

THE PRESS AND CONTEMPT OF COURT

Abstract

The preservation of order in every facet of life and social interaction constitutes the subject matter of the discipline of law. Law creates and defines the boundaries of each of the social institutions and forbids each from meddling excessively in the affairs of one another. The duty of the press, for instance, is to report fairly and accurately on event happening in different stations of life in the society in a way that will not obstruct the orderly conduct of affairs in any other part of the society. Hence, the main thrust of the law of contempt is to protect a party in any suit or proceeding against the excesses of the press, especially in relation to matters pending in court. One of the cardinal principles of natural justice is that every person is entitled to a fair hearing within a reasonable time, by a court of competent jurisdiction. Fair hearing in this context, must include freedom from any publication that is capable of prejudicing the chances of parties, however slightly, in the matter or suit pending in a court. It also includes any act done or writing published calculated to bring a court or a judge of a court seized with a matter into contempt or to lower his authority. Hence, acts done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the court is the gist of the law of contempt. In the monarchical system of the primeval era of divine rights, the court was deemed an extension of the king who was God's representative on earth. And to disobey the court by any act or omission was to hold the king in contempt. In democratic settings, special constitutional provisions of inherent powers are made to shield the court from undue interference or disobedience to its orders. See, for example, section 6 (6) (a) of the 1999 constitution of the Federal Republic of Nigeria. Thus, the right to fair hearing is balanced against the right to freedom of expression so as to guarantee peace, order and development of the human society.

Introductory Overview:

Essentially, the law of contempt is designed to regulate the press in exercise of freedom without scandalizing the court or its agents. The emphasis is on self-control in reporting, freedom with a sense of duty of care. McQuails (2000:172) put it succinctly thus: "This power (of the press) carries with it a responsibility to exercise it with great caution and respect for others." All the institutions of the society are expected to demonstrate and exhibit mutual respect for each other as they all perform for the betterment of the society. In *Parashuram Detaram Shamdasan v King Emperor* (1945) A.C the court explained the purpose of the law of contempt of court as follows:

The purpose of the discipline enforced by the court in the case of contempt is the need to project the dignity of the court to the person of the judge and to prevent undue interference with the administration of justice but not to bolster up the power and dignity of the judge as an individual. To maintain law and order, judges have and must have power at once to deal with those who offend against it.

Even in the United States where the First Amendment enjoins the Congress to "make no law abridging the freedom of speech or of the press" the court is given sweeping powers to punish those who disobey or act contemptuously to its orders. In *Pennekamp v Florida*, the associate editor of the Miami Herald, a newspaper of general circulation was charged with contempt for publishing two editorials that were considered "unlawfully critical of the administration of

criminal justice in certain cases then pending before the court..." In the case, the newspaper accused the judges of going out of their ways "to find every possible technicality of the law to protect the defendant, to block, thwart, hinder, embarrass and nullify the prosecution." Taking exception to the publication the Supreme Court of the United States cautioned thus: "A newspaper may criticize, irritate, or vent its spleen against a person who holds the office of judge in the same manner that it does a member of the Legislature and other elective officers, but it may not publish scurrilous or libelous criticisms of a presiding judge as such or his judgments for the purpose of discrediting the court in the eyes of the public."

The purpose of this paper is to draw the attention of proprietors, editors, reporters etc. to the dangers inherent in reporting court proceedings especially when the case is still pending. By highlighting instances of contemptuous publications that have put the court and the press on collision course in retrospect, we intend to put the journalist on the alert regarding the land mine called contempt of court. Section 133 (4) of the Criminal Code defines contempt of court to include any publication in a newspaper misrepresenting proceedings of a court.

In *Franklin Atake v Attorney General of the Federation and Anor* (1982) the court observed that it is difficult to give exact definition of contempt of court because of its manifold nature. It however described contempt of court as "any conduct which tends to bring into disrespect, scorn or disrepute the authority and administration of the law or which tends to interfere with and/or prejudice litigants and/or their witnesses in the course of litigation."

