

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON WEDNESDAY, THE 8TH
DAY OF MARCH, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO. C1/7/23

AUGUSTINA ABBEY ---- PLAINTIFF/ APPLICANT

VRS.

GIDEON NARH ---- 1ST DEFENDANT/RESPONDENT

BRIGHT (DEVELOPER) --- 2ND DEFENDANT/RESPONDENT

PARTIES

PRESENT

ANTHONY ADU-NKETIAH, ESQ. FOR THE APPLICANT PRESENT

**RAPHAEL AGYAPONG, ESQ. FOR THE DEFENDANT/RESPONDENT
ABSENT**

RULING

FACTS

The plaintiff/applicant (hereinafter called “applicant”) caused a writ of summons to issue against the defendants/respondents (hereinafter called the “respondents”) on 21st October, 2022, claiming against the respondents as follows;

- a. Declaration of title to all that piece or parcel of land described in paragraph 9 of the Statement of claim.
- b. A declaration that the 1st defendant committed fraud in registering the plaintiff’s land at Lands Commission.
- c. A declaration that any interest claimed in the land by the 1st defendant is statute barred.
- d. Recovery of possession of the land in dispute.

- e. General damages.
- f. Perpetual injunction against the defendants their agents, assigns, servants, heirs and all who claim through them from dealing with or interfering with the Plaintiff's enjoyment of the said land, the subject matter of this suit.
- g. Cost including legal fees; and
- h. Any other remedy this Honourable Court deems fit.

The Respondents entered appearance filed a defence and counterclaimed against the plaintiff as follows;

- a. A declaration of title to ALL that piece or parcel of land situate lying and being at Prampram in the Dangme West District in the Greater Accra Region of the Republic of Ghana and bounded on the Northwest by Lessor's land measuring 310.8 feet more or less on the Northeast by a proposed road measuring 107.6 feet or less on the Southeast by Lessor's land measuring 333.8 feet more or less on the Southwest by Lessor's land measuring 147.8 feet more or less and containing an approximate area of 0.35 Hectare (0.88 Acre) more or less which piece or parcel of land is more particularly delineated with the relevant measurements.
- b. Confirmation of Land Certificate with number TD 9222, Volume 022 and Folio 325 and the date of the instrument is 20th August 2013, date of registration 5th day of December 2013 and registered with number 022/Z39207/2.
- c. An order for perpetual injunction restraining plaintiff, by herself or any other encroachers, their servants, agents, assigns, privies, workmen, successors from interfering with the subject matter land in anyway whatsoever to the detriment of the 1st defendant or his lawful agent until the final and consequent determination of the dispute.

- d. Recovery of possession.
- e. General damages.
- f. Costs, including legal fees.

The Applicant subsequently filed the instant application for interlocutory injunction praying this court for an order to restrain the respondents, their assigns, agents, privies, servants whatsoever described from dealing with the land in dispute until the final determination of the suit. In the affidavit in support of the motion, the applicant deposed that she acquired the land in dispute from one Nene Atsure Benta III, Mankralo of Prampram, acting with the consent and concurrence of his Principal Elders in the year 1998. In support, she annexed **Exhibit AA1**, a copy of a lease evidencing this fact. The applicant further deposed that she went into possession and constructed a fence wall around her boundary without let or hindrance and annexed **Exhibit AA2**, photographs of the said wall.

The applicant further deposed that somewhere in the year 2013, the Kley Tsokunya family of Prampram with Numo Teye Akrong as its head of family laid claim to the land and as a result, she atoned tenancy to the Kley Tsokunya Family who then executed a new lease dated 6th April, 2013 and stamped at the Lands Commission. Thereafter, she commenced the construction of a two-bedroom foundation up to footing level and travelled outside the country. The plaint of the applicant is that the 1st respondent has unlawfully entered the land and is developing same and has purportedly obtained a land title certificate from the Lands Commission which is tainted with fraud. She contends again that all attempts to stop the acts of trespass by the respondents have proved futile.

The applicant further states that the respondents are changing the character of the land and rendering it unfit for the purpose for which she acquired it. As such, the applicant states that it will be in the interest of justice for the status quo to be maintained pending the final determination of the suit. The applicant further states that greater hardship and injustice will be caused to her if the application is refused since damages will not be adequate to compensate her. Also, if she emerges victorious at the end of the case, the judgment will be rendered nugatory. She therefore prays the court to grant the application to restrain the respondents pending the final determination of the suit.

