Role Of The Public And The Media In Civil Court Proceedings In Ghana

By Dr. Kweku Ainuson*

Introduction

The Court system as it exist in Ghana was inherited as part of the colonial heritage of Ghana. Being a former British colony, Ghana's court system was built on a foundation of the Anglo-Saxon common law[1]. The reforms of the Judicature Acts of the 1870 in the United Kingdom helped to shape the structure of the court system in Ghana[2]. Within the then Gold Coast[3], the Supreme Court Ordinance (1876) established the Supreme Court of the Gold Coast as the highest court of the land. At the eve of independence in 1957, the court system in Ghana was essentially based on the traditions of the United Kingdom court system. After independence in 1957, although Ghana went through many political phases, experimenting with one party state, military rule and its current multi-party democracy, the traditions of the court system have not changed since it was introduced during the colonial era.

Thus, when one considers the role of the public and the media in civil court proceedings in Ghana, it is important to look at the place of the public and the media in civil proceedings in the traditions of the United Kingdom where the court system of Ghana owes it origin. The right of the public to have access to court proceedings and court documents has been seen as a core principle in British legal traditions. This right has a long history dating back to many hundred years and to some cases that were heard prior to the signing of the Magna Carta in 1215[4]. It is a right that is deemed sacrosanct to the protection of personal liberties of the victim and the accused. In R v. Legal Aid Board EX Parte Kaim Todner the court in discussing the role of the media and for that matter the public in respect of the system of justice said the following per Lord Woolf

> *"The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by*

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1 *Daniels, R. J., Trebilcock, M. J., Carson, L. D. (2011)*The American Journal of Comparative Law, Volume 59, Issue 1.

2 *Ollennu, N. A.* (1961) Journal of African Law. Volume 5, Issue 1. pp. 21-35.

3 Ghana was called Gold Coast during colonial period and only changed its name to Ghana after Independence in 1957.

4 *Pfanner, E.* (2013) Balancing Privacy With Open Justice in Britain. The New York Times article dated May 12, 2013. Available at https://www.nytimes.com/2013/05/13/business/media/balancing-privacy-with-open-justice-in-britain.html?pagewanted=all&_r=0 (last assessed on 4th February 2018.).

> *analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely. If secrecy is restricted to those situations where justice would be frustrated if the cloak of anonymity is not provided, this reduces the risk of the sanction of contempt having to be invoked, with the expense and the interference with the administration of justice which this can involve."*

The courts are seen as the very basis of an open society that is devoid of arbitrariness and unfairness[5]. It is in the court that members of the society can seek redress from injustice and protect their personal liberties. The court must therefore not only dispense justice, but it must be seen to be manifestly doing justice[6]. It is one of the foremost institutions that cements the social contract theory in that one need not resort to the law of the jungle to resolve issues but one can seek redress at the court. The concept of public access to court proceedings is therefore the expression and the display of the court's ability to be manifestly seen to be dispensing fair and impartial justice. The right of the media and the public to access civil court proceedings has been referred to as the open justice system or the open court principle[7]. The development of the open court principle can be traced to the eighteenth century philosopher Jeremy Bentham who famously said that

> *"In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial."* [8]

To many scholars, the words of Jeremy Bentham are true today as they were when he famously stated them many years ago. The open court system has become the foundational stone for most liberal democracies around the world. Today, the open court principle is not

5 *Zakaria, F*. (1997) Foreign Affairs. Vol. 76, No. 6 p. 22-43; Barak, A. (2002-2003) A Judge on Judging: The Role of a Supreme Court in a Democracy, 116 Harv. L. Rev. 19; Widner, J. (2001) Courts and Democracy in Post conflict Transitions: A Social Scientist's Perspective on the African Case. American Journal of International Law. Volume 95, Issue 1 January 2001 , pp. 64-75.

6 *Oakes, A., R. and Davies, H*. (2016) Justice Must Be Seen to Be Done: A Contextual Reappraisal. Adelaide Law Review, 37 (2). pp. 461-494.

