IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: HENRY KWOFIE JA (PRESIDING)

BRIGHT MENSAH JA

RICHARD ADJEI-FRIMPONG JA

SUIT NO. H1/51/2022

DATE: 14TH JULY 2022

SINO AFRICA DEVELOPMENT CO. LTD. ..... PLAINTIFF/APPELLANT

VS.

1. **ROYAL BELL INVESTMENTS LTD.**
2. **KWAME BLAY ..... DEFENDANTS/RESPONDENTS**

J U D G M E N T

KWOFIE JA:

This is an appeal against the ruling of the High Court Accra, Land Division dated the 18th October, 2021 by which the trial judge dismissed an application for interlocutory injunction filed by the plaintiff/appellant against the defendants/respondents.

The facts giving rise to this appeal are that by a writ of summons and an accompanying statement of claim filed on 9th August 2021, the plaintiff/appellant claimed against the defendants as follows:

a) *A declaration of title to all that land more particularly described in the statement of claim*
b) *Recovery of possession*
c) *Perpetual Injunction restraining the defendants, their agents, privies, servants, assigns and any person deriving any interest through them, from entering or dealing with the said land in any manner that interfered with the lawful possession and occupation of the plaintiff*
d) *Damages for Trespass*
e) *Costs inclusive of legal fees and*
f) *Any order relief(s) which this honourable court deems fit or considers just.*

The plaintiff's case as set out in its pleadings is that sometime in August 2010 it acquired two (2) parcels of land in an area commonly referred to as Nungua Farms from the Nungua Stool represented by the chief of Nungua and the Gborbu Wulomo which acquisition was evidenced by two (2) sub-leases dated 16th August 2010 executed between the Nungua stool of the one part and the plaintiff for a period of 95 years.

Plaintiff further averred that the 2 sub-leases were executed pursuant to a lease executed between the Nungua Stool and the Government of Ghana for a term of 99 years, dated the 12th of August 2010. It was the plaintiff's case further that after acquiring the said land, it went into immediate occupation and exercised acts of ownership and possession. Plaintiff pleaded that it has constructed its head office on a portion of the land and has put up ten (10) single room structures on the land to demarcate its boundaries. Further, the plaintiff said that it had fixed corner pillars and constructed a fence wall around the tract of land and all these were done without any

let or hindrance from anybody. According to the plaintiff, quite recently, the defendants without any just cause or consent of plaintiff have entered unto portions of the land acquired by the plaintiff from the Nungua stool and have started demolishing structures thereon with brute force and are reducing those portions as part of their land to the plaintiff's detriment. Pursuant, to those facts, the plaintiff successfully applied to the High Court for an order of interim injunction. The ex-parte order granted by the Court was to last for 10 days. A repeat application on notice to the defendant was dismissed by the trial court differently constituted.

The defendants/respondents admitted that the land in dispute forms part of the large tract of Nungua Stool land acquired by the Government of the Gold Coast by a Certificate of Title dated 7th March 1940 for Livestock Farms and Approved Road. The defendants stated that after the acquisition, the government embarked on the live-stock farming on a small portion of the acquired land and later allocated portions to the University of Ghana for experimental and Research Farm, the New Race Course, Borteyman Affordable Housing among other projects. The defendants stated that the Nungua Stool by a 99 year lease dated 28th May 1996 granted a portion of the acquired land totalling 31.37 acres to the Nii Abotsi Borlabi family of Bortey We as a result of their occupation and possession of portions of the acquired land. The defendant's further state that on 12th August 2010, the Government of Ghana by a 99 year lease released portions of the acquired land to the Nungua stool and its subjects. Further, the defendants contend that the Nii Abotsi Borlabi family subsequently obtained a Land Title Certificate dated 7th October 2015 over all that piece and parcel of land containing an approximate area of 29.791 acres granted them by the Nungua Stool. The Nii Abotsi Borlabi Family by an assignment dated 20th October 2015 assigned its interest in the land to the 1st defendant company which also obtained a Land Title Certificate dated 10th June 2016 on the land. The defendants further contend that it instituted an action in

