

## ICAC V AUGUSTIN 2023 SCJ 345

**Mr Augustin C.J was found guilty for contempt of court for not abiding by an Order of the court.**

**Law:** sections 56(1) and (2) of the Prevention of Corruption Act

These are committal proceedings brought by the Independent Commission Against Corruption against the respondent, asking the Supreme Court to declare that the latter has committed a contempt of court and to sentence him in such manner as the court thinks fit.

**Facts:** The Respondent and several other persons were suspected of being involved in drug trafficking and money laundering and after investigations, ICAC made an application under sections 56(1) and (2) of the Prevention of Corruption Act and obtained an attachment order. A number of properties, vehicles and horses, all listed out in the order, were attached in the respondent's hands.

It is the case of the ICAC that by selling to a third party an asset which had been so attached the respondent has willfully and intentionally interfered with the order made by the Honorable Judge sitting in Chambers and has, in so doing, embarrassed and hindered the court in the administration of justice.

**Held: Court ordered the respondent to undergo 3 months' imprisonment for contempt.**

The Supreme Court stated that both parties agreed that to succeed in an application for contempt of court, an applicant has to satisfy the court that –

- (a) there is an order of the court or an undertaking;
- (b) the terms of which are clear and unambiguous;
- (c) proper notice of the terms has been given to the respondent; and
- (d) there is a breach of the order/undertaking proved beyond reasonable doubt.

On the issue of whether the Respondent was given proper notice of the terms of the order, the Supreme Court considered the usher's return for the renewed order, which reads as follows: "*The foregoing Rule was duly served by me, the undersigned Court Usher upon 1. Jean Christopher Augustin, by leaving true and certified copies thereof, with his assistant found at 3rd floor, Goliva Court, St Jean, Quatre Bornes*"

It is interesting to note that service of the committal proceedings was made on the respondent's father in Vacoas on 12th May 2022 and the respondent was duly present in court as required on 23rd May 2022.

After anxious consideration, this court found that the respondent's insistence on him to be personally served for contempt proceedings to lie is misguided and unjustified. Worse even, this is a classic case of ingenuity shown by a respondent to evade service on him.

Court was of the considered opinion that "*although service on the respondent was not personal, the court finds, on all the evidence before it, that the latter had proper notice of the terms of the attachment order in view of the many avenues through which notice of the terms of the order were given to him, including through his legal advisers who wrote on his behalf. This respondent's defence may be ingenious, but it is inadequate*". Moreover, it was decided that "*the court has clearly got power to make a committal order without any need for personal service of the order on the defendant*".

Hence, by proceeding to sell the land attached by the order in the face of its clear and unambiguous terms, Court found that the respondent clearly breached the order and committed a grave contempt of court. The court found the breach to have been proved beyond reasonable doubt.

In this case, the Supreme Court took a very serious view of the ingenuity and defiance shown by the respondent in effecting a sale outright of a property subject of an attachment order by the Judge in Chambers in the context of a criminal investigation into alleged drug trafficking and money laundering.

There was no remorse shown by the Respondent and no apology made during the committal proceedings,

For all the above reasons, Court found that the applicant has established beyond reasonable doubt that the respondent has committed a contempt of court by deliberately flouting the order issued by the learned Judge in Chambers on 25th July 2019.

**Sentence:**

The recent case of *Omnican Limited v Marie Liliane Tonta [2023 SCJ 295]* was relied upon by the Honorable Judge, wherein the court imposed a sentence of 3 months' imprisonment for contempt with respect to a sale of land despite an interim order by the Judge in Chambers in the nature of an injunction.

The court observed that it could not "*overlook the willful and deliberate flouting of a court order by the respondent, which is no doubt a serious matter*", and added that a lenient sentence would send the wrong signal.

For all the above reasons, the Court ordered the respondent to undergo 3 months' imprisonment for contempt.