de novo, we hope that management will continue its usual financial support up to the conclusion of the trial."

This Court considers the assertion in the headline of the article that NASCORP dished out US 65,000. 00 to members of the Supreme Court and jurors as a callous and reckless statement with complete disregard for the truth, and merely intended to impugn the good names of members of the Supreme Court Bench and cast aspersion on their reputation. The publication of the grossly false and scandalous article forms the basis of these contempt proceedings.

On November 19, 2008, the Chief Clerk of the Supreme Court, on orders of the **court en banc**, issued summons to Mr. Tom Kamara, Editor-In-Chief of the New Democrat newspaper, to appear before the Full Bench of this Court on Thursday, November 20, 2008, at the hour of 9:00 a.m. to show cause, if any, why he should not be held in contempt for publishing the article set forth above.

The contemnor appeared in court and, through his lawyers, Counselors Beyan D. Howard and A. Kanie Wesso, requested for time to file his returns.

Section 12.5(2) of the New Judiciary Law requires that in criminal contempt proceedings, the respondent should be notified of the accusation and be given reasonable time within which to make a defense. Thus, the request was granted.

This Court ordered that the returns be filed with the Chief Clerk of the Supreme Court before the close of work on Friday, November 21, 2008 and the contempt matter was reassigned for hearing on Monday, November 24, 2008.

The respondent (contemnor) filed returns which we quote below:

"RESPONDENT'S RETURNS"

Respondent in the above entitled cause of action prays this Honourable Court to pardon him and the New Democrat for the following reasons, to wit:

1. As to the entire contempt, respondent says that the article which is the subject matter of the contempt was written and published based on information revealed by the auditors of GAC during an interview with a reporter of the New Democrat. However, instead of stating that the story was based on information revealed during the interview, the reporter erred by stating that the article was written based on the official Audit Report of the GAC. This was an error which the publisher deeply regrets and prays this Honourable Court for pardon.

2. Further as to count one above, Respondent says that during the interview, the auditor did not tell the reporter that National Social Security and Welfare Corporation (NASSCORP) dished out money to members of this Honourable Court.

3. What the auditor told the reporter is contained in the second sentence of the article which triggered these contempt proceedings. Therefore the first sentence of the article was totally unnecessary because it is not supported by the audit report or the information gathered during the interview.

4. The reporter made a clear human error by stating that money was dished out to this Honourable Court. As the publisher of the New Democrat, respondent is sincerely sorry for the embarrassment the article, the subject matter of these proceedings, has caused this Honourable Court, for which respondent prays Your Honour to pardon him and the New Democrat.

5. Further as to counts 1 and 2 above, respondent says that he is prepared to retract the said article because the intent of the article was not to ridicule this Honourable Court. The sole intent was to point out the mismanagement of people's funds by unscrupulous individuals at the National Social Security and Welfare Corporation (NASSCORP).

WHEREFORE AND IN VIEW OF THE FOREGOING, respondent prays your Honors to pardon him and the New Democrat because the intent of the article was not to ridicule this Honourable Court and the members thereof, and grant unto respondent all other relief justice and equity demand in the premises.

Respectfully submitted:

Respondent by And thru his Legal Counsel:

LEGAL CONSULTANTS, INC.

Carey Street,

Monrovia, Liberia and the KANIE,

KOIWUE LEGAL REDRESS, INC.,

Ashmun Street,

Monrovia, Liberia

BEYAN D. HOWARD COUNSELLOR-AT-LAW

A. KANIE WESSO COUNSELLOR-AT-LAW"

During the hearing of this matter, the lawyers representing the contemnor essentially maintained that the publication of the article was a "human error" for which they apologized on behalf of their client, and prayed that "God will touch the hearts of the members of the Supreme Court to forgive their client."

