IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA

CORAM: **SENYO DZAMEFE JA (PRESIDING)**

ALEX B. POKU-ACHEAMPONG JA

NOVISI ARYENE (MRS.) JA

SUIT NO H1/216/2022

DATED 26TH JANUARY 2023

1. **KING ODAIFIO WELENTSI II**
   (Paramount Chief of Nungua)

2. **NUMO BORKETEY LARWEH TSURU .... PLAINTIFF/RESPONDENTS**
   (Gborbu Wolumo and Shitse of Nungua
   Traditional Area)
   BOTH SUING ON BEHALF OF THE NUNGUA STOOL

VRS

DAVID MENSAH QUAYE & ANOR ..... 1ST DEFENDANT/APPELLANT

R U L I N G

NOVISI ARYENE JA:

On hearing Plaintiffs' application for interim injunction, the trial judge by a ruling delivered on 7th April 2022, restrained the parties from carrying out any further development on the disputed land pending the final determination of the suit. The court also ordered that developments on the disputed land, which have reached advanced stage ie. lintel level, could continue. It is this aspect of the ruling which has triggered the instant appeal by the 1st defendant.

In this judgment, Plaintiffs would be referred to as Respondents and the 1st defendant as the Appellant. 2nd Defendant did not enter appearance. By notice of appeal filed on 11th of April 2022, Appellant is praying the portion of the ruling which allowed development of buildings which have reached advanced stage to continue, to be set aside on the following grounds:

I. *The judgment is against the weight of affidavit evidence.*
II. *The learned trial judge's decision to allow development on parts of the land that have reached lintel level is a wrong application of the law on injunctions and same has occasioned a substantial miscarriage of justice on the 1st defendant/appellant.*

For a better appreciation of what this court has been invited to consider in this appeal, we shall refer to the facts as provided by the parties in their pleadings and affidavits. Describing themselves as the Paramount Chief and the Chief Priest respectively, of the Nungua Traditional Area, 1st and 2nd respondents, by an amended writ of summons and statement of claim, contended that appellant and 2nd defendant have trespassed onto their grantees' land and demolished buildings under construction and that all efforts to restrain them had failed. Hence the instant action, brought on behalf of the Nungua Stool, for the following reliefs:

i. *A declaration that all Santeo lands are Nungua Stool lands.*

ii. *A declaration that the Nungua Stool is the legal and proper authority to grant Nungua stool lands.*

iii. *A declaration of title to all 79 acres of land being, lying and situate at Santeo.*

iv. *A declaration that defendants have trespassed onto Nungua stool land.*

v. *An order of perpetual injunction restraining the defendants their assigns privies and anyone claiming through them from further trespassing onto the land.*

vi. *General damages for trespass*

Challenging the claim, Appellant entered appearance and filed a statement of defence counterclaiming for declaration of title to the same land. He also prayed for an order of perpetual injunction restraining respondents and their representatives, assigns, agents and those claiming title through them, from interfering with Appellant's interest in the said land or acting in any way and manner adverse to his interest; recovery of possession of the portions of land the Appellant's land unlawfully delineated by the Respondents to third parties and general damages. No defence was filed to the counterclaim.

Respondents followed up the action with an application for interim injunction in which averments in the statement of claim were repeated. Contending to be allodial owners of the disputed land, Respondents averred that Appellant and 2nd defendant are demolishing buildings put up by grantees of the stool and are interfering with their quiet enjoyment of same, and prayed for a restraining order from the court. Relying on photographs of buildings allegedly demolished by Appellant and 2nd Defendant, Respondents submitted per their statement of case that on a balance of convenience, they would suffer greater hardship if Appellant was not restrained. And that not only are the actions of Appellant and 2nd Defendant likely to change the nature and character

of the land, but that they (Respondents) would not be adequately compensated if Appellants were not restrained and the suit succeeded.