Also, in *Theophilus Adetola Awobokun and Anor v Toun Adeyemi* (1968) the court defined contempt as any "action or inaction amounting to an interference with or obstruction to, or having a tendency to interfere with or obstruct due administration of justice." In specific terms, the following conducts have been held to constitute contempt of court. These include: allegation of partiality which tends to undermine or scandalize the court, language or behavior which is outrageous or scandalous or which is deliberately insulting to the court; comments whether oral or written, publication in a newspaper or article containing scurrilous personal abuse of the judge, with reference to his conduct as a judge in a judicial proceeding. However, in *Okodowa v State* (1988) it was noted that a fair and civil criticism made against a court may not amount to contempt. Neither does every act of discourtesy amount to contempt. Hence, in *Pennekamp v Florida*, the court held that "Freedom to publish one's views is a principle of universal practice, but when the press deliberately abandons the proprieties and sets out to poison its pabulum or to sow dragons' teeth and dispense canards for the purpose of doing another a wrong, it is no different category from a free man that does likewise." Thus, it is only when an act or publication constitutes "a clear and present or a grave and immediate danger" or poses a threat to the impartial and orderly administration of justice that the court takes offence. It has been noted that reporting court proceedings is a voluntary undertaking and the publisher who fails to fairly report does so at his peril.

For instance, the court has always taken serious exception to the use of cameras and recording devices during proceedings to prevent disruptions and distractions protect the fairness of the trial and ensure the solemnity of the proceedings. According to Trager et al (2005:239) "... some judges believe that cameras alter the content of testimony, encourage

theatrics in the courtroom, and change the attitude and behaviours of jurors.” They noted that the U.S Supreme Court is famous for its dislike of cameras, and permits neither still nor video cameras.

Similarly, English courts, after which the common wealth countries’ courts are modeled, do not welcome the presence of the electronic media during proceedings. For instance, section 41 of the English Criminal Justice Act 1925 makes it a criminal offence to take or attempt to take, a photograph or (with a video for publication) to make a sketch or portrait of a juror, witness, litigant or judge in the courtroom, the court building or the precincts, or publish any such prohibited image. Also, under Section 9 of the Contempt of Court Act 1981, it is contempt to tape-record court proceedings, unless the court gives permission. Neither the television camera nor the tape recorder is allowed in English courts. David Pannick (2007:191) gave five reasons why the court holds contemptuous the use of electronic gadgets during judicial proceedings.

First, it is said that, the mechanical equipment could cause disruption and prevent fair trial, hence American courts introduced ban on photographers in courts and later extended the ban to electronic media.

Second, it is objected that the presence of the camera or tape recorder would influence the conduct of the participants in the trial, civil or criminal.

Thirdly, judges feel that certain witnesses and parties should be protected from publicity, examples include juvenile, matrimonial or rape cases.

Fourthly, it is said that it is unfair to a defendant in a criminal case, or to the parties in a civil case, that their legal proceedings should be broadcast to a large audience outside the courtroom.

The fifth is that the broadcasting of court proceedings and the use of cameras will trivialize, sensationalize or degrade the true nature of the judicial function.

Whatever is said and done, the fact remains that judges must protect trials and ensure impartial and unimpeded administration of justice and are therefore empowered the world over to disallow any object that will interfere with this constitutional function. The judicial reporter is better advised to steer clear of any act or omission that will invoke the courts wrath on him. For as observed by Anyafulude (2004:121) “Litigation is not a football contest.” Left to the journalists, they would even want to cover proceedings live, forgetting that the court has a royal origin. The king knows how to decide cases to ensure peace among his subjects and would not allow any distractions during proceedings. Journalists should abide by court’s practice directions to avoid contempt charges.

Of note is that in contempt charges, judges have sweeping powers to punish summarily. As observed by Trager, Rossomanno and Ross (2007:238) each judge has discretion to determine what types of conduct constitutes contempt, to cite someone for contempt, to find the person guilty and to decide the penalty. Hence, in a contempt charge, the judge is the prosecutor, the witness and, of course, the judge. This sweeping power is evident in section 6 of the 1999 constitution which states that “The judicial powers vested.... (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law.”