Mr. Tom Kamara, the contemnor, on order of this Court, was questioned: Ques: Are you prepared to defend your Article? Is the story true? Do you stand by your story? Ans: No, I cannot stand by the story. It was a complete error..." Ques: Would you like for somebody to do to you what you have done to members of the Supreme Court? What is the motive [of your story]? Ans: Absolutely there is no motive. Ques: Then why did you write the story? Ans: I was working against deadline so we published the story. Ques: Mr. Kamara, according to the article you published, the basis for the story was an audit report. Why didn't you mention the Ministry of Justice in the story, but instead the Supreme Court of Liberia? Ans: The report was voluminous, and I was working against deadline. I am very sorry. Ques: What does deadline mean? Did you have the facts before writing the Article?

A. KANIE WESSO COUNSELLOR-AT-LAW"

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apologized on behalf of their client, and prayed that "God will touch the hearts of the members of the Supreme Court to forgive their client."

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Ques: Are you prepared to defend your Article? Is the story true? Do you stand by your story?

Ans: No, I cannot stand by the story. It was a complete error..."

Ques: Would you like for somebody to do to you what you have done to members of the Supreme Court? What is the motive [of your story]?

Ans: Absolutely there is no motive.

Ques: Then why did you write the story?

Ans: I was working against deadline so we published the story.

Ques: Mr. Kamara, according to the article you published, the basis for the story was an audit report. Why didn't you mention the Ministry of Justice in the story, but instead the Supreme Court of Liberia?

Ans: The report was voluminous, and I was working against deadline. I am very sorry.

Ques: What does deadline mean? Did you have the facts before writing the Article?

Ans: We had the facts but the facts proved to be wrong.

The lone issue to be addressed in deciding these contempt proceedings is — whether there was an abuse of the right of freedom of speech and of the press, guaranteed under Article 15(a) of the Liberian Constitution (1986), by the New Democrat's publication of the story.

Article 15(a) of the Constitution provides:

"Every person shall have the right to freedom of expression, being fully responsible for the abuse thereof This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution."

Article 15(e) of the Constitution provides in part:

"This freedom may be limited only by judicial action in proceedings grounded in defamation..."

We hold that the article published was an abuse of the right of freedom of speech and of the press guaranteed under Article 15(a) of the Liberian Constitution (1986).

The right to freedom of speech is a valuable right of the people and an essential tenet of democracy. While our Constitution recognizes this and thus gives right to everyone to speak freely, the speaker is held responsible, if what he/she speaks injures another person, group of persons or an institution, as the case may be. Freedom of speech, therefore, is not unlimited. And the limit is imposed by the Constitution itself when it places responsibility of the abuse of free speech on the speaker, and empowers the judiciary to take appropriate step(s) "... by judicial action in proceedings grounded in defamation..."

Indeed, the publication made by the respondent is defaming, as the act attributed to the members of the Supreme Court is totally untrue, and the publication thus made lowers the image of the Supreme Court nationally and internationally. The New Democrat newspaper is one of the dailies widely circulated in Liberia and in other countries in the West African sub-region. As such, it has a huge reading audience. Besides, it has a website: www.newdemocratnews.com on which all of its publications are posted and thereby circulated to the entire world. Since the publication of the article, many persons in our Country have talked and continue to talk about it, some forming a belief as to the falsity or veracity of the story. And many friends and relations have called and continue to call members of the Supreme Court inquiring about the article. So, no one can doubt that the Court is being negatively impacted as a result of the false publication.

We must state here that the Supreme Court is not only the highest Court in our Country; it heads the Judiciary. Any publication, therefore, which imputes improprieties to its members destroys public confidence in the court system in our Country and amounts to a tacit indictment of the entire judiciary as an institution.

The Supreme Court sits and determines the fate of lawyers as the final arbiter on matters of unprofessional conduct, and through the Judicial Inquiry Commission appointed by the Chief Justice, it regulates the conduct of lower court judges in complaints alleging ethical transgressions. Now, what moral and legal authority will members of this Court have to carry out these functions, if they themselves are involved in acts of improprieties as alleged by the publication made by the respondent?