the High Court, Accra in Suit No. LD/1228/2017 entitled Royal Bell Investments Ltd. vs. Nii Borlabi Borketey Nkpa which case was settled and the Terms of settlement filed on 22nd December 2017 was adopted as consent judgment on the 4th day of April 2018. Pursuant to the Consent judgment, the Deputy Sheriff of the High Court, Land Division on 30th day of June 2021 put the 1st defendant company into possession of the land. The 1st defendant contends that the Nungua stool having already granted the land in dispute in the year 1996 was estopped from granting same to the plaintiff after the release of the land by the Government and could not validly grant same to the plaintiff. Accordingly, the 1st defendant counterclaimed against the plaintiff as follows:

a) *A declaration that the 1st defendant Company is the owner of all that piece or parcel of land situate lying and being at Borteyman covered by Land Title Certificate No. TD 0558 Volume 019 Folio 58 dated 10th June 2016 covering 29.791 acres which it duly assigned to Terra Farm Development Co. Ltd.*
b) *An order annulling the purported lease dated 16th day of August 2010 of portion of the land in dispute by the Nungua Stool to the plaintiff which has already been granted to the Nii Abotsi Borlabi family assigned to the 1st defendant and subsequently to Terra form Development Co. Ltd.*
c) *An order directed at the Lands Commission to expunge from its records any purported registration of the land in dispute in favour of plaintiff forthwith.*
d) *Perpetual injunction restraining the plaintiff herein, its assigns, agents, servants, privies, independent contractors or any other persons claiming through it or authorized by it from entering, developing, occupying or interfering in any manner with the land in dispute*
e) *Damages for Trespass*
f) *Costs*
g) *Any other reliefs that may be just in the circumstances.*

As already stated, the trial judge dismissed the motion for an order of interim injunction against the defendants. Dissatisfied with the ruling of the trial High Court of 18th October 2021, the plaintiff appealed to this Court against the ruling by a notice of appeal on 21st October 2021 on the following grounds:

a. *The ruling is not supported by the weight of affidavit evidence on record*
b. *The learned trial judge erred in finding that the applicant had not established a legal or equitable right which the Court ought to have protected by the grant of an injunction order*
c. *The learned trial judge erred in his application of identity of land in a substantive claim for declaration of title to the interlocutory application for injunctive relief before him.*
d. *The learned trial judge failed to consider that the refusal of the application would disrupt the status quo and result in the applicant suffering imminent financial distress*
e. *The learned trial judge established no basis for his conclusion that the respondent would be able to compensate the applicant in damages should the substantive matter be determined in the applicant's favour*

The relief sought from the Court of Appeal is that the ruling of the High Court dated 18th October 2021 be reversed and the respondents be ejected from interference with the subject matter of the suit pending final determination.

Arguing the appeal, counsel for the plaintiff/appellant (hereinafter referred to as the appellant) argued ground (i) (ii) and (iii) together and thereafter argued ground (iv). He submitted that the effect of all these grounds of appeal is an invitation to this court as an appellate body to persue the record of appeal particularly the relevant processes like the pleadings of the parties, the respective affidavits and written submission that formed

the basis of the determination of the application by the trial court in order to arrive at the conclusion whether the trial court was right in refusing the application or otherwise. Counsel referred to the pleadings of the parties wherein the plaintiff stated that the land it acquired from the Nungua stool in August 2010 was the subject matter of a compulsory acquisition by the then Gold Coast Colonial Government pursuant to a certificate of title dated the 7th March 1940, more particularly registered at the Deeds Registry as number 214/1940. By a lease dated 12th August 2010, the President of the Republic acting through the Lands Commission granted the Nungua Stool a lease over part pf the land compulsorily acquired in 1940. The total area subject matter of the lease was 976.466 acres. It is out of this 976.466 acres that the plaintiff on the 16th August 2010 acquired a total area of 328.877 acres more or less made up of 294.520 acres and 34.357 acres more or less. Counsel asserted that the defendants in their statement of defence admitted that the land, the subject matter of this suit was part of the land compulsorily acquired by the colonial government by virtue of the certificate of title dated 7th March 1940 and also formed part of the land, subject matter of the lease between the President of Ghana per the Lands Commission and the Nungua Stool dated the 12th August 2010.