7 *Conley, A., Datta, A., Nissenbaum, H., and Sharma, D*. (2011 – 2012) Sustaining Privacy and Open Justice in the Transition to Online Court Records: A Multidisciplinary Inquiry. 71 Md. L. Rev. 772.

8 Quoted by the Supreme Court of Canada in R. v. C.B.C. et al., 2013 ONCJ 164 (CanLII.).

only practiced in England but has also become part of the legal system in Canada, United States, Australia and New Zealand. In most of these countries, the concept of open court has found its way into the basic legal document being the constitution. For instance, in the United States, the first amendment of the United States Constitution which guarantees free speech has been regarded as the foundational document that support the open court principle[9]. In Canada, the concept of open courts was discussed by the Canadian Supreme Court in the case of A.G. Nova Scotia v. MacIntyre[10] where the court said that the open court principle is one of the symbols of a democratic society. The court further stated that transparency is the vital glue that holds democratic principles together. Openness comes with scrutiny, with scrutiny comes accountability and with accountability comes enhanced public confidence in the operation of state institutions. In addition, in Re. Vancouver Sun, the Supreme Court of Canada stated that the open court principle ensures judicial integrity by showing that, "that justice is administered in a non-arbitrary manner, according to the rule of law". Openness is necessary to maintain the independence and impartiality of courts. It is integral to public confidence in the justice system and the public's understanding of the administration of justice. Moreover, openness is a principal component of the legitimacy of the judicial process and why the parties and the public at large abide by the decisions of courts."[11] Also, in England, in the case of Scott v. Scott, the House of Lords noted the right of public access to the courts is "one of the principle ... turning, not on convenience, but on necessity"[12]

Thus, the public expects that the courts will operate in an open and transparent way. Apart from very limited circumstances where the interest of justice so dictates, secrecy is an abomination to the operation of the courts in a democracy.

A. Open Court Principle in Ghana

In Ghana, the concept of open court has been written into the 1992 Constitution[13]. Article 19 (14) provides that "Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public." However, prior to the advent of colonialism, the right of the public to have access and participate in the adjudication of disputes has been part of the African traditional system. In Ghana, traditional elders, chiefs and kings sat in

9 The first Amendment of the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

10 A.G. (Nova Scotia) v. MacIntyre, [1982] 1 S.C.R. 175.

11 Vancouver Sun (Re), [2004] 2 SCR 332, 2004 SCC 43.

12 Scott v Scott [1913] UKHL 2. See also Ambard v. Attorney-General for Trinidad and Tobago, Lord Atkin [1936] 1 All ER 704.

13 The 1992 Constitution is the forth Republican Constitution of Ghana.

public to hear and adjudicate disputes. The role of the public has never been in doubt. In fact the traditional authorities needed the public participation to reinforce their legitimacy and the right to adjudicate cases. In addition, public participation and openness ensured that there were witnesses to the proceedings as well as the outcome. Under African traditional justice system, a dispute between two members of the community was often regarded as a problem which affected the entire community. Thus, to ensure communal harmony, there must be a general satisfaction not only of the disputants but also the general community at large. Public participation and consensus was therefore paramount to among others ensure enforcement of the decision through social pressure on the disputants. The procedure used therefore at the traditional adjudicating body allowed members of the public to tender evidence and make their views known[14].

Under the traditional justice system which existed in Malawi for example: "...although judgment was delivered by the chief on the advice of the elders, everybody had a right to speak in an orderly manner, to put questions to witnesses, and to make suggestions to the court. This privilege was extended to passers-by who, although they might have been complete strangers, could lay down their loads and listen to the proceedings. The chief and his wise elders would sit for hours listening to what by Western standards might be considered a mass of irrelevant details. This was done to settle the disputes once and for all so that the society could thereafter continue to function harmoniously." In Ghana, the participation of the community was important to ensure the legitimacy of the process of customary arbitration to settle disputes between the disputing parties. It was therefore an essential requirement, for instance, for the decision of the tribunal (Customary arbitral award) to be published to the disputants as well as the members of the public[15]. In any case, before the advent of formal education and writing as a means of record keeping, adjudication of disputes was done in public to ensure that there were plenty of witnesses to the proceedings to ensure that members of the community participated in the enforcement of the ultimate decision. In addition, public participation served as a deterence for would-be offenders.