It therefore, follows that the principle of natural justice that one should not be a judge in one's own cause, which forms the second limb of fair hearing as contained in section 36 (1) of 1999 constitution is subject to section 6 aforementioned. It therefore behooves on every publisher to steer clear of contemptuous publications. For as Lord Hardwicke pointed out in *Yakubu* (1999:80) "there cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters." And as the court observed in *Parashurams Detaram Shamdasan's* case, cited earlier, those who strike at the orderly administration of justice strike at the very foundations of the society. A contemnor can be ordered to be kept in prison until he purges his contempt. (*Ikabala v Ojosipe*, 1972).

Theoretical Premise:

The homeostatic equilibrium which undergirds the society is the product of live-and-let live philosophy which ensures that each institution operates within its legally defined boundary. This is the main thrust of the Social Responsibility theory. McQuail (2000:150) elaborates this. The media have a duty to society, and media proprietorship is a public trust. Hence, the media are enjoined to be truthful, accurate and fair, objective and relevant.

The media should be free, but self-regulated and should follow agreed codes of professional ethical conduct. Where the media fail, government, may, under some circumstances, need to intervene to safeguard the public. The Social Responsibility philosophy agrees with 'the neighbour principle' enunciated in the celebrated case of *Donaghue v Stevenson*. This principle stresses the duty of care which imposes a legal obligation on us to take proper care to avoid conduct fraught with unreasonable risk of danger to others. According to Lord Atkin (cited in Enemo 2007:22) the rule that you are to love your neighbour becomes, in law, you must not injure your neighbour. And the answer to the lawyer's question, "who is my neighbour?" becomes persons who are so closely and directly affected by my acts that I ought reasonably to have them in contemplation. Hence, we must take reasonable care to avoid acts or omissions which we can reasonably foresee would be likely to injure our neighbour.

As explained earlier, the principle of fair hearing, which includes fair trial, will be jeopardized when the press publishes negligently on cases pending in courts. Such publications may have adverse effects on a party or parties or on the judge before whom the case is pending. The judiciary as an arm of the government, may, in such circumstances, be compelled to protect both itself and the parties before it from the unwarranted onslaught.

The Offence of Contemptuous Publication:

Section 133 (4) (5) (9) of the Lagos State Criminal Code and those of other States specified clearly what the offence of contempt is and who to attach it to. It includes:

Any person who:-

- (4) While a judicial proceeding is pending makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the

authority of any person before whom such proceeding is being had or taken;
or

(5) Publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(9) Commits any other act of intentional disrespect to any judicial proceeding or to any person before whom such proceeding is being had or taken, is guilty of a simple offence and liable to imprisonment for three months.

There are many instances and occasions some journalists have caused their media organizations to pay dearly for negligent and contemptuous publications that offended the court. In *Rex v Thomas Horatio Jackson*, the accused who was the proprietor and editor of a newspaper titled *Lagos Weekly Record* was dragged to the High Court of Lagos, then called the Supreme Court for publications considered contemptuous. In the articles captioned "A Great Constitutional Issue" and "The Dangers of the Judicial System in Nigeria" respectively published in the said newspaper, the editor made grave aspersion against the integrity and partiality of the judges of the court. According to Jackson, the judges were timorous and went out of their way to invent plausible arguments that ensured favorable decisions to the Executive. For this, the editor was summarily committed to prison for two months and also ordered to pay the cost of the proceedings.

Similarly, in *Rex v Ojokolo*, (cited in Elias 1969:54) The Daily Times, The Nigerian Advocate and Eko Akete newspapers each published articles that associated the theft of various articles from Government House, Lagos to an ex-convict who had recently been discharged from the prison. These publications took place while the trial was still going on in the court. The court considered this prejudicial to fair trial. The three newspapers were summarily committed for contempt of court and penalized accordingly.