The application was vehemently resisted by Appellant who contended that the grant of the disputed land was made to him by the self-same Nungua Stool in 2000 and that he had since then been in unchallenged possession. Appellant contended further that after acquiring the land, he registered same at the Land Title Registry in his name, and had since made several grants to individuals without let or hindrance. Appellant averred further that a representative of the Nungua Stool testified on his behalf in an action instituted against him (Appellant) in the High Court in respect of the said land. And that judgment in that case (which was against him), was reversed by the Court of Appeal.

Attached to the affidavit in opposition were an indenture executed by the Nungua Stool; the Land Title Certificate and receipts of ground rents issued to appellant by the Nungua Stool over the years. In their statement of case, Appellant submitted that the grant made to him by the Nungua Stool more that twenty-two years ago, extinguished the interest of Respondents for the unexpired term of the lease. Accordingly, Respondents have no right in law or in equity which the court should be invited to protect.

The two grounds of appeal were argued together. It was submitted that almost all developments on the disputed land are being carried out by grantees of Respondents, and that the trial court's decision which restrained both parties while permitting continuation of buildings which had reached lintel level, would not maintain the status quo. And that the trial court's order was a carte blanche for Respondents' grantees to develop other buildings to lintel level to meet the benchmark provided by the court; a condition which would not hold the balance evenly between the parties, thereby

occasioning manifest injustice against Appellant. And that in the circumstances, a successful counterclaim would be a brutum fulmen.

In support of these submissions, counsel relied on the case of **American Cynamid Co V Ethicon (1975) 1 All ER 504 at 510,** where it was held that the object of an interim injunction was to protect the applicant against damage which cannot be compensated in damages. Counsel argued further that Appellant had per its affidavit evidence, demonstrated that he had a legal right which ought to be protected. And that the balance of convenience tilted in favour of Appellant who was likely to suffer greater hardship if Respondents were not restrained from further developing buildings above lintel level.

Resisting the appeal, it was submitted that the continuation of buildings which have reached advanced stage, would not affect the status quo ante as the character of the land which has already been developed, would not change. Counsel submitted that it was Respondents' grantees who had invested heavily in developing the land to lintel level who will suffer greater hardship if they were restrained. And that the courts are reluctant to grant injunctions where buildings have reached lintel level.

Relying on the case of **Owusu v Owusu-Ansah [2007-2008] SCGLR 870**, it was further submitted that, considering the vastness of the land (which is in excess of 79 acres with buildings at several stages of development), the trial court properly exercised its discretion by limiting the order to buildings below lintel level.

An application for interim injunction calls for the exercise of the court's discretion. And per the decision in a stream of cases, that discretion must be judicially exercised. In addressing the instant appeal, we are guided by the principle that an appellate court must not interfere with the exercise of discretion by the trial court unless it is satisfied that the trial judge wrongly exercised his discretion, applied wrong principles or can be

said to have reached a wrong conclusion which would work manifest injustice between the parties. Or that it took into consideration matters which it should not have taken into consideration. See **Nartey Tokoli v Valco (No 3) [1989-90] 530** (where the case of **Crentsil v Crentsil [1962] 1 GLR 171 at 175** was cited with approval), the court ruled thus;

> *"It is a rule of law deep rooted and well-established that the court of appeal will not interfere with the exercise of the court's discretion save in exceptional circumstances."*

We are further guided by the decision in **In Re Bob Kwame & Co ltd Gyingyi v Bernard & Anor [1989-90] 1 GLR 87** holding 1, where this court ruled thus;

> *"The granting or refusal of an interim application such as the instant case, involved the exercise of the trial court's discretion. Any appeal from the exercise of that discretion related to the manner in which the discretion was exercised. It had been well established that such an appeal was not to the discretion of the appellate court. The burden was on the appellant in such a case to show that the court below did not exercise its discretion judicially. The court below would be held not to have exercised its discretion judicially, if for example, it took into consideration matters which it should not have taken into consideration. The fundamental rule was that the appellate court would only interfere with the exercise of discretion by the court below in very exceptional cases."*

Applying the principles as hereinbefore discussed to the facts of the instant case, the question to address is whether Appellant had made a case for the interference of this court. What exceptional circumstances have been canvassed to induce a favourable ruling?