Counsel submitted that the Nungua Stool or its subject had no proprietary interest in the land farming part of compulsory acquisition from 7th March 1940 to 11th August 2010 to enable it or them to make a valid grant to prospective purchasers. He asserted that the purported grant by the Nungua Stool to the Nii Abotsi Borlabi family of Bortey We dated 28th May 1996 was thus a nullity and of no legal effect as the principle of Nemo Dat quod non habet applies. He submitted that the plaintiff relied on Exhibits SAL and SAL 1 which were the two (2) sub-leases evidencing the parcels of land acquired from the Nungua Stool which were attached to the affidavits in support.
Counsel also referred to exhibits SAL 2 which depicts buildings or structures on the land as well as exhibit SAL 3 which is a picture of plaintiffs office building on a portion

of the land in dispute. Counsel also referred to Exhibit SAL 4 which contains pictures of the demolished wall of the plaintiff which it claims was caused by the defendants.

Counsel for the defendants responded to the plaintiffs submissions and relied on Exhibit B, C, and C1 attached to the affidavit in opposition. Exhibit B which is at pages 163-165 of the record is an agreement purportedly executed between the Government of Ghana represented by the then Minister of Lands, Forestry and Mines and the Nungua Stool which is dated 25th September 2008. Clause 4 of this agreement reads as follows:

> *"That as a goodwill gesture and in line with Government policy objective to return part of excess lands acquired by the state to the original owners ..... **all that piece or parcel of land measuring** approximately 1,016 acres comprising of 40% (forty percent) ..... **shall be released to the land owners** free from all encumbrances"*

It suffices only to say that under the agreement dated 25th September 2008 no land was released to the Nungua Stool as the relevant clause *"all that piece or parcel of land measuring approximately 1016 acres comprising of 40% (forty percent) ..... **shall be released to the land owners**"* clearly referred to a future activity. The defendant admits in paragraph 7 of the affidavit in opposition at page 145 of the Record of Appeal that "*the land in dispute forms part of the large track (sic) of Nungua Stool land acquired by the Government of the Gold Coast by a Certificate of Title dated the 7th day of March 1940 for livestock farms and Approved Road*"

In the case of **Owusu vs. Owusu-Ansah (2007-2008) 2 SCGLR 870** at page 875 the Supreme Court stated per Sophia Adinyira JSC that:

> *"while agreeing that in an interlocutory application for an interim relief, the court ought to refrain from expressing an opinion on the merits of the case before the hearing, we are of the view that that does not absolve the*

trial court from considering the material before it in order to guide it to either grant or refuse the request before the court. The guiding principle in such applications is, whether an applicant has by his pleadings and affidavit established a legal or equitable right which has to be protected by maintaining the status quo until the final determination of the action on its merits:

See the case of ***Thorne vs. British Broadcasting Corporation (1957) 1 WLR 1104.*** *For as Amissah JA succinctly put it in the Vanderpuye case (supra) at 432:*

"The governing principle should be whether on the face of the affidavits there is need to preserve the status quo in order to avoid irreparable damage to the applicant and provided his claim is not frivolous or vexatious. The question for consideration in that regard resolves itself into whether on balance, greater harm would be done by the refusal to grant the application than not. It is not whether a prima facie case however qualified and with whatever epithet, has been made"

Thus the fundamental rule therefore is that the trial court should consider whether the applicant has a legal right at law or in equity which the court ought to protect by granting an interim injunction and as was stated in the **Owusu Ansah** case (supra), this could only be determined by considering the pleadings and affidavit evidence before the court.

What were the respective roots of title relied upon by the parties? The plaintiffs case gleaned from its pleadings is that sometime in August 2010, it acquired two (2) parcels of land in an area commonly referred to as Nungua Farms from the Nungua Stool represented by the chief of Nungua and the Gborbu Wulomo which acquisition was

evidenced by two (2) sub-leases dated 16th August 2010 executed between the Nungua Stool and the plaintiff. The leases were for a period of 95 years. The plaintiff further averred that the sub-leases were executed pursuant to a lease executed between the Nungua Stool and the Government of Ghana for a term of 99years dated the 12th August 2010. The plaintiff after acquiring the land went into immediate occupation and exercised acts of ownership and or possession over same. Plaintiff in particular pleaded that it has constructed it's head office on a portion of the land and has put up ten (10) single room structures on the land and erected corner pillars and constructed a fence wall around the tract of land. Exhibit SAL and SAL 1 are the two sub-leases evidencing the parcel of land acquired from the Nungua Stool. Exhibits SAL 2 depicts the buildings/structures on the land as well as Exhibits 3 which is a picture of the plaintiff's head office building on a portion of the land in dispute. Exhibits SAL 4 depicts the demolished fence wall of plaintiff which it claims to have been caused by the defendants.

