IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA AD 2022

CORAM: *1. SENYO DZAMEFE, J. A (PRESIDING)*

2. M. WOOD (MRS), J.A

3. ERIC BAAH, J.A

CIVIL APPEAL NO.HI/173/2022

DATE: THURSDAY, 15TH DECEMBER, 2022

NANA NKRUMAH BEDIAKO === DEFENDANT/APPELLANT

VRS

1. **AGRI-CATTLE LAKESIDE ESTATE LTD. === PLAINTIFFS/RESPONDENTS**

2. **MOHAMMED NAJEED**

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JUDGMENT

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M. WOOD (MRS), JA

The Plaintiff who was aggrieved by and dissatisfied with the Ruling of the High Court, Accra delivered on 13th April 2021 filed an appeal against same to this Court. The trial judge granted an interlocutory injunction against the dismissed the Plaintiff's claim and entered judgment in favour of the Defendant Xxx

The antecedents of this case are that:

The 1st Plaintiff is a limited liability company whose business is real estate development while the 2nd Plaintiff is a grantee of the 1st Plaintiff. The Defendant is described as a trespasser and encroacher on a portion of the 1st Plaintiff's larger tract of land lying at Katamanso in the Greater Accra Region. The 1st Plaintiff avers that it is the legal owner of land at Katamanso measuring 2911.53 acres and covered by Land Title Certificate No TD 0513. It became the legal owner on 8th October 1970 when Black Watch Cattle Breeding Farms company took a leasehold interest from the Nungua Stool acting per the then Nungua Mantse, Nii Odai Ayiku IV with the consent and concurrence of all the principal elders of the Nungua Stool for a parcel of land measuring 4244.25 acres for fifty years for agricultural purposes and same was registered. The 1st Plaintiff on 18th January 1974, Agric-Cattle Limited was assigned the interest of the former and thereafter on 28th September, 1995, the 1st Plaintiff entered into a renewed lease agreement for a further fifty year term. The Government by an Executive Instrument (EI 15) compulsorily acquired portion of the 1st Plaintiff land and this further reduced to 2911.53 acres. In 9th January 1996, it registered its interest in the land and was issued with a Land Title certificate and changed its name to the present. The Plaintiff avers that in early 2020, it granted a portion of its registered land to the 2nd Plaintiff who moved into possession and started developing the land. On 2nd December 2020, the Defendant trespassed on a portion of their land and destroyed the development done on it, by reason that he has obtained a default judgment against certain individuals namely Giwa Abass, Kweku Amoah and Ashie Neequaye who the 1st Plaintiffs allege are not known to them. As according to the Plaintiffs, they were not parties to the said suit and that land is not occupied by the people he obtained a writ of possession against. It is also their case that their ownership of the land has been confirmed by several judicial decisions and evidenced by exhibit LE3.

Accordingly, the Plaintiffs filed a Writ of Summons and Statement of Claim at the High Court instituted an action against the Defendant claiming the following reliefs:

a. A declaration of title to all piece or parcel of land situate at Katamanso, Accra and containing approximate area of 2911.53 acres and covered by Land Title Certificate No. TD 0513 of which the 0.0173 acre being claimed by the Defendant forms part.
b. A declaration that the Defendant has trespasses on portions of the 1st Plaintiff's land described in relief (a) above.
c. An order for recovery of possession of land mentioned in (a) above.
d. An order of perpetual injunction restraining the Defendant, his agents, assigns, workmen and any person claiming title through him from interfering with the Plaintiff's land.
e. General damages.
f. Cost including the lawyer's fee.

As expected, the Defendant responded with a Statement of Defence in which she denied all the material allegations. It is her case that in 2003 her mother Mary Quartey bought two plots of land from Kweku Andoh who had originally purchased some land from Numo Cephas Ashale Nikoi, Ebenezer Nikoi, Nii Amasah Nikoi and Emmanuel Anum Nikoi being the joint heads of Asale Botwe family. Documentation was made in the names of the Defendant and her mother in 2004. She avers that her mother walled the Defendant's land, built an outhouse thereon and placed caretakers on the land. On the second plot her mother built a one storey building and also placed a caretaker in it. They enjoyed quiet possession till in 2014 when someone trespassed on the land and this led to a complaint being lodged at the Lakeside police station where she was informed that the 1st Plaintiff had announced a regularization of documents and she was advised to see the said Plaintiff. During the regularisation of both plots of land, it was realised that her land had upon instructions of Gyiwa Abass been picked and measured by the 1st Plaintiff's surveyor and 1st Plaintiff informed the Defendant that the said Gyiwa Abass would be invited to resolve the issue. It is her case in pleading that when she later discovered that Kweku Andoh and Ashie Neequaye had conspired and sold the land to Gyiwa Abasshim.her land, she informed the 1st Plaintiff who advised her to legal steps against them and upon