It has been held that truth is an absolute or complete defense where a claim of offensive statement is made, regardless of bad faith or malicious purpose, or the ill will of the publisher. *Section 249, 50 AMJUR, 2d Truth of Statement*. This common law principle has long been adapted and applied in our jurisdiction. In the case: *Knowlden v. Reeves et al.*, 12 LLR, (1954), this Court in dismissing a defamation suit brought by the plaintiff on appeal, held that no action will lie "since the publication complained of constituted a true and fair report of facts..."

And under *section 12.5(e) of the Judiciary Law* approved May 10, 1972 and published June 20, 1972, it is provided that "...a court cannot punish as a criminal contempt the publication of a true and fair report..." But where the publication is offensive and is not a true and fair report, the publisher has no defense under the cover of any law.

In the case before us, the respondent did not publish a true and fair report. The respondent himself admitted this. The publication made, therefore, was an abuse of the freedom of speech and of the press, guaranteed under the Article 15(a) of the Liberian Constitution (1986).

When asked whether he stood by his story, Mr. Tom Kamara, the contemnor, stated categorically that he could not. When asked further why he had published the story, he said that he was working against a deadline, so he published the story. On the question of motive, the respondent said he had no motive whatsoever. But we determine that there was motive, and the motive was to malign the justices of the Supreme Court of Liberia.

Even though the captivating front page headline of the New Democrat newspaper and the first sentence in the published article stated that US\$65,000.00 "was dished out" to the Supreme Court and jurors, the second sentence in the same article stated: "Auditors said there were no accompanying receipts to prove the money was given to anyone at the Supreme Court."

And while the respondent said he relied on "an official Government audit report as the basis of the story, the audit report so relied on says nothing about the Supreme Court, or the jurors receiving money from the management of NASSCORP or from anyone.

We quote the relevant portion of the Executive Summary of The Report of the Auditor General on the National Social Security and Welfare Corporation for Financial Years 2005/2006 and 2006/200, as found on Annexure 8, No. 8, titled:

Summary of Irregular Disbursements by NASSCORP Yet to Be Accounted For:

"Payments made through NASSCORP Legal Counsel to facilitate the participation of Ministry of Justice (MOJ) State Prosecutors in the case between NASSCORP and its former Director General: No documentation to show how the money was accounted for, in other words, no evidence of disbursement to intended beneficiaries. Ref Paragraph 270-280 of the AG's Report."

The audit report which the respondent relied upon as the source of his publication does not say that payment was made to the Supreme Court, nor that payment was made intended for members of the Supreme Court. Rather, the report clearly states that payment was made through NASSCORP's legal counsel to facilitate the participation of the state prosecutors in the case involving NASSCORP and its former director general. The audit report further stated that there was "no documentation to show that the money was accounted for; in other words, no evidence of disbursement to the intended beneficiaries." Here, we note that the audit report did not say "there were no accompanying receipts or documents to prove that the money was given to anyone at the Supreme Court" as stated in the published story. So, the audit report talks nothing about the Supreme Court or jurors of court. It is the respondent who concluded, out of the clear sky, that NASSCORP dished out money "ostensibly" for members for the Supreme Court and the jurors in the lower court.

With the glaring inconsistencies existing in the news story and the audit report, one would have thought that the editor of the New Democrat newspaper would have exercised prudence and caution to verify the story, or even contact the Supreme Court for clarification, if any, in keeping with good journalistic practice before publication. But this was not the case; the editor "was working against deadline," so he went right ahead and published the false story. Such is the reckless nature of the publication, subject of the contempt proceedings now before us.

During the hearing of the of the matter, Counselor Cyril Jones, who represented NASSCORP in the case involving the Corporation and its former director general and others, and whose name is mentioned in the news story was called upon to say what he knew about the sixty five thousand United States dollars (US65, 000.00) which the respondent alleged "was dished out" to members of the Supreme Court and jurors in the lower court. Counselor Jones said he did not know of any amount given to members of the Supreme Court or to jurors of the lower court.

Counselor Tiawon Gongloe, Solicitor General of Liberia, when similarly asked, also denied any knowledge of any money given to members of the Supreme Court or jurors of the lower court.

