IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA-GHANA

CORAM: *Sowah, JA. (PRESIDING)*

Gaisie, J.A

Kyei Baffour, J.A.

SUIT NO: ***H1/116/2022***

22nd February, 2023

Alhaji Ismail Abubakar _____ ***Defendant/Appellant***

Vrs.

Enoch Francis Annan Tetteh _____ ***Plaintiff/Respondent***

JUDGMENT

***SOWAH*, J.A.:**

Introduction

This is an interlocutory appeal by the defendant/appellant against the decision of the High Court, Land Division, Accra dated 17th December 2021 which granted an application for interlocutory injunction brought by the plaintiff/respondent. The Ruling on appeal is at pages 161-166 of the record of appeal.

The parties will hereafter be called by their designations at the trial court.

Background Facts

In the writ of summons and statement of claim of the Plaintiff, he sued for and on behalf of the Okpon We family of Dzornaman and Teshie as owner of 603.51 acres of land. The plaintiff pleaded a Statutory Declaration made on 8th January 1979 and a judgment of the High Court obtained on 25th March 2011 over a portion of the land covered by the Statutory Declaration and had been put in possession with the assistance of the Deputy Sheriff. The writ of summons against the defendant/appellant was however for declaration of title to an area 0.46 acres in respect of which the plaintiff claimed the defendant had trespassed, perpetual injunction and recovery of possession.

In the motion for interlocutory injunction, the plaintiff sought for the Defendant to be restrained from entering, alienating, developing or interfering in any manner with the land in dispute pending the final determination of the Suit. It was alleged that the defendant with the aid of land guards was forcefully developing the land at a very fast rate.

The Motion was opposed. In the affidavit in opposition, it was averred for the defendant that by a judgment of the High court dated 27th July 2015, the Akwraboye Doku family of Teshie had been adjudged the owners of Otanor lands covering a total size of 748.39 acres whilst the Nii Anorkwei and Nii Tuaka families had been granted possessory title

to a portion of that land. That the defendant had attorned tenancy to the latter family and he had exhibited his leases from the two families dated 15th December 2019 and 15th December 2020 respectively as well as the land title certificate of the Akwraboye Doku family to the whole 748 acres.

The defendants' statement of defence and a counter-claim for declaration of title to a parcel of land measuring 0.99 acres and for perpetual injunction was filed on 22nd December 2021 after the Ruling on appeal had been delivered.

In the Ruling, the learned trial judge restrained both parties, their agents etc. from having anything to do with the subject land pending the final determination of the suit. Since the application had been opposed, the plaintiff/applicant was ordered to execute an undertaking to reimburse the defendant for any loss the defendant may suffer as a result of the grant should the plaintiff's action fail. This accorded with Order 25 rule 9(1) of C.I. 47

Grounds of Appeal:

The defendant is appealing the Ruling by a Notice of Appeal filed on 22nd December 2021. His grounds of appeal are:

a. *The ruling is against the weight of evidence*
b. *The learned trial Judge erred when he granted respondent's motion for interlocutory injunction without taking into account the huge investment made by the appellant on the land.*
c. *Further and/or additional grounds will be filed upon the receipt of the record of appeal*

The reliefs he seeks are for an Order reversing the Ruling of the High court and a further Order dismissing the Order for Interlocutory Injunction

Submissions of the defendant

Arguing the first ground of appeal which is the omnibus ground, Counsel for the defendant submits that the trial court had been referred to a judgment of the High court that had adjudged his grantors as owners of the land in 2015. On the other hand the plaintiff had only exhibited a Statutory Declaration of his grantor dated 8th January 1979 over 603.52 acres. Meanwhile, the site plan attached to that document was for 321.200 acres. This was an inconsistency that the trial court ought to have noted. Moreover, the plaintiff failed to present any proof of a legal or equitable interest in the 0.46 acres that he claimed the defendant had trespassed on.

In respect of the 2nd ground of appeal, the Defendant states that he has a 3 story edifice in construction on the disputed land. Citing the case and principles laid in **American Cynamid Co, vs Ethicon Ltd [1975] 1 All ER 504 at 509,** he submits that the trial judge failed to take this huge investment into account in weighing where the balance of convenience lay.