resolution to return for regularisation of her title. She therefore issued a writ of summons and statement of claim against them in suit no. FAL/780/2014 and even though Gyiwa Abass entered appearance when judgment was obtained against him he abandoned the matter. Meanwhile she paid for her mother's plot and 1st Plaintiff prepared a sublease in her mother's name. During the pendency of the matter in court, she avers that Gyiwa Abass resold the land and placed land guards onto the land while displacing the caretakers. She therefore counterclaimed for declaration of title to land, declaration that the purported sale is unlawful and therefore null and void, an order of perpetual injunction, an order directed at 1st Plaintiff to regularise Defendant's interest in the land and costs.

The Plaintiffs in their affidavit alleges that the 1st Plaintiff is the legal owner of a tract of land which has been registered which the disputed land falls within this tract of registered land by the 1st Plaintiff. The 1st Plaintiff states that some people encroached on the said land which he got an order from the High Court to demolish the encroaches' structures but they chose to regularize their stay on the land. On 2nd December 2020, the Defendant trespassed on a portion of their land and destroyed the development done on it, by reason that he has obtained a default judgment against certain individuals namely Giwa Abass, Kweku Amoah and Ashie Neequaye who the 1st Plaintiffs allege are not known to them. As according to the Plaintiffs, they were not parties to the said suit and that land is not occupied by the people he obtained a writ of possession against. It is also their case that their ownership of the land has been confirmed by several judicial decisions and evidenced by exhibit LE3. Thus, an application praying for an order for interlocutory injunction to restrain the Defendant from further encroaching on their land.

XX It is the Defendant's case that her mother bought two plots from the joint heads of the Ashaley Botwe family which she constructed a wall around one plot and built a storey building on the other which they have been in possession ever since until 2014, when someone trespassed unto the land. He reported to the lakeside police station where he was informed for the first time that the 1st Plaintiffs were regularizing the title of the land. He

then went to their office but was told that one Giwa Abass has taken his plot. Upon advice from the 1st Plaintiff, the Defendant instituted an action against Giwa Abass for declaration of title in suit no: FAL/780/2014. Subsequently, the Defendant found out that one Kweku Andoh and Ashie Neequaye had conspired and sold his land to Giwa Abass. Giwa Abass notwithstanding the pendency of the suit resoled the land to the 2nd Plaintiff which he then took the 2nd Plaintiff to the 1st Plaintiff to regularize his title. The Defendant states that his possession on the land is known to the 1st Plaintiff and thus the present application be refused as the Respondent's family live there.

The 1st Plaintiff applied for an order of an interlocutory injunction to which the Defendant was opposed to. In granting the application, the learned trial judge stated that "the Plaintiffs on the face of the pleadings and affidavit evidence would be more disadvantaged and inconvenienced if the Defendant is allowed to continue to develop the land" and restrained the Defendant and her assigns from dealing with the land covered by the Land Title Certificate until the final determination of the matter.

Being aggrieved by the said ruling the Defendant appealed by filing a Notice of Interlocutory Appeal at Page 252 of the record of appeal on the following grounds:

i. The judge misapplied his discretion by granting the application which amounted to an indirect ejection or eviction of the Defendant and her dependants who have been living on the land since 2004.
ii. That additional ground will be filed on receipt of the copy of the ruling.

Relief sought

To set aside the ruling

Notice of Additional grounds filed on 19th May 2021are as follows"

1. The trial judge erred by concluding that the Plaintiffs have a superior title to the land.

2. The trial judge erred by concluding that there would not be irreparable damage caused to either party.
3. The trial judge erred by restraining the Defendant from entering the land by herself, workmen, assigns, agents etc. when in fact Defendants caretaker and family were already in possession and occupation of the land.
4. The judge erred by holding that the Defendant's caretaker had been driven away from the land.