As earlier set out the defendants traced their root of title through Exhibits B, C and C1 attached to the affidavit in opposition. Clearly exhibit B, the agreement purportedly executed between the Government of Ghana represented by the Minister of Lands, Forestry and Mines and the Nungua Stool dated 25th September 2008 as stated earlier did not transfer or release any land to the Nungua Stool. Thus, the Nungua Stool could not and did not have any interest in the compulsorily acquired land as at 2008 to purport to transfer same to the Nii Abotsi Borlabi family of Bortey We on 28th May 1996 as pleaded by the defendants in paragraph 5 of their statement of defence. It was not until 12th August 2010 that the Government of Ghana released part of the land compulsorily acquired by the colonial government by virtue of the certificate of title dated 7th march 1940 to the Nungua Stool and which was the subject matter of the lease between the President per the Lands Commission and the Nungua stool.

All the parties to the dispute agree in their respective pleadings as follows:

i. The land in dispute in this instant action forms part of the Nungua Stool land which was compulsorily acquired on 7th March 1940 by the colonial government

ii. The land in dispute forms part of the land released by the President of Ghana through the Lands commission to the Nungua Stool by a lease dated 12th August 2010

It follows therefore that the Nungua Stool as the pre-acquisition owner of the land could not make any grant to anybody prior to 12th August 2010 when the lease was executed between the Government of Ghana and the Nungua Stool as the said stool did not have any interest to convey prior to 12th August 2010.

In his ruling the trial judge stated the principle correctly when he stated as follows at page 314 of the record that:

> *"It is trite learning that before a person can ask a court of competent jurisdiction to grant a prayer for injunction, the person must first and foremost show that he or she has a right to protect"*

And indeed he referred to such cases as **Centracor Resources Ltd vs. Boohene and others (1992-93) GBR (Part 4) 1572, Quansah vs. Quansah (1984-86) 1 GLR 718 at 723 and Owusu vs. Owusu-Ansah (supra)**

The trial judge clearly recognized and appreciated that by the pleadings and affidavit evidence and attached exhibits, the plaintiff/applicant had a legal right that ought to be protected having regard to the fact that the plaintiff/applicant had leases covering the plots of land, was in possession and had buildings including its head office building on

the land and had constructed a wall around the land. Indeed the affidavit evidence shows that the plaintiff/appellant went into occupation of the land immediately after the execution of the 2 sub-leases Exhibit SAL and SAL 1 on 16th August 2010.

The trial judge in his ruling stated as follows:

> *"In the application under consideration, both parties exhibited title documents evidencing their interest in the subject land. The title documents of the applicant were exhibited as Exhibit SAL and SAL 1. A look at same depicts there are no site plans attached though the boundaries of the land are clearly stated in the said sub-lease agreements ..... as indicated supra, the title documents exhibited by the applicants have no site plans. It is trite knowledge that site plans are the foundation of every indenture. Thus there cannot be an indenture without a site plan. I therefore wonder how the applicants, came by the boundaries they stated in the indentures. No wonder the respondents contend that they are not on the applicants land ..... The title documents of the respondent was exhibited as Exhibit F. It is salient to note that the rationale behind the acquisition of the subject land by each of the parties is to put up affordable houses for public and civil servants ..... The above depositions clearly depict the interest of the parties are to provide the public with affordable houses which obviously would help address the deficit in the housing sector in the country"*

The trial judge then sets out the basis for his refusal of the application as follows:

> *"There is unchallenged evidence before me that the respondents have expended so much money in engaging surveyors, architects, engineers, contractors, expatriates, consultants, obtained building permits for the affordable housing project for the government. See Exhibits L, L1 and L2. There is further evidence before me that Terraform Development Ltd. has entered into various agreements*