In **Civil Procedure: A Practical Approach by Kwami Tetteh**, the learned author referring to the case of **Punjabi Brothers v E & J Namih [1958] 3 WALR 381,** at page 496 of his book, stated that the incidence of the burden of proof in applications for interlocutory injunctions lies with the applicant. And that the court will not interfere in the conduct of the Respondent unless the Applicant establishes the need for interference.

Order 25 r 1 (1) of The High Court (Civil Procedure) Rules 2004 C.I 47 provides that:

> *"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".*

The principles guiding the grant or refusal of an application for interim injunction are well settled. It is beyond controversy that at the heart of the application, is the important issue of whether or not it is "just" or "convenient" to grant same. It has been held that the test for just and convenient is that the grant or refusal of the application must be just and convenient and the decision of the court must depend on the facts as disclosed in the affidavit and pleadings before the court. See **Owusu v Owusu Ansah & Anor (supra)** where the Supreme Court speaking through Sophia Adinyira JSC observed at page 876 *thus;*

> *"The fundamental rule in application for interim injunction is that a 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. This could only be determined by considering the pleadings and affidavit evidence before the court."*

It is also the duty of the court in an application for interim injunction, to ascertain the balance of convenience. The court would consider which party would suffer greater

hardship upon the grant or refusal of the application. In doing so, the court must weigh the Plaintiff's need for protection against the corresponding need of the Respondent for protection against injury resulting from having been prevented from exercising his own legal rights, and determine where the balance of convenience lies.

In **Odonkor v Amartei [1987-88] 1 GLR 571** the Supreme Court speaking through Adade JSC ruled,

> *"The basic purpose of interim orders is as much as possible, to hold the balance evenly between the parties, pending a final resolution of matters in difference between them".*

In the earlier case of **Punjabi Brothers v E & J Namih** (supra), it was held thus,

> *"in dealing with an application in such circumstance for an application for an interlocutory injunction, the court does not attempt to determine the rights of the parties, but merely seek to keep the property in its existing condition until the legal rights can be established .....The court then interferes on the assumption that the party who seeks its interference has the legal right it asserts, but needs the aid of the court for the protection of the property in question until the legal right can be established. In consequence, a man who seeks the aid of the court must be able to show a strong prima facie case in support of the title which he asserts. He is not required to make out a clear legal title, but he must satisfy the court that he has a fair question to raise as to the existence of the legal right which he sets up. The court must, before disturbing a respondent's legal right or stripping him of any of the right with which the law has clothed him, be satisfied that the probability is in favour of his case ultimately falling in the final issue of the substantive suit."*

Where damages would be adequate compensation at the end of the trial, the application may not be granted. See **Bram-Larbi v the Registrar & 2 Others [2010] 28 MLRG 148 at 154.** In **American Cynamid Co V Ethicon (supra)** Lord Diplock stated the position thus;

> *"The object of the interlocutory injunction is to protect against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiffs need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiffs undertaking in damages if the uncertainty resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of convenience lies."*

These principles were re-echoed by Date-Bah JSC in **Welford Quarcoo v. the Attorney-General (2012) 1 SCGLR 259.** At page 260 the legal luminary stated thus,

> *"It has always been my understanding that the requirement 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"*

Since this appeal is against the exercise of the trial court's discretion, it is our duty, as earlier discussed, to ascertain whether the trial court adverted its mind to these time honoured principles in its ruling.

Below is the ruling of the trial court, being impugned by Appellant:

> *"Having looked at the developments on the disputed land as exhibited by the applicants in pictures, it is the view of this court that the application be granted on these terms. Developments which have already reached advanced stages are allowed to continue. However, there should be no new development on the disputed land pending the final determination of the suit and this order affects all parties in this case, their agents, assigns, workmen and grantees. For the avoidance of doubt, structures which have reached advanced stages should be interpreted to mean structures which have reached lintel level."*

In the first place, it would be noted that the court gave no reasons for allowing the parties to continue developing buildings at lintel level. It would be noted that in its decision, the trial court relied on photographs of buildings on the land which were attached to the supporting affidavit as exhibit JKA 1. A close examination of the said exhibit would reveal photos of buildings at various stages of development. They include buildings at lintel level and buildings below lintel level. See exhibit JKA 1. Without specifically indicating in the ruling, which of the many buildings shown in exhibit JKA 1, (from pages 153 to 190 of the ROA), the parties were permitted to continue developing, the order of the trial court is not clear, leaving it open to abuse. Further, considering the number of buildings in the exhibit and the vastness of the land, enforcement of the order would require monitoring by the court, thereby failing the test of convenience.