The open court system has been cemented as part of the legal system of Ghana. With its antecedents in the 1992 Constitution, the Ghana Courts Act, 1993 (Act 459)[16] embraces the open court system. Under section 102(1) of the Courts Act 1993 Act 459), the law provides that "Except as may be otherwise ordered by a court or tribunal in the interest of public morality, public safety or public order, the proceedings of every court or tribunal including the announcement of the decision of the court or tribunal shall be held in public." Thus, in

14 *Allot, A. N.* (1968) "African Law", in Derrett , J.D An Introduction to egal Systems, Sweet & Maxwell, pp. 131-156.;.

15 *Brobbey, S. A.* (2000) Practice and Procedure in the Trial Courts and Tribunals of Ghana. Black Mask Publications.

16 The Courts Act is an Act to incorporate into the law relating to the courts, the provisions of chapter eleven of the Constitution; to provide for the jurisdiction of Regional Tribunals; to establish lower courts and tribunals, provide for their composition and jurisdiction; to consolidate and reenact the Courts Act, 1971 and to provide for connected purposes.

general, all court cases in Ghana are heard in open court and members of the public including the media are admitted to attend with little or no restrictions. In addition, members of the public as well as the media who attend court sittings and are privy to the happenings in the court room are free to exercise their constitutional right to free speech by commenting on the work of the court outside of the court for as long as their comments do not impugn the integrity of the court. In fact the courts have come to adopt this principle and it has seen judicial pronouncements in judicial decisions in Ghana. For instance, the courts in Ghana have emphasized the principle of hearing cases in public in the following decided cases, Ghana Bar Association v Attorney-General, [1995-96] 1 GLR 598, Darke IV v Darke IX, [1981] GLR 144, CA., C.O.P. v Ighaghara, [1960] GLR 75, CA. and Agbeko v The Republic, [1977] 1 GLR 408.

The open court principle is very important in Ghana because of its checkered political history. Although Ghana is seen as a beacon of multi-party democracy around the world[17], its current democratic dispensation has only been from 1992. From independence in 1957, although there were periods of democratic governance, the period between 1966 to 1991 was marked with long periods of military coup d'états, counter coup d'états and military rule. This period also saw the least transparency in the administration of justice in Ghana and the least participation of the public and the media in the dispensation of justice. There were adhoc courts that were set up and secret trials conducted to punish perceived corrupt officials. During the AFRC/PNDC era[18] which was the longest combined period of military rule in Ghana spanning the period between 1979 to 1992, military tribunals were set up to trial perceived wrong doers which critics said were in essence the opponents of the military regime. During the initial months and years of the PNDC regime, the state set up the Citizens' Vetting Committees ostensibly to trial corrupt officials[19]. These 'Kankagoo Courts' as they were infamously referred to were used to terrify people and many people were brought to forced accountability before them.[20] A common characteristic of the military tribunals was that most of the trials were conducted secretly without any access by the public or the media. Thus, although the military regimes were often swept to power by widespread corruption in the society the tribunals that they set up to trial the perceived corrupt officials and its proceedings were hardly seen to be legitimate. For instance, in June 1979, the AFRC military regime executed three former heads of states and four military officers after a

17 *Menocal, A. R. (*2015) Ghana's democracy is driving great progress in health and education. An online article published by The Guardian on 18th March, 2015. available at https://www.theguardian.com/global-development/2015/mar/18/ghana-democracy-progress-health-education (Last assessed on 15th May 2018)

18 AFRC is the Armed Forces Revolutionary Council which staged a military coup on 4th June 1979 and ruled Ghana from 4th June 1979 to 29th September 1979; PNDC is the Provisional National Defence Council which staged a militaty coup and ruled Ghana from 31st December 1981 to 7th January 1993.