In arguing Grounds 1 of the Ground of Appeal, 3 and 4 of the Additional Grounds of Appeal, Counsel for the Appellant submits that the trial judge omitted to take into consideration the fact that since 2004, the Appellant had been in possession of her land and that of her mother's and that during the trial of suit no FAL780/2014, the caretaker of the Appellant was chased off the land by the 1st Defendant in the said suit. Furthermore, she argues that it was the same trial court that declared title of the same land to the Appellant in FAL/780/2014 and placed the Appellant back in possession in 2020 by an order for possession on 12th October 20202. Again on 14th January 2021, the said trial judge ordered the Deputy Sheriff to ensure that all unwanted structures on the land be brought down under the supervision of the deputy sheriff. He further submitted that the judge's omission to avert his attention of this fact led to the wrongful exercise of his discretion as the order sought to indirectly evict the Appellant and her dependants from the land the trial judge had earlier granted them possession of.

Counsel further argued that the Appellant had been in possession of the land and had constructed a fence wall and single room on same. But when the caretaker was temporarily displaced the court granted as part of its judgement recovery of possession of the land in dispute and the Appellant was placed back into possession. Counsel therefore She referred to the cases of **Quansah vrs Quansah [19888-84] 1 GLR 718,** Ababio vrs Kanga [1932] 1 WACA 253 at 259-260 and Order 43(3) of CI47.

In addressing Ground 1 of the Notice of Additional Evidence, Counsel submitted that the trial judge erred by concluding that the Plaintiffs have a superior title to the land. She said

the application was brought in bad faith and that the Appellant had a right to be on the land. And referred to the case of Montero and Another vrs Redco Ltd and Another [1984-86] 1 GLR 710

Regarding Ground 2 of the Notice of Appeal, she submitted that the trial judge erred by concluding that there would not be irreparable damage to either party and referred to the case of ***Welford Quarcoo vrs AG and The Electoral Commission*** JI/2/2012 dated 13th June 2012. She contends that irreparable damage will be suffered by the Appellant and her dependants who will be evicted from the land they have been living on per the orders of the trial court since October 2020.

Responding to the written submission of the Appellant, argues that the guiding principle in the determination of interlocutory injunction 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. It is his submission that the Plaintiffs/Respondents in their affidavit evidence adequately produced documentary evidence which amply demonstrated that the Plaintiffs/Respondents have rights that ought to be protected especially since it found that there Appellant was attempting to develop the land in dispute. He referred to the cases of ***Thorne vrs British Broadcasting Corporation [1967] 1 WLR 1104*** and ***American Cyanamid Co. vrs Ethicon Ltd [1975] 1 All E.R. 504***.

Order 25 rule 1 states that "the court may grant an injunction by an interlocutory order in all cases in which it appears to the court to be just and convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the court considers just".

In considering what is just and convenient, the case of ***American Cyananamid Co. vrs Ethicon Ltd. [1975] 1 ALL ER 504 Per Lord Diplock. HL,*** stated three steps the court should consider in granting an interlocutory injunction, i.e 1. Whether there is a serious question to be tried on as to who will suffer more hardship if the order is granted or otherwise

refused. 2. Where an order of damages will not be adequate to compensate the injured party. 3. The court must weigh one need against the other and determine where the balance of convenience lies, as also held in ***Quansah vrs Quansah [1984-1986] 1 GLR 718.*** These 3 steps to be considered were also affirmed by the Supreme Court in the case of ***Welford Quarcoo vrs Attorney General & Another [2012] 1 SCGLR 259, per Dr. Date-Baah.***

It has also been held by the High Court and Supreme Court that the order of interlocutory injuction is to preserve the subject matter of the dispute and also to hold the balance evenly.

As per the law above, an interlocutory order when applied for is granted per the discretion of the court. The Supreme Court in the case of ***Arthur (No.2) vrs Arthur (No.2) [2013-2014] 2 SCGLR 579***, identified ***in the Matter of Fowler and Fowler, 145 N.H. 516, 519, 764 A.2d 916 (2000),*** that "The trial court has broad discretion in determining matters of property distribution and alimony in fashioning a final divorce decree." Also stated that ***in the Matter of Peter Letendre and Linda Letendre (2002) 149 N.H. 31; 815 A2d 938***. "It is instructive on the approach a superior court should adopt in relation to the exercise of discretion by a trial court in the division of marital property and in tune with the general approach adopted by this court in overriding the decisions of the court below."