with financial institutions to secure funding for the affordable housing project supported by the Government of the Republic of Ghana see exhibits M and M1. A look at Exhibit N confirms the arrival of expatriate engineers contracted by the respondents to undertake and supervise the housing project. According to the respondents the interest rate on the funds procured for the project would rise and the fund itself may be withdrawn should the application be granted. If I may ask, what harm or unnecessary hardship is reasonably likely to be caused to the applicants or the respondents by a refusal or granting of the instant application? This requires the court to weigh the applicant's application (need) against that of the respondents to enable the court to determine where the balance of convenience lies to aid the court in determining the grant or refusal of the application. There is evidence before me that the respondents have procured loans and also cost toward the construction of the affordable houses for the benefit of the public per an agreement they have entered into with the government. I have taken judicial notice of the fact that the cost of building materials are on the rise. According to the respondents, they have bought building materials for the project and that if same is not used within the time frame should the application be granted same will go waste and cause the respondents and it assignee, the state and the general public so much losses, hardship and damages. It is my considered view that granting the application could obviously cause a lot of hardship to the state and the respondents per the evidence before the court. It is therefore my considered opinion that since both parties acquired the subject land to put up affordable houses for the public in order to make profits, the interest of the applicant would still be taken care of in terms of damages should they succeed in this case. In the circumstance, I hereby refuse the application. The respondents are ordered to execute an undertaking to reimburse the applicants in terms of cost and damages

should they fail to succeed in this action. The undertaking should be executed within seven (7) days. No order as to cost"

The law is settled that the granting or refusal of an injunction is at the discretion of the trial judge and the exercise of this discretion must be based on the material before the trial Court as contained in the pleadings and the affidavit evidence. Generally, an appellate court should be slow in interfering with the exercise of discretion by a trial court, but if this discretion is not properly exercised, an appellate court has a duty to interfere. Thus in the case of **Blunt vs. Blunt (1943) AC 517 at 518** the House of Lands stated as follows as stated in the headnotes:

"An appeal against the exercise of the court's discretion may succeed on the ground that the discretion was exercised on wrong or inadequate materials if it can be shown that the court acted under a misapprehension of fact in that it gave weight to irrelevant or improved matters or omitted to take relevant matters into account"

See also the case of **Prince William Tagoe vs. Albert Acquah**; Civil Appeal No. J4/24/2008, dated 11th March 2009 (Supreme Court) (Unreported) where the Supreme Court cited with approval **Blunt vs. Blunt** (Supra) and held as follows per Anin-Yeboah JSC (as he then was)

"This Court as an appellate court can only intervene with the exercise of the discretion if it could be shown that the discretion was exercised on wrong or inadequate material placed before the court which exercised the discretion or if it could be demonstrated that the court gave no weight to the relevant matters and ignored relevant material in arriving at its decision. If the lower court's decision was also based on a misunderstanding of the law or on inferences that particular

facts existed or did not exist when infact evidence shows to be wrong, this court can interfere"

Was the trial judge right in his appreciation of the material placed before him in the application by the parties and the inferences drawn from them?

I now wish to refer to the materials placed before the trial judge and to determine whether he took into consideration all the relevant materials in arriving at his decision not to grant the application for interlocutory injunction. The starting point in this analysis is the description of the land. In his ruling the trial judge stated at page 319 to 320 of the record:

> *"As stated (supra) the title document exhibited by applicant have no site plans. It is trite knowledge that site plans form the foundation of every indenture. Thus, there cannot be an indenture without a site plan. I therefore wonder how the applicant came by the boundaries they stated in the indenture. No wonder respondent contend that they, are not on applicants land ..... This clearly puts the site plans of the applicants in issue for which same is fatal to the success of the applicant's application"*

The plaintiff had in paragraphs 19 and 20 of the statement of claim described the land it was claiming and indeed had stated in relief (a) of its endorsement to the writ of summons a declaration of title to all the land more particularly described in the statement of claim.

In paragraphs 19 and 20 of it's statement of claim, the plaintiff pleaded as follows:

> *"19. The land in dispute consists of all that piece of land known as site for Sino Africa Development Ltd, Borteyman in the Tema Municipal Assembly in the Greater Accra Region of the Republic of Ghana boundary whereof*