The respondents vehemently opposed the applicant's motion for interlocutory injunction. In the affidavit in opposition, the 1st respondent also claims title to the disputed land through Numo Teye Akrong Family by a lease dated 20th August 2013, and a copy annexed as **Exhibit "1"**. The 1st respondent deposed that he commenced the registration process at the Lands Commission which was published in the *Spectator Newspaper* on 28th December, 2013. In support, the applicant annexed **Exhibit "2"** evidencing the newspaper publication as notice to the whole world of the fact of the registration. Subsequent to that, he was issued with a Yellow Card attached as **Exhibit "3"** and finally issued a land title certificate as **Exhibit "4"**. The 1st respondent also claims to have exercised control and possession of the land in dispute without let or hindrance until the applicant started encroaching on the land. In support, the 1st respondent exhibited photographs as **Exhibit "5"** series,

The 1st respondent therefore maintains that he acquired the land in dispute long before the applicant purported to have acquired same from his grantors

who at the time had divested themselves of any interest in the land to him and had no interest to sell to the applicant. The 1st respondent further states that he had already changed the character of the land since he had already developed the disputed land by filling the waterlog and it shall not serve the interest of justice if the Court grants the instant application. The 1st respondent further deposed that the applicant has woefully failed to show that she has a legal equitable interest in the disputed land and that the applicant, in the event that the application is granted will not be able to compensate the 1st respondent with pecuniary damages.

Ruling

I have determined the instant application for interlocutory injunction based on the motion paper, the supporting affidavit and the annexures, the supplementary affidavit in support, the affidavit in opposition filed by the respondent, the statement of case in support of the applicant's motion, the statement of case attached to the affidavit in opposition, the oral submissions made by both lawyers and all processes so far filed in the suit.

Order 25 rule 1(1) of the High Court (Civil Procedure) Rules, 2004 (C.1. 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 that the Court considers just"

It is trite law that the grant or refusal of an application for interlocutory injunction is at the discretion of the court. Like all discretionary powers, the court has a duty to exercise it judiciously. In the case of **Welford Quarcoo v. Attorney-General & Anor** [2012] 1 SCGLR 259 at 260, Dr. Date-Baah JSC

(Sitting as a single Justice of the Supreme Court.), the Supreme Court stated the conditions for the grant of interlocutory injunction held as follows:

“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.”

Also, in the case of **In re Yendi Skin Affairs; Yakubu II v. Abdulai** [1984-86] 2 GLR, 231, the Court held in its holding 1 that:

“the courts had consistently operated on the principle that where two parties were litigating, every care must be taken to ensure that the party who eventually won did not find his judgment useless in his hands. Hence, at first instance, there were rules for interim preservation of the subject of litigation, and for injunction to prevent waste. At the same time, the courts have tried to hold the balance evenly between the parties so that one did not take undue advantage of the other during the course of the litigation. Those principles have been applied, subject to the balance of the convenience in a particular situation and to the hardship which the making or the refusal of an order might have on one or the other of the parties”

In the instant case, the applicant claims to have acquired the land in dispute in the year 1998 and has since exercised various acts of possession over the land until in the year 2013 when the Kley Tsokunya Family claimed ownership and she started atoning tenancy to the family. The lease between her and the said family is dated 6th April, 2013. The 1st respondent also claims

title to the disputed land through the same family and has also exhibited a lease dated 20th August, 2013 and a Land Title Certificate. The parties have each exhibited pictures of the various acts of possession exercised over the land in dispute. Also, from the reliefs endorsed on the writ of summons the applicant has pleaded the statute of limitation to the effect that the claim of the 1st respondent is statute barred. The applicant has also alleged fraud in the Land Title Certificate procured by the 1st defendant.

The duty of the court at this stage is not to pronounce on the merits of the respective case of the parties but to determine whether there are genuine issues for trial and that the applicant's case is not frivolous. In my considered opinion, on the affidavit evidence and the pleadings, there are serious questions of law and facts to be tried between the parties who are claiming title through the same grantor. In the case of **Odonkor v. Amartei** [1987-88] 1 GLR 578, the court held in its holding 1 that:

"the basic purpose of interim orders was, as much as possible, to hold the balance evenly between the parties, pending a final resolution of matters in difference between them, and also to ensure that at the end of the day the successful party did not find that his victory was an empty one, or one that brought him more problems than blessings."

In the case at bar, to hold the balance evenly between the parties and to ensure that the status quo is maintained pending the final resolution of the matters in controversy between the parties, I deem it just and convenient to restrain all the parties from dealing with the land, the subject matter in dispute pending the final determination of the suit.

The application for interlocutory injunction is accordingly granted. The parties, their assigns, agents, privies, servants whatsoever described are

hereby restrained from dealing with the land in dispute until the final determination of the suit.

In accordance with **Order 25 rule 9** of C.I. 47, the grant of this application is subject to the applicant giving an undertaking to pay damages to the respondents who opposed the application.

There shall be no order as to costs.

The suit shall take its normal course.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)