Secondly, we are of the view that in restraining both parties from further developing buildings below the lintel level, the trial court took into consideration the facts as presented by the parties in their pleadings and affidavits. It may be inferred from the ruling that the court saw the need to maintain the status quo ante by evenly holding the balance between the parties pending the determination of the suit. It is for this reason that we rule that by exempting some buildings from the injunctive order, the trial court

misapprehended the law and erroneously placed undue weight on the stage of development of those buildings, to the neglect of the principle which required the court to evenly hold the balance between the parties. We are of the view that in the circumstances, the trial court applied wrong principles thereby justifying the setting aside of that portion of the order. **Crentsil v Crentsil** (supra) refers.

It is also our respectful view that like Respondents, Appellant, (a counterclaimant), had per his pleadings and affidavit evidence sufficiently demonstrated that he had an interest in the disputed land worth the protection of the court hence the decision to restrain both parties from further development. In the circumstances, it was the duty of the court to evenly hold the balance between the parties by restraining further development on the entire disputed land, regardless of the stage of development.

We have given careful thought to the submission that respondents' grantees had expended huge sums of money in the buildings which had reached lintel level, and that it would not be just and convenient to restrain them from further developing same. With all due respect to counsel, in an action where the defendant had counterclaimed for declaration of title to the disputed land, and the court appreciates the need to maintain the status quo ante by restraining both parties, permitting the continuation of development of some buildings for the simple reason that they were at lintel level, would not hold the balance evenly between the parties.

Counsel for Respondent who forcefully argued that the courts are reluctant to restrain a party when the building had reached an advanced stage, failed to cite any legal authority in support of the submission. In our view, because Appellant was laying claim to the portion of land delineated by Respondents to third parties (the developers), and had counterclaimed for perpetual injunction and recovery of the said portion of land, the decision of the trial court runs counter to the principle of maintaining an even balance between the parties.

Further, allowing parties to continue developing the disputed land would not preserve the integrity of the land. See **General Development Co. Ltd v Rad Forest Products Ltd & Ors (1999-2000) GLR 178,** where it was held that the purpose of an injunction is to protect the integrity of the property pending the determination of the suit.

The order, in our view is prejudicial and also has the potential of resulting in miscarriage of justice. We hold this view because having allowed the continuation and completion of the said buildings, the trial court's judgment of the real issues before it is likely to be impaired.

Upon a careful reading of the ruling and having given careful thought to submissions by both counsel, we hold that the trial court ignored the time honoured principles governing the grant or refusal of interim injunction orders. The decision which restrained the parties from further developing buildings below lintel level, while permitting the continuation of buildings above lintel level (on the same disputed land), was not influenced by any of the known principles as earlier discussed in this ruling.

Accordingly, we rule that the trial court failed to exercise its discretion judicially, and to allow the order to stand in its current state would work manifest injustice between the parties. In our view, Appellant has made a case for the intervention of this court. Accordingly, we order that that part of the ruling of the trial court dated 10th April 2022, which permitted continuation of buildings above lintel level, is hereby set aside as erroneous. For avoidance of doubt, all parties their agents, assigns and persons claiming or deriving title through them are hereby restrained from further developing the land, pending the final determination of the suit. No award as to costs.

SGD

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JUSTICE NOVISI ARYENE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I AGREE .....

JUSTICE SENYO DZAMEFE

(JUSTICE OF THE COURT OF APPEAL)

SGD

I ALSO AGREE .....

JUSTICE ALEX B. POKU-ACHEAMPONG

(JUSTICE OF THE COURT OF APPEAL)

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