

IN THE CIRCUIT COURT OF JUSTICE, SITTING AT ASHAIMAN ON
MONDAY THE 5TH DAY OF JUNE, 2023, BEFORE HIS HONOUR SIMON
GAGA

SUIT NO. C1/09/23

ODIKRO YAW FAMILY SUING PER ITS HEAD OF FAMILY LAWRENCE ADJEI TETTEH OF ODESO	}	PLAINTIFF/APPLICANT
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VRS

1. KINGSLEY ASARE 2. GEYAK CONSULT LTD. BOTH OF ODESO 3. BASHIRU IBRAHIM AGORO OF SAASABI	}	DEFENDANTS/RESPONDENTS
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**RULING ON MOTION ON NOTICE FOR
INTERLOCUTORY INJUNCTION**

The Black Law Dictionary 9th edition defines injunction as follows, “*A court order commanding or preventing an action.*” It goes further to state that in general sense every order of a Court which forbids is an injunction, but in its legal sense is a judicial process or mandate operating in personam and by which upon certain established principles of equity, a party is required to do or restrained to do or restrained from doing a particular thing.

Again, it also defines preliminary injunction as temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the Court has a chance to decide the case. It is also called an interlocutory injunction. This appears to be the gravamen of the provision under *Order 25 rule 1(1) of CI 47*, which deals with injunctions.

The purpose of an interim injunction has been outlined in *Owusu vrs. Owusu Ansah (2007/08) SCGLR 870*, holding (1) as follows:

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

SEE also the case of *Pounteny vrs. Doegah* (1987/88) 1 GLR 111 CA.

On the 28th December, 2022, the Plaintiff/Applicant filed a Writ of Summons and Statement of Claim claiming the following reliefs against the Defendants/Respondents;

- a. Declaration of Title and Recovery of possession of all that parcel of land situate, lying and being at Saasabi (Dzorka village) Odeso near Kpone Bawaleshie and shares boundaries on the North with Odametey & Pinto properties, South East with Gbosha, Adaitse-Abladey family and Anang Nkpa, South West with Moi We and on the South with Kpone/Appolonia lands.
- b. General Damages for Trespass.
- c. Perpetual Injunction to retrain the parties, their agents, privies, assigns, workmen, etc., from having anything to do on the disputed land.
- d. An order by the Honourable Court to order the Defendant, their privies, agents, assigns, workmen, etc., to demolish whatever unlawful structure that has been put on the disputed land.
- e. Cost of the suit.

It is as a result of the reliefs being sought that the Plaintiff/Applicant brought this application for interlocutory injunction, which was filed together with the affidavit in support and statement of case on 28th December, 2022.

In the affidavit in support, the Applicant stated all his depositions. I wish to quote some of the relevant paragraphs in this ruling.

- (4) That the Defendants/Respondents who are not the owners of the land in dispute have unlawfully trespassed onto portions of the disputed lands, being the property of the Plaintiff/Applicant family, which has prevented the Plaintiff/Applicant from having quiet and peaceful enjoyment of the Plaintiff/Applicant's land.

- (5) That the Plaintiff/Applicant states that the disputed land was acquired by its forefathers by name Yao Adjete, so many years at Odeso from Twenebaoh Aryeh stool at Obosoman somewhere in the year 1802.
- (7) That the Plaintiff/Applicant states that the total acreage of the disputed land is estimated at 1,463.1 acres and is situate and lying at Saasabi (Dzorka village), Odeso, near Kpone Bawaleshie, and shares boundaries on the north with Odametey-Pinto properties, south east with Gbosha, Adaitse-Ablaley family and Anang Nkpa, south west with Moi We and on the south with Kpone/Appolonia lands.

It is very interesting to note that even though the 1st and 2nd Defendants/Respondents were served with the processes and the 3rd Defendant/Respondent was served by substituted service, only the 1st and 2nd Respondents entered conditional appearance through their Counsel, Archie Martin Danso Jnr, on the 9th of February, 2023 but failed to file the subsequent process associated with conditional appearance. All the Respondents did not file any affidavit in opposition to the application.

After several adjournments at the instance of the Counsel for the 1st and 2nd Respondents, Counsel for the Applicant moved the motion for interlocutory injunction on 23rd May, 2023.

In his submission, Counsel repeated the depositions in the affidavit in support, the statement of case. Counsel also made references to Exhibits **A, A1, A2, A3, A5, A5, A6** and **A7** to support his submission.

The issue then is whether to grant or refuse the application for interlocutory injunction. It is trite law that the grant or refusal of an application for injunction is entirely at the discretion of the Court. See the case of *Yaw Agyei & others vrs. Similao (2003) SCGLR 127*.

For an injunction application to be granted, the Applicant must establish that there is a serious question to be tried by the Court. SEE: *Welford Quarcoo vrs. AG & Another (2012) SCGLR 259*.

I have examined all the processes filed in this case, I have also examined the oral submission made by the Counsel for the Applicant. There are triable issues to be

determined in the case. It will therefore be fair, just and convenient to grant the application.

The effect is that pending the final determination of the case, the Respondents, together with their respective privies, agents, assigns, workmen, etc., are restrained from dealing with the disputed land estimated at 1,463.1 acres and is situate and lying at Saasabi (Dzorka village), Odeso, near Kpone Bawaleshie and shares boundaries on the north with Odametey-Pinto properties, south east with Gboshia, Adaitse-Abladey family and Anang Nkpa, south west with Moi We and on the south with Kpone/Appolonia lands until the final determination of the case.

However, the Applicant is to make an undertaking within fourteen (14) days that in an event he loses the case while the application has been granted, he will compensate the Respondents One Hundred Thousand Ghana Cedis (GH¢100,000.00).

No cost is awarded.

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

1. COUNSEL FOR APPLICANT
 - ROBERT TWENE – PRESENT.
2. COUNSEL FOR 1ST AND 2ND RESPONDENT
 - ARCHIE MARTIN DANSO JNR. – ABSENT.

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