commencing at a pillar marked GCGEP 11/38/4 which same pillar serves as a point of departure and runs on a bearing of 074'28' for 2655.3 feet to which same pillar forms part of the boundary of the afore mentioned site whereof commencing at a pillar marked GCG EP1138 FIS 1 and thence on a bearing of 270'00' for 588.9 feet to a pillar GCG EP 11 38 FIS 2 and thence on a bearing 000'00' for 2206.9 feet to a pillar marked GCG EP1138 FIS 3 and thence on bearing 090'00' for 125.0 feet to a pillar marked GCG EP 11 38 SACL 1A and thence on a bearing of 000'00' for 627.7 feet to a pillar marked GCG EP 11 38 SCAL 1 and thence on a bearing of 000'00' for 1174.5 feet to a pillar marked GCG EP 11 38 SCAL 2 and thence on a bearing of 092'55' for 172.6 feet to a pillar marked GCSEP 11/54/3 and thence on a bearing of 76'40' for 1044.1 feet a pillar marked GCSEP 11/38/A5/3 and thence on a bearing of 173'53' for 789.0 feet to a pillar marked GCGEP 11/38/A5/4 and thence on a bearing of 189'56' for 824.3 feet to a pillar marked GCGEP 11/38/A5/5 and thence on a bearing of 106'21' for 982.5 feet to a pillar marked GCGEP 11/38/A6/1 and thence on a bearing of 108'13' for 1538.3 feet to a pillar marked GCGEP 11/38/A6/9 and thence on a bearing of 107'22' for 1074.5 feet to a pillar marked GCGEP 11/38/A1/14B and thence on a bearing of 184'20' for 129.7 feet to a pillar marked GCEEP 11/38/A1/13A and thence on a bearing of 249'17' for 415.6 feet to a pillar marked GCEP 11/38/A1/13 and thence on a bearing of 247'18' for 451.2 feet to a pillar marked GCEP 11/38/A1/12 and thence on a bearing of 247'46' for 540.0 feet to a pillar marked GCGEP 11/38/A1/11 and thence on a bearing of 248'09' for 591.0 feet to a pillar marked GCDEP 11/A1/9 and thence on a bearing of 248'18' for 642.1 feet to a pillar marked GCEP 11/38/A1/8 and thence on a bearing of 248'18' for 1178.0 feet to a pillar marked GCG EP

11/38/FIS/1 and thence on a bearing of 270'00' for 779.63 feet to a pillar marked GCG EP/11/38/FIS/! Which marks the point of commencement and thus containing an area of 294.520 acres or 119.192 Hectares.

20. *Plaintiff will also seek judgment over all that piece and parcel of land known as site for Sino Africa Development Ltd. Borteyman in the Tema Minicipal Assembly in the Greater Accra Region of the Republic of Ghana boundary whereof commencing at a pillar marked GCG EP 11/38/4 which same pillar serves as a point of departure, containing an area of 34. 357 Acres or 13.904 Hectares.*

The affidavit evidence clearly shows that the plaintiff was in possession of this land with structures and buildings on the land with corner pillars and a wall erected around the land. The defendant does not deny that it forcefully entered this land but asserts that it entered the land in dispute in execution of a consent judgment it obtained on 4th day of April 2018 in Suit No. LD/1228/2017 entitled Royal Bill Investment Ltd. vs. Nii Abotsi Borlabi Borketey Nkpa and in pursuance of a Certificate of Execution dated 30th June 2021.

Clearly therefore with regard to occupation of the land, the status quo was that the plaintiffs had been in possession from 16th August 2010 until they were forcefully evicted from the land by the defendants in June 2021. In any case, the affidavit evidence clearly shows that the defendants/respondents knew that the land was not in the possession of Nii Borketey Borlabi Nkpa the defendant they claimed to have obtained judgment against in Suit No. LD/1228/2017 to warrant the wrongful eviction of the plaintiffs from the land. The affidavit evidence further shows that the identity of the land in dispute was not in doubt and therefore it was clearly wrong for the trial judge to

state that the plaintiff/appellant had failed to prove the identity of the land they were claiming.

Further in his ruling, the trial judge stated:

> *"There is unchallenged evidence before me that the respondents have expended so much money in engaging surveyors, architects, engineers, contractors, expatriate consultants, obtaining building permits for the affordable Housing project for the government ..... There is further evidence before me that the Terraform Development Ltd. has entered into various agreements with financial institutions to secure funding for the affordable Housing Project supported by the Republic of Ghana ..... a look at Exhibit N confirms the arrival of the team of expatriate engineers by the respondent to undertake the housing project"*

These assertions by the trial judge are not borne out by the affidavit evidence. Exhibit N which the trial judge uses to support his assertion of the arrival of a team of expatriate engineers in the country at the instance of the respondents is actually one (1) bio-data page of a United Kingdom passport belonging to one Hanns Sean Edward with an expired one year resident permit. How this could be used to support the contention of the trial judge that a team of expatriate engineers had arrived in Ghana at the expense of the respondents to undertake the affordable housing project is baffling?

