

**IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON
THURSDAY THE 23RD DAY OF MARCH, 2023, BEFORE HIS HONOUR
SIMON GAGA, CIRCUIT COURT JUDGE**

SUIT NO. C1/05/23

**1. DERICK LAWER DAUTEY
2. DOMINIC ATTER DAUTEY
ALL OF KATAMANSO
GREATER ACCRA**

PLAINTIFFS/APPLICANTS

VRS

**DANIEL KWESI DONKOR
KATAMANSO
GREATER ACCRA**

DEFENDANT/RESPONDENT

**RULING ON MOTION ON NOTICE FOR
INTERLOCUTORY INJUNCTION**

On the 10th of October, 2022, the Plaintiffs/Applicants through their Counsel filed a Writ of Summons claiming the following reliefs against the Defendant/Respondent.

1. A declaration of title to all that piece or parcel of land situate at Katamanso – Accra and Bounded on the North East by lessor's land measuring 94.7 ft. more or less, on the South by a proposed road measuring 207.7 ft. more or less, on the South West by lessor's land measuring 70.0 ft. more or less, on the North West by lessor's land measuring 199.9 ft. more or less, and containing an approximate area of 0.38 Acre or 0.15 Hectare more or less.
2. Recovery of Possession.

3. An Order of permanent injunction restraining the Defendant by themselves, or through their agents, assigns, workmen, descendants, personal representatives and generally all those claiming through the Defendant from any further activity on the disputed area.
4. Damages for trespass.
5. Costs including cost of litigation.
6. Any other orders(s) the Court may deem appropriate in favour of the Plaintiffs.

It is as a result of the reliefs being sought that the Plaintiffs/Applicants brought this application against the Defendant.

The application, I believe, is brought under *Order 25 rule 1 of the CI 47* which states 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."

The purpose of the interim injunction has been outlined in the case of *Owusu v. Owusu Ansah (2007/2008) SCGLR 870* holding (i) which among others states as follows:

"The fundamental principle of application for interim injunction is whether the applicant has a legal right or in equity, which the Court has to protect by maintaining the status quo until the final determination of the action on its merits. This could be determined by considering the pleadings and affidavit evidence before the Court."

SEE also the case of *Pountney v. Doegah (1987/88) IGLR 111-117 CA*.

The issue then is whether to grant or refuse the application for interim injunction, which is discretionary remedy. One of the requirements for granting of such an interim injunction is that the applicant must establish that there is a serious question of law for the Court to determine.

SEE: *Welford Quarcoo v. Attorney General and Another* (2012) 1SCGLR 259.

SEE also *Yaw Agyei and Others v. Similao* (2003) SCGLR 127.

it is very interesting to note that while the applicants claim that the disputed land belongs to them, the Respondent also claims that the disputed land belongs to him.

The applicants depose in their affidavit in support to the extent that they acquired a leasehold interest in the disputed land since 2012 and have been granted an Indenture on same and it is signed by Nii Otu Akwetey IX, the late Katamanso Mantse who also doubles as the Head of the Nii Adzin We Family of Katamanso. They exhibited a copy of the Indenture as Exhibit 'B'.

The Defendant/Respondent in his affidavit in opposition vehemently opposed the application of the applicant. He among others deposed to the extent that he acquired the disputed land from the Katamanso Stool per the lawful representative and Regent of the stool. He had acquired Indenture and the Site plan for the disputed land. He exhibited the Site plan and the Indenture as Exhibit DKD3. Respondent in the supplementary affidavit in opposition deposed that he has put up an event center on a part of the disputed land. He exhibited photographs of the events held at the said event center on 26th December, 2021 as Exhibit DKD5.

Both Counsel informed the Court to rely on affidavit evidence and the statement of cases to rule on the injunction.

It is trite law that in respect of injunction, whatever form it may be, if it is before the determination of the case, the Court shall restrain itself from expressing opinion on the merits of the case. This is because at that time, the Court will only be seized with the affidavit evidence and pleadings but not evidence. It is the pleadings and evidence, which make the case.

SEE: *The Republic v. High Court, Kumasi, Exparte Mobil Oil Ghana Ltd, (Hagan – interested party)* (2005/06) SCGLR 312.

I will therefore not attempt to make any comment about the merits of the case, since evidence has not yet been led.

I have examined all the processes filed in this case by both parties, I am of the view that there are triable issues to be determined by the Court. In granting or refusing the application, I have to take into consideration the balance of convenience in favour of the applicants and also the balance of inconvenience in favour of the Respondent.

SEE: the case of *Food Specialities Ghana Ltd v. Technicas De Multiconstructions S.A (1987-88) 1GLR 25.*

the Respondent by Exhibits DKD5 and DKD6A-D has an Event Center on a part of the disputed land which generates income for the Respondent. I am therefore of the view that it will be fair and just to grant the application in part. Because granting it whole will inconvenience the Respondent on the balance of convenience.

As a result, all the parties, their agents, assigns, privies, etc., are restrained from dealing with the disputed land in whatever form till the final determination of the case. However, the Respondent can keep on operating the event center but cannot do any further development or expansion on it.

No order as to cost.

**(SGD) (H/H) SIMON GAGA
(CIRCUIT COURT JUDGE)**

- PARTIES – PRESENT.
- COUNSEL FOR APPLICANTS – ABDUL FATAWU ALHASSAN – ABSENT.
- COUNSEL FOR RESPONDENT – KORBLA HLORTSI-AKAKPO – PRESENT.

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