Whether or not the amount in question or any amount of money was given to facilitate the prosecution of NASSCORP's case, one thing is certain; no money was given to the members of the Supreme Court as stated by the respondent. To receive money in order to carry out a duty required of them by law is woefully wrong and no member of this Court would be worthy of the seat of high honor were this to be the case.

The fact of the matter is that in 2006, the Republic of Liberia, by and thru the Ministry of Justice, indicted the former managing director of NASSCORP, Lafayette Orishall Gould and others for the crime of economic sabotage. The matter was tried in the First Judicial Circuit, Criminal Court "C," Montserrado County during the May, 2006 term of that court.

On August 22, 2006, the empanelled jury in the case brought a unanimous verdict of not guilty in favor of defendants Gould and others, and the presiding Judge, Blamo Dixon, entered final ruling based on said verdict, discharging the defendants from further answering the charge of economic sabotage, and disbanded the jury. However, the succeeding Judge, William Ware, entertained and granted a motion for new trial filed by the State. On appeal before this Court, we held, *inter alia* that under the Criminal Procedure Law of Liberia, a motion for new trial is not a right granted by law to the State. Judge Ware's ruling was therefore reversed by this Court. This means that the ruling of Judge Blamo Dixon acquitting the defendants was upheld by this Court. Could it be, as the respondent wants reasonable people to believe that members of the Supreme Court took money from NASSCORP to ensure that Gould and others were successfully prosecuted, and yet entered judgment confirming the acquittal of said defendants? This is utterly absurd!

In re: Tom N. Bestman, 20 LLR 574, (1972) this Court held that "generally speaking, he whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with...or otherwise tends to impede, embarrass, and obstruct the court in the discharge of its duties is guilty of contempt."

Contempt of Court has been defined as "any act which tends to belittle, degrade, obstruct, interrupt, prevent or embarrass the court in the administration of justice."

In re: Frances G. Doe, 23LLR 42 (1974).

"The power to punish for contempt of court is intrinsic to the court as an incident necessary to its existence under an orderly form of government. " ***Meriden BIAO v Topor***, 38 LLR 174, (1996)."

"A contempt proceeding is a **sui generis** action. Thus, the court, without a complaint, may on its own motion, institute proceedings to punish for offenses against its dignity and authority, although the contempt was not straightly speaking committed in the actual presence of the Court." **Glassco V. Thompson**, 30 LLR 670, (1983).

Contempt proceeding may be either civil or criminal in nature. Civil contempt proceedings are instituted by private individuals for the purpose of protecting their rights. It may come in the form of the failure to obey an order of court issued in favor of a private individual.

Criminal contempt, on the other hand, is an act that attacks the integrity of the court or obstructs justice. The purpose of criminal proceedings is to vindicate the dignity of the Court. What we have before us clearly falls under criminal contempt. In keeping with **section 12.5 of the Judiciary Law**, Courts are given full power to punish for criminal contempt.

We take note that the respondent in these contempt proceedings admitted wrong doing and prayed for mercy. According to the respondent, it was not his intention to bring this Court into disrepute. It has been held that, "a disclaimer of intentional disrespect or design to embarrass the due administration of justice..., or disavowal of intent to insult the Court will be considered on the question of the sentence to be imposed, but does not purge the contemnor. **In Re: Joseph K. Jallah, Contempt of Court**, 34 LLR, 398 (1987).

In view of the foregoing, we hold that the contemnor is guilty of criminal contempt for publishing the false and malicious story which has brought this Court into serious disrepute. He is fined the amount of Three Hundred United States dollars (US\$300.00) to be paid into government revenue within seventy-two hours effective today. He is ordered to retract the story published against the members of this Court and offer an appropriate apology. The retraction and the apology should be published on the front page of the New Democrat newspaper and a copy thereof posted to the paper's website at www.newdemocratnews.com, starting Monday, December 22, 2008 and shall continue each and every day for a period of five days. Should the contemnor fail, refuse or neglect to retract the story, offer appropriate apology and publish same on his paper's front page and website as ordered, he shall be committed to the Monrovia Central Prison for a period of thirty days. AND IT IS HEREBY SO ORDERED.

Respondent adjudged guilty of contempt.