In *R v Tibbits*, the court noted that the point was not whether an article would in fact have any effect upon the mind of either the magistrate or judge, but whether the conduct was calculated to produce "... an atmosphere of prejudice in the midst of which the proceedings must go." Hence in *Pennekamp v Florida* earlier cited, the Supreme Court of the United States noted "The theory of our system of fair trial is that the determination of every case should be induced solely by evidence and argument in open court and the law applicable thereto and not by any outside influence whether of private talk or public print." (Trager, Russomanno and Ross, 2005:30). The justification for this awesome power of the court to punish contemnors was clearly stated in *Balogh v St. Albans Crown court*:

The power of a superior court to commit a contemnor to prison without charge or trial is very ancient, very necessary, but very unusual, if not indeed unique. It is as old as the courts themselves and it is necessary for the performance of their function of administering justice, whether they exercise criminal or civil jurisdiction. If they are to do justice, they need power to administer it without interference or affront as well as to enforce their own orders and to punish those who insult or obstruct them directly

or indirectly in the performance of their duty or misbehave in such a manner as to weaken or lower the dignity and authority of law...

And in addition to the constitutional safeguard provided for judges stated earlier, section 6 of the criminal code Act also shields them. It states:

Nothing in this Ordinance or Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as contempt of court...

Hence, in *Mu'Azu of Nunku v Inspector General of Police*, (cited in Elias 1969:51) a magistrate summarily committed the appellant to prison for a contempt committed in the face of the court during a proceeding.

Types of Contempt

There are two types of contempt as identified by Yakubu (1999:84) and *Elias, (1969) and in the case of Aniweta v The State, Awobuivin v Adeyemi; Afe Babalola v Federal Electoral commission and Chief Adegborioye*. They are: (i) criminal contempt and (ii) civil or non-criminal contempt. In *Hart v Hart*, the court held that contempt of court is criminal when the act interferes with the administration of law thus impeding and preventing the course of justice. It is civil when it consists of disobedience to the judgment orders or other processes of the court resulting or involving a private injury.

In *Re: Dr. Olu Onagorowa*, the court stated that contempt could be committed in the face of the court, referred to as *in facie curie*, or outside of the court termed *ex facie curie*. Examples of contempt *in facie curie* include word spoken or act done within the precincts of the court which obstructs or interferes with due administration of justice or calculated to do so. Contempt *ex-facie curie* includes words spoken or otherwise published or act done outside the court which are intended or likely to interfere with or obstruct the fair administration of justice. As remarked by Reed in Trager et al (2005:30) "... courts cannot function in free country when the atmosphere is charged with the effusions of a press designed to poison the mind of the public against the presiding judges rather than clarify the issues and propagate the truth." The latter, he said, was the press that Mr. Jefferson envisioned when he promulgated the thesis: "Our liberty depends on the freedom of the press and that cannot be limited without being lost." This is a universal truth as freedom of speech and of the press are natural and inalienable rights. But they must be exercised with caution and responsibility.

Conclusion

Contempt of court, like defamation of character, constitutes serious danger to the careless journalist. This means that media organizations must train and re-train their reporters to appreciate the legal landmines to successful journalism, and newspaper production as a business venture. According to Azikiwe (1994:349) competent editorship and efficient management are essential to the healthy life and survival of a modern newspaper. He identified inept editorial management; inadequate legal safeguards and inefficient general

supervision of newspaper establishment due to individual laxity as the bane of successful newspaper enterprise.

We have, in this work, examined the untoward consequences of the offence of contempt of court. This is to enable media practitioners; proprietors, editors, reporters and budding journalists to appreciate the dangers inherent in reporting or publishing materials that could incur the wrath of the court and avoid them. To be forewarned, they say, is to be forearmed. It must be appreciated that the Nigerian courts and the Nigerian press have maintained mutual respect for each other. Most of the contempt charges are settled out of court and therefore, not reported. Hence, most of the contempt cases occurred during the colonial rule when the hegemon used all legal means to silence and suppress agitations towards political freedom in Nigeria.

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