Nor does exhibit M and M1 support the trial judge's assertion that the respondents have entered into various agreements with financial institutions to secure funding for the affordable Housing project. Exhibit M is a letter dated 8th June 2021 from the Acting Coordinator of the National Housing and Mortgage Fund and addressed to the Honourable Minister of State, Ministry of Works and Housing, Accra. That letter was

copied to the Managing Director, Terraform Development Ltd. The relevant part of that letter states.

> *"**Re; Proposal to engage with the Ministry of Works and Housing for the Delivery of Affordable Housing Units: Terraform Development Ltd**.*
>
> *I write to acknowledge receipt of your letter with the above subject matter and the attached letter from Terraform Development Ltd. ..... As you are aware, our mandate as a fund is to provide support for the demand side of the housing sector, especially in creating the incentive for private sector players to offer mortgage facilities for the affordable housing market space at the most affordable rates as possible. To pursue this mandate, NHMF has successfully set-up and piloted schemes with some private sector entities. We are there looking forward to scaling up for which reason we find the proposal of Terraform very much aligned to our current objective. .....*
>
> *Delazin Anu*
>
> *Ag Co-coordinator*
>
> *CC:*
>
> *The M.D.*
>
> *Terraform Development Ltd.*

Exhibit M1 is also a letter dated 13th August 2021 from the Managing Director of Terraform Development Ltd. addressed to First National Bank (Ghana) Ltd. Accra indicating "*our intention to apply for construction finance for the sum of $4,000,000 ..... for the proposed Borteyman Development"* This Exhibit M1 was just an application indicating an intention to apply for construction finance of $4,000,000.00. Whether this application

was going to be approved by First National Bank could be anybody's guess. Clearly the trial judge was wrong in his appreciation of Exhibits M and M1 which do not support his assertion that the respondents had entered into various agreements with financial institutions to secure funding for the housing project with the attendant rise in interest rates on the funds procured.

Further on the trial judge reasoned as follows in his ruling:

> *"It is therefore my candid opinion that since both parties acquired the subject land to put up affordable houses for the public in order to make profits, the interest of the applicant would still be taken care in terms of damages should they succeed in this case. In the circumstances, I hereby refuse the application"*

This opinion of the trial judge is at once strange and baffling! The fact that the appellant and the respondents intended to use the disputed land for housing schemes is not a basis for the trial judge's statement that the interest of the applicant would still be taken care of in terms of damages, should they succeed in this case and therefore a basis for refusing the application. Clearly ground (iv) of the appeal succeeds.

In my view and with due respect to the trial judge, he acted on a misapprehension of the pleadings and the affidavit evidence and material before him and thereby exercised his discretion wrongly in favour of the respondent. It is my considered opinion that the trial judge erred in refusing to grant the order of interim injunction. I am of the view that having regard to the pleadings, the affidavit evidence and all the material available, the proper order to have been made was to restrain both parties from entering unto and developing the disputed land pending the final determination of the case. Accordingly, we allow the appeal and set aside the ruling of the trial court dated 18th October 2021

and we substitute in place of that order the following order: it is hereby ordered that the defendants/respondents/respondents are hereby restrained either by themselves, their attorneys, agents, privies, successors, workmen, assigns and any person claiming through them from any demolition, development, alienation, interference and/or entering unto and/or dealing with the disputed land pending the final determination of the suit. The plaintiff/appellant who on the affidavit evidence before the Court was in possession of the land before being wrongfully evicted from the land is hereby also restrained from embarking on any further development of the disputed land pending the determination of the suit. Having regard to the circumstance of this case and taking into consideration the views of the trial judge in his ruling which have far reaching implications for the determination of the substantive matter, we hereby order that the Registrar of this court brings this case to the attention of His Lordship the Chief Justice to transfer this case from the trial judge Amo Yartey J and to put same before the High Court differently constituted to hear the substantive matter.

SGD

.....

JUSTICE HENRY KWOFIE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE **.....**

JUSTICE P. BRIGHT MENSAH

(JUSTICE OF THE COURT OF APPEAL)

SGD

I ALSO AGREE .....

JUSTICE RICHARD ADJEI-FRIMPONG

(JUSTICE OF THE COURT OF APPEAL)

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OFOSU GYEABOUR FOR DEFENDANTS/RESPONDENTS