Submissions of the plaintiff

Plaintiff's counsel submits in respect of the first ground of appeal that it ought to be dismissed as incompetent in law. Cases cited in support of his contention are **Zikpuitor Akpatsu Fenu & 4 ors vs The Attorney General & 3 others [2019] 130 GMJ 179, Atuguba & Associates Vrs Scipion Capital (UK) Ltd , Holman Fenwick Willian LLP [2019] 139 GMJ 31** and **Asamoah vrs Marfo [2011] 2 SCGLR 832.**

In his response to the 2nd ground of appeal, counsel points out that injunction is an equitable remedy granted at the discretion of the Court, and in exercise of that discretion

the trial court had restrained both parties to evenly keep the balance between them. He submits that the trial judge exercised discretion rightly, and that the appellant has failed to demonstrate any exceptional circumstance to warrant interference by this appellate Court.

Consideration of the grounds of appeal

An omnibus ground of appeal is a general ground of fact complaining against the totality of the evidence adduced at the trial. Thus where no viva voce evidence has been proffered which enjoins a judge to evaluate the evidence on record and make its findings of fact in appropriate cases, the propriety of mounting an appeal on the omnibus ground has been questioned. The Supreme Court speaking through Amegatcher, JSC in the **Atuguba case** (supra) bemoaned the use of the omnibus ground particularly in interlocutory matters and in the exercise of judicial discretion such as in applications for injunction, stay of execution, amendment, joinder, judicial review, and consolidation. His Lordship made reference to an earlier 2019 Supreme Court decision; **Fenu & Ors vs The Attorney-General & Ors [supra]** where the court held that in interlocutory appeals where no evidence was led such ground of appeal is misconceived.

Also in **Asamoah vs Marfo** [supra], the Supreme Court per Anin Yeboah JSC, stated that the omnibus ground filed in that case was completely misplaced because the judgment obtained at the High Court did not go beyond the close of pleadings as it was a default Judgment.

On the authority of the above cases, it is concluded that the first ground of appeal which states that *"The ruling is against the weight of evidence"* is misplaced and incompetent and it is accordingly dismissed.

Exercise of Discretion

The complaint of the defendant in the 2nd ground of appeal is that the trial judge failed to take his huge investment into account in weighing where the balance of convenience lay.

It is trite that an injunction is an equitable remedy, and the responsibility of the Court in the grant of interlocutory injunction is to do what is just and convenient.

Order 25 rule 1 of the High Court (Civil Procedure) Rules, 2004, C.I 47 confers an extensive discretion on the court to do not only that which may seem to it just but convenient as well. The rule provides as follows:

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

Like all matters where a trial Judge exercises discretion, an appeal from his decision is not an appeal from his discretion to the discretion of the appellate court. The Court of Appeal merely determines if the lower Court exercised its discretion in accordance with correct principles of law and so will not intervene and alter a discretionary order where no sufficient error in law on the part of the court below has been shown. See **Lithur vs. Lithur [Civil App No. J4/01/2021] dated 21st April 2021**.

It was held by the Supreme Court in **Owusu vs Owusu-Ansah & anor [2007-2008] SCGLR 870** that:

"An appeal against the exercise of the courts' 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 either gave weight to irrelevant or unproved matters or omitted to take relevant matters into account."

See also **18th July Ltd. v Yehans Int. Ltd. [2012] 1 SCGLR 167** where the Supreme Court approved the principle laid in **Crentsil v Crentsil [1962] 2 GLR 171, SC and Ballmoos v Mensah [1984-86] 1 GLR 724 CA** that an appeal against the exercise of discretion by a Court will only succeed when the lower court applied the law wrongly; or there was a misapprehension of facts resulting from reliance on irrelevant or unproved matters, or failure to take relevant matters into consideration.

So the question is whether the appellant has demonstrated where trial judge went wrong in exercising discretion

The defendants' main concern is his huge investment in the uncompleted three storey edifice. This was a matter that was brought up in the defendants' affidavit in opposition and statement of case. Indeed from the plaintiffs' case, it would appear that it was the fast pace at which the defendant was developing the land with the alleged aid of land guards that necessitated the application for injunction. The record contains the pictures of the development exhibited by the plaintiff as exhibit F series (pages 50-54) and plaintiffs' averment in a supplementary affidavit at page 146 that the defendant hurriedly continued building on the land in dispute during the pendency of the suit and the injunction application. It is without doubt that the fact of defendants' uncompleted structure was in the purview of the trial judge.