19 *Insaidoo, K*. (2013) Ghana: An Incomplete Independence Or a Dysfunctional Democracy? Author House. Bloomngton. USA.

20 Ibid.

hastily constituted tribunal tried them in secret and sentenced them to death[21]. The Christian Council of Ghana and the Catholic Bishops' Conference, two of the most influential religious bodies in Ghana registered their protests against the executions. The jointly wrote a letter to the leadership of the AFRC and stated as follows;

> *"We are all painfully aware of the mismanagement and corruption which has rendered our dear country nearly bankrupt. We also believe that those who are responsible for this sorry state of affairs should be severely punished. But we do not believe that the death penalty, especially after secret trials, is the only, or even, the most effective punishment that can be administered to those who are found to be guilty."*[22]

Although the citizenry accepted that there was widespread corruption and there was the general belief that those who were responsible for the prevalent corruption should be brought to booked, many did not subscribe to the system of secretly trying people of offences against the state. Perhaps, some or all of the former heads of state and army officers who were executed by the AFRC for alleged crimes to the state may have been guilty, but for the trial to have been conducted in secrecy without public participation, there was no evidence that these people were given a fair trial. It is often difficult to talk about justice when men cannot stand in open court with all the resources available to them to be afforded the opportunity to defend themselves in a court constituted by members of their society.

The military tribunals and their secret trials are now a thing of the past. However, they still serve as a constant reminder of ills of yesteryears and the important role that the open court principle plays in ensuring fair trial and justice.

B. The Importance of the Open Court Principle and the Role of the Public and the Media in Civil Proceedings

Scholars have written about the importance of the open court system and its contribution to rule of law in a society. The principles of open court system play an important role in the work of the courts. The usual courtrooms can accommodate only a small number of people in most cases, usually the immediate parties and a few people that may be interest or want to observe proceedings.[23] Nevertheless, the principle of openness is important because it ensures public confidence in the administration of justice. In addition, those who do not attend can read about significant cases in the newspapers and hear about them on the radio

21 *Osei, J*. (2009) The Challenge of Sustaining Emergent Democracies: Insights for Religious Intellectuals and Leaders of Civil Society. Xlibris Corporation, USA.

22 *Van Gyampo RE* (2015) The Church and Ghana's Drive Towards Democratic Consolidation and Maturity. J Pol Sci Pub Aff 3: 161. doi:10.4172/2332- 0761.1000161.

23 *Basten, J*. (2005) Courts and Media Relationship. National Judicial College, Beijing, Conference - 30 October to 4 November 2005 available at http://www.austlii.edu.au/au/journals/NSWJSchol/2005/18.pdf (last retrieved on 12 February 2018.).

and on television through the reports of journalists.[24] The open court principle therefore ensures transparency and upholds the rule of law which are important principles for a modern democracy.

Democracy has some important tenets that the open court principle supports and promotes. One of the important cornerstones of democracy is the rule of law which is moderating the exercise of power by subordinating it to well-defined and established laws. It is important therefore that there must be certainty in the law. Certainty in the law will ensure that those subject to it will have the ability to regulate their conduct and affairs appropriately. If citizens are aware of how the law is applied in court proceedings, citizens are able to plan their affairs accordingly. Participation in court proceedings and the dissemination of court proceedings by the media ensure that citizens are able to keep up with the position of the law and any changes thereof.

For instance, Ghana practices the common law tradition in which judge made law and judicial precedents make a large part of the applicable law. Thus, following court cases and decisions of the court is one important way of learning about the development of the law. In Ghana, property rights among spouses under customary law as was pronounced by the court was that "…it is the duty of a man's wife and children to assist him in the carrying out the duties of his station in life. The proceeds of that joint effort, and any property which the man acquires with such proceeds, are by customary law the individual property of the man, not the joint property of all."[25] The court held in Quartey v. Martey that under customary law a widow's right is the right to maintenance by the family of her deceased husband and she was entitled to stay in the house acquired together with the husband upon good behavior. The spousal property rights then moved from the Quartey v. Martey principle to the era of substantial contribution. The principle of substantial contribution was laid down in the case of Yeboah v. Yeboah[26]. The principle as was explained by Justice Hayfron Benjamin in his judgement in the Yeboah v. Yeboah case was that even though Customary Law did not support joint acquisition of properties by spouses, where it was determined that a wife had contributed substantially to the acquisition of property during marriage, the wife was to be seen as a co-owner of the property.