Concluding that a superior court should take caution in dismissing the discretion given by a trial court for they have first-hand background of the case.

Being a discretionary order, "a court will not grant an injunction to restrain an actionable wrong for which damages are the proper remedy, and the court is to consider to which side the balance of convenience is inclined", ***John Akaribo Ndebugre vrs The Attorney General and Others; (Suit No. J1/5/2013, 21 November 2013) (unreported).***

In my humble opinion, from the law espoused above an interlocutory injunction is a discretionary order given to the court to grant or refuse considering whether or not it is just and convenient to do so, it is granted to preserve the status quo of the property and also on the balance one party will not suffer hardship and can be adequately compensated.

From the facts, it is known that there is a serious issue to be tried by the Applicant, moreover the Defendant is developing the subject matter of this case and it is just to grant the order to preserve the status quo of the property, that on the balance of convenience, the Defendant in the likelihood of succeeding will not suffer any hardship and can be adequately compensated.

Thus, the appeal should be dismissed. The court's power to grant interlocutory injunctions is provided for in Order 25 rule (1) of the High Court (Civil Procedure) Rules, 2004 (C.I 47) as follows:

> *"The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the Court considers just."*

Although the granting or refusal of an interlocutory injunction is at the discretion of the trial court, the discretion has to be exercised judiciously. In exercising the discretion, 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. The court must be satisfied that the action in respect of which the application was brought was not rooted in vexation of frivolity. In other words, there must be a serious issue to be tried. In the exercise of such discretion the court must take into consideration the pleadings and affidavit evidence before it.

In **American Cyanamid Co. vrs Ethicon Ltd**. [1975] 1 All E.R. 504, H.L, Lord Diplock stated at p. 510 thus:

"The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried."

In the case of **Vanderpuye vrs Nartey** [1977] 1 GLR 429, Amissah J.A. stated thus:

> *"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."

Once the court is satisfied that the Plaintiff's claim is not frivolous, then the governing consideration is the balance of convenience. The question to be considered as far as the balance of convenience is concerned is the extent of disadvantage to either party being incapable of compensation in damages if at the end of a full trial it succeeded in making out its case.

In the case of **Welford Quarcoo vrs Attorney General and another** (2012) 1 SCGLR 259, Date-Bah JSC summarized the law on interlocutory injunctions thus:

"It has always been my understanding that the requirements for the grant of an interlocutory injunction are: first, that the Applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief."

From the nature of the claim, the pleading, affidavits and all documents filed in this application, it is clear that the Plaintiff/Applicant's claim is not frivolous. The Plaintiff/Applicant has obtained land title certificates for the lands in dispute which confer on him an indefeasible title to the lands in dispute. Unless there is a determination by the court that the said land certificates were obtained by fraud or mistake, the Plaintiff/Applicant has title to the lands in dispute. Thus, the Plaintiff/Applicant has demonstrated that he has legal right which must be protected by the court.

With respect to the balance of convenience, from the pleadings and affidavits filed, it is clear that the Defendant was warned to stop his building activities on the land and was

aware of the Defendant/Respondent's adverse claim. Considering the relative inconvenience which the Plaintiff would suffer in the event of a refusal if he should succeed at the end of the day against that of the Defendant, it is submitted that the balance of convenience tilts in favour of the Plaintiff and for that matter the application ought to have been acceded to. It is therefore fair and just that building operations on the land should cease forthwith to await the outcome of the trial.

The Defendant/Respondent in his affidavit in opposition stated that he has procured building materials which would go waste if the application is granted. In light of this, it is submitted that the application for an interlocutory injunction as sought by the Plaintiff/Applicant against the Defendant/Respondent should be granted subject to the Plaintiff giving an undertaking in respect of damages which might be sustained by the Defendant/Respondent in the event of the Plaintiff/Applicant not succeeding at the end of the trial, the damages in this regard being the difference in the building cost as a result of the order of injunction.

After having read carefully the affidavits for and against the granting of the application and heard both counsel, the court will exercise its discretion in restraining both parties from the land pending the determination of this matter.

MERLEY A. WOOD (MRS.) JA