The defendant appears to think that he ought to be permitted to continue with his development because of how much he has invested. The question then is; what happens if the disputed land is adjudged for the plaintiff and the character of the land had been changed?

With the competing claims for the disputed 0.46 acres of land – whether the land is part of Dzornaman lands as claimed by the plaintiff or Otano lands as claimed by the defendant, it was appropriate for the trial judge to restrain both parties pending determination of the suit and to order the plaintiff to give an undertaking as to damages.

In **Donkor & Ors v Amartei [1987-88] 1 GLR 57 at 581** the Supreme Court held that the basic purpose of interim orders is, as much as possible, to hold the balance evenly between the parties, pending the final resolution of the matters in difference between them, and also to ensure that at the end of the day the successful party does not find that his victory is an empty one, or one that brings him more problems than blessings.

The order for the plaintiff to give an undertaking is meant to ensure that if the defendant is the successful party at final determination of the suit, any damages he has suffered will be compensated.

Lord Wilberforce in **Hoffmann-La Roche & Co v Secretary of State for Trade and Industry [1975] AC 295 at 355-356** said:

"The object [of an interim injunction] is to prevent a litigant, who must necessarily suffer the law's delay, from losing by that delay the fruit of his litigation … Since the injunction by its nature freezes the situation, it is necessary also to think of the other party's position and rights; he too by being stopped in what may be a lawful action, may suffer serious damages, so the procedure has been evolved … of matching the injunction with an undertaking to pay any damages which it is just should be paid if it should turn out that the injunction was unjustified".

Another argument of the defendant is that his grantors have a 2015 High Court judgment whilst the plaintiff could not establish a legal or equitable right which is a perquisite for a party seeking an interlocutory injunction.

The record does not support this contention at all. Apart from the 1979 Statutory Declaration over land which has been registered with the Lands Commission in 1985, the plaintiff had also exhibited a 2011 High Court judgment and exhibits to show that plaintiffs' family was put in possession of a parcel of land and this fact, according to the plaintiff, is evidenced by streets named after family members [see exhibit C series at pages 17-19. On the record, the plaintiff sufficiently established a right to be protected.

In the Ruling, the learned judge states that he perused judicial authorities and the important principles of law upon which interlocutory injunctions are granted or refused; namely that the applicant must have a legal or equitable right to be protected, where the balance of convenience lies and whether the award of damages will be adequate compensation.

The Ruling shows that it was after consideration of these principles vis a vis the case of each party as per their affidavits and the various exhibited documents that the trial judge reached his conclusion to grant the application but to restrain both parties. His sound reasoning was that there was a need to protect the status quo antem.

In **Owusu vs Owusu Ansah [supra] at page 876** the Supreme Court per Adinyira JSC delivered itself as follows:

> *"The fundamental rule therefore 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 trite Law that the grant or refusal of an injunction is at the discretion of the Trial Court and that discretion is ample even in the face of the several factors/considerations discussed above. The discretion is however to be exercised judicially. In the exercise of the said discretion the Trial Judge is required to take into consideration the pleadings and affidavit evidence before it."*

It has not been demonstrated that the trial judge in this case on appeal misapprehended the affidavit evidence before he exercised his discretion or wrongly applied the law. No exceptional circumstance has been shown to warrant our interference.

Having reviewed the whole record of appeal, we cannot fault the trial Judge for granting the application. We are satisfied that the trial Judge exercised his discretion judiciously by considering the rights of both parties and the injustice that would be occasioned if the application was not granted.

The appeal of the defendant/appellant against the decision of the trial court granting an Order of interlocutory injunction against both parties, thus fails and is accordingly dismissed.

The Ruling of the trial High Court delivered on 17th December 2021 is affirmed.

Cost of Gh¢5,000.00 is awarded in favour of the plaintiff/respondent against the defendant/appellant.

(Sgd.)

CECILIA H. SOWAH

[JUSTICE OF APPEAL]

(Sgd.)

Gaisie, (J.A.) *I agree* **AMMA A. GAISIE**

[JUSTICE OF APPEAL]

(Sgd.)

Kyei Baffour, (J.A.) *I also agree* **ERIC KYEI BAFFOUR**

[JUSTICE OF APPEAL]

COUNSEL:

- Francis Osei Bonsu for Defendant/Appellant
- Kwame Fosu Gyeabour for Plaintiff/Respondent (absent)