The principle of substantial contribution was therefore the guiding post for property rights amongst spouses until the Supreme Court introduced the principle of 'equality is equity' in the case of Mensah v. Mensah[27]. In the development of the law, the court held that a marriage is not a commercial enterprise for spouses to measure their individual contribution towards the acquisition of properties during the subsistence of the marriage. In any case, the contribution of a spouse to the acquisition of properties during marriage should not be measured based on the cash or material contribution only. Thus, where a spouse performs

24 Ibid.

25 Quartey vrs. Martey and Another. [1959] GLR 377-383.

26 Yeboah vrs. Yeboah [1974] 2 GLR 114-126.

27 Mensah v. Mensah [1998-1999] SCGLR 350.

his/her spousal duties and creates a conducive atmosphere for the other spouse to acquire properties, the the properties so acquired are presumed to be held in equal share. [28] The reasoning of the court in the development of the law in spousal property rights was based on article 22(3) of the 1992 Constitution. Article 22 of the 1992 constitution provides that parliament shall as soon as practicable after the coming into force of the Constitution enact legislation to ensure equitable property rights of spouses. However, after many years of inaction by Parliament, the court took the lead in the development of the law in espousing the equality is equity principle.

The media's participation in civil proceedings plays a critical role to demystify the work of lawyers. There is the perception of some exclusivity in the work of lawyers and the courts and in a country like Ghana where education levels at the country side are quite low, such perceptions are fueled with less transparency in the work of lawyers and the court. Allowing the work of lawyers and the court to be shrouded in secrecy affects access to justice. In addition, access to the courts and court proceedings is important to curb the often misinformation that characterizes information that is passed down from different filters. Direct access ensures firsthand information and therefore increases the acceptance of the work of the court. In 2013, there was a high stakes presidential election petition before the Supreme Court of Ghana. After a keenly contested presidential election in December 2012, the Electoral Commission of Ghana declared the then incumbent president, the president elect. The president had won with a very slim margin amidst a number of reported irregularities. The opposition party filed a presidential election petition at the Supreme Court of Ghana to challenge the declaration of the incumbent president as the president elect. Although the court initially refused an application to have the case televised, the court eventually allowed television cameras in the court for a live television coverage of all the proceedings which lasted eight months. It was a high stakes case and people were glued to their TVs as if it was a popular soap opera. On the day of the verdict, one would have thought that the supporters of both political parties would have massed up at the court premises creating a volatile security situation. However the day of the verdict was unusually quiet with only a few people on the streets. People were glued to their television sets to watch proceedings of the day and listen to the verdict on the presidential election petition. The verdict was eventually given with very little fanfare. The Supreme Court confirmed the incumbent President as having been validly elected the President of Ghana for a four year term. Although many commentators credited the then opposition leader Nana Akuffo Addo for saving Ghana from a potential civil disturbance by graciously accepting the verdict of the court, the real credit was the fact that the entire presidential election petition was televised live for eight months for every citizen who cared to watch and listen. In the end, there was a sense of acceptance by the general public that the decision was the outcome of a fair process. Although the then opposition leader and his millions of supporters disagreed with the verdict

28 Mensah v. Mensah [2012] 1 SCGLR 391.

of the court, they agreed that the process was fair[29]. The general acceptance of the Supreme Court verdict may not have been possible but for the important role played by the media in reporting the proceedings of the court. The mass media has a propagating role and because not all members of the public will have the chance to appear in court and witness court proceedings, the role of the media can therefore be collaborative of the open court principle.

C. The Limits of Media and Public Participation in Civil Proceedings

Although the open court principle has been widely accepted, the courts have been reluctant to allow the mass media into the court room to report the proceedings of the court or to openly encourage individual and media coverage of court proceedings. This is because there is the fear of abuse. The media may have a different agenda for reporting court proceedings and skewed media coverage can be used to obstruct the rule of law. Where there is no rule of law and justice, there is the likelihood of anarchy. The reason why people resort to the court to settle their disputes and disagreements is because they do not want to resort to the law of the jungle to resolve issues. Thus, where media coverage is allowed to erode public trust in the court system, there is the likelihood of chaos. In the literature, some arguments that have been advanced against media coverage of court proceedings are that;

1. There is the likelihood to be increased distractions in the court room and witnesses who are already uncomfortable and stressed because of the court appearance would further be stressed thereby impeding the free flow of information.
2. Lawyers may be tempted to play to the gallery, especially when there is media present rather than directing their focus to the basic elements of the case.
3. The media tend to sensationalize cases which may end up producing decisions that are based on passion and emotion as opposed to reason.
4. Outside influence may be so pronounced that judicial system may end up losing control over its own proceedings.
5. The media tend to portray defendants as being liable or guilty and thereby produce a climate of hostility towards defendants.[30]
6. The media by its nature may focus on court participants and as a result target such participants for possible community pressure, abuse and threats.

It is interesting to note that all the above reasons that are given for curbing public and media participation in court proceedings all affect the principle of fair trial. Thus, the reluctance of the court to allow increasing public and media participation in civil proceedings is the fear that the abuses, especially of media participation may distort the fair dispensation

29 Full speech of Nana Akufo-Addo after the Supreme Court verdict on the 2012 Presidential Election Petition case. Reported on 30th August 2013 on Ghanaweb news portal. Available at https://www.ghanaweb.com/GhanaHomePage/NewsArchive/FULL-SPEECH-What-Nana-Akufo-Addo-said-after-the-verdict-284168 (last accessed on 10th May 2018.).

30 Estes v Texas 381 U.S. 532, 1965.).

of justice in the court room. This fear is further exacerbated by the many forms of new media in the advent of social media where information travels very fast. Today, you don't need giant television cameras in a court room to broadcast court proceedings to the members of the public. Individuals armed with smart phones can beam proceedings through multiple social media channels and available to the world in matter of minutes. It is interesting to note that the same fair trial argument that Bentham's idea[31] of open court seems to support is the same argument that is being advanced to curb the participation of the public and the media in court proceedings. One thing that is clear is that there is a convergence amongst practitioners of the open court principle that the open court principle is not absolute. Scholars have long recognized the limits of public and media participation in court proceedings to ensure fair trail and advance the ends of public policy.

In Ghana, article 19(14) of the Constitution which established the open court principle never made it an absolute right. It was made subject to public morality, public safety and public order. In fact the constitution gave the court the power to limit access of the public and the media to court hearings if the court considered it necessary or expedient to limit public access in order to prevent prejudice and further the ends of justice. [32] Thus, where the court is of the view that public access will affect public policy and obstruct justice, it will limit access to court proceedings accordingly.

The courts have also used contempt of court to help address the excesses of public and media participation in civil proceedings. Contempt of court is the willful disregard of the authority of a court of justice or a disobedience of its lawful orders.[33] A person is therefore deemed to be in contempt of court if he does an act in willful contravention of the authority or dignity of the court or act in a way that is intended to impede or frustrate the administration of justice. [34] In Republic v Liberty Press Ltd[35], it was held that "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."[36] In addition, in Republic v Amandi[37], the court held that "the law is that where a publication creates a substantial risk that the course of justice in a legal proceeding in question will be impeded or prejudiced, then that publication is a conduct that will be treat-

31 Supra note 8.

32 Ibid at Article 19(15), see also section 102 of the Courts Act, 1994 (Act 495.).

33 Black's Law Dictionary, Online Version. Available at https://thelawdictionary.org/contempt/ last assessed on 26th March 2018.

34 Ibid.

35 Republic v Liberty Press Ltd., [1968] GLR 123.

36 Ibid at p. 135.

37 Republic v Amandi, [2001-2002] 2 GLR 224, CA. see also Republic v Acquah; Ex parte Perko II, [2003-2005] 1 GLR 135, per Asiamah J., where it was held that "Any party who stated a deliberate falsehood in a calculated attempt to interfere with the due course of justice or to impair the administration of justice was in contempt of court.".

ed as a contempt of court. But it is not any publication that will amount to a contempt of court especially where the publication was done in good faith."[38]

In using the power of contempt, the court has been careful to state that its intention has never been to fetter public and media participation of court proceedings. In fact the courts have recognized the fact that the court like any institution should be subject to public scrutiny and criticism. However such public scrutiny and criticism should not be aimed at undermining the power of the court to dispense justice. Thus, in Republic v Liberty Press Ltd.,[39] Akufo-Addo C.J., as he then was stated that "I need hardly say that the judiciary has never claimed to be above criticism. Indeed I have on more than one occasion stated in public that the judiciary, like any other democratic institution, must justify its continued existence. This implies that its actions and conduct must be subject to the same measure of public scrutiny as any other governmental institution. Justice, it has been said, is not cloistered virtue, and those who have the responsibility to dispense justice will certainly not want to live in cloisters."[40] However, the court has guarded its independence and dignity so jealously that even where a judge is deemed to have erred, the court is likely to use its power of contempt if the public criticism of the judge is deemed scandalous. In the case of Republic v Mensa-Bonsu[41], the Supreme Court of Ghana held that "no wrong was committed by any member of the public, including the press, who exercised freely the ordinary liberty of criticizing temperately and fairly in good faith in private or in public any case which had been concluded. Thus provided members of the public refrained from imputing improper motives to those taking part in the administration of justice and were genuinely exercising their right of criticism without malice, they were immune from attachment for contempt. However, in the instant case, the words used by the respondents to impute derogatory conduct to Justice Abban—a liar, a criminal, one practising judicial and political chicanery and a partial judge—were pregnant with malice and were intentionally published. Since they amounted to the contempt of scandalizing the court, the court was duty bound to punish the respondents so as to maintain its dignity and prevent any interference with the administration of justice."[42] In this case, the court went ahead to state that truth was not a defence in law in the case of contempt of court. Thus, where the media or a member of the public made statements that scandalized the court, the truth of the statements made will not avail as a defence in an action for contempt.

38 Ibid, Republic v. Amandi.

39 Supra note ….

40 Ibid at page 135.

41 Republic v Mensa-Bonsu, [1995-96] 1 GLR 377, SC.

42 Ibid.

D. Conclusion

Generally speaking, the court recognizes the public's right to know and the duty of the media to report on civil proceedings in court. This is a rights that ensures fair trial and the very legitimacy of the court system to exist in a free society. Thus, although there are limits to the open court principle, the courts are very reluctant to limit it and will generally place limitations on the rights of the public to participate only on very limited circumstances. For instance, in R v Legal Aid Board ex parte T, a Firm of Solicitors[43], where a firm of solicitors sought anonymity in court proceedings because of a potential damage to the reputation of the firm that may be occasioned by their participation in the court proceedings, the court in dismissing their request stated that; "It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule." Dissatisfied with the reasoning of the court, the firm of solicitors appealed the decision. The appellate court dismissed the appeal and reasoned that any interference with the public nature of court proceedings is to be avoided unless justice requires it. The court stated further that it cannot be reasonable for the legal profession to seek preferential treatment over other litigants. At the end, the court did not think that this was a case that the identity of the firm could be protected.

The Courts in Ghana recognizes the importance of the role of the public and the media in civil proceedings and have therefore not bared journalist and media people from covering court proceedings. The jurisprudence leans towards the fact that reportage must be fair, decorous and not calculated to impugn the ends of justice.

It is clear therefore that a democratic country like Ghana cannot restrict the public's access to information and for that matter court proceedings. In the same way, the state has an obligation to protect the image of the courts as the last bastion of democracy and ensure fair trial. The way to go is therefore to find a middle ground, to strike a fair balance between the public's right to know and the integrity of the court in ensuring fair trial.

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