

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON MONDAY, THE 27TH
DAY OF NOVEMBER, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO. C11/150/23

ELEANOR JOYCE KORNGO AKOTO ---- PLAINTIFF/ APPLICANT

VRS.

JOHNATHAN SENANU DOKU ---- DEFENDANT/RESPONDENT

**PLAINTIFF/APPLICANT ABSENT REPRESENTED BY SAMUEL NARH
AKOTO PRESENT**

KWADWO BOAMAH BOAKYE, ESQ. FOR THE APPLICANT PRESENT

FAISAL BELLA DJIBRILLA, ESQ. FOR THE RESPONDENT ABSENT

RULING ON INTERLOCUTORY INJUNCTION

FACTS

The plaintiff/applicant (hereinafter called “applicant”) caused a writ of summons with an accompanying statement of claim to be issued against the defendant/respondent (hereinafter called the “respondent”) on 5th April, 2023 claiming against the respondent as follows;

- a. A declaration of title to all that piece or parcel of land situate, lying and being at Dawhyenya, Accra Region of the Republic and more particularly descry bed in the schedule contained in the statement of claim.
- b. Recovery of possession.
- c. Damages for trespass.
- d. Perpetual injunction restraining the defendant by himself, agents, assigns, privies, workmen, servants, and however described from interfering, dealing with anything to do in any manner whatsoever with land, the subject of this suit.

The respondent also filed a statement of defence and counterclaim on 29th September, 2023 and also counterclaimed against the applicant as follows;

- a. A declaration of title to all that piece and parcel of land situate at Dawhenya-Accra containing an approximate area of 0.183 Acre or 0.074 Hectare more or less; bounded on the North-East by Assignor's land measuring 78.1 feet more or less on the South -East by Assignor's land measuring 102.3 feet more or less on the South West by Assignor's land measuring 79.3 feet more or less on the North- West by proposed road measuring 101.1 feet more or less (the "Property").
- b. An order permanently restraining the Plaintiff and her agents, assigned or whomever derived title from the Plaintiff from any entering and trespassing on Defendants Property and from interfering with the peaceful enjoyment of the Property by the Defendant.
- c. Cost including legal cost.
- d. Any other relief that the court deems just.

On 14th April, 2023, the applicant filed a Motion on Notice for the grant of an order for Interlocutory Injunction seeking to restrain the respondent his agents, assigns, privies, workmen, servants or whatsoever described from interfering, dealing with and or having anything to do in any manner whatsoever with the land the subject matter of this suit pending the final determination of the suit.

The applicant deposed in the Affidavit in Support of the Motion that by an indenture of a lease dated the 20th day of January 2012, executed between Numo Narh Mensah, Head of Osu - Wem Family & Dzasetse of Prampram traditional area as "lessor" of the one part and the plaintiff herein of the other part, she acquired the land in dispute. In support, the applicant annexed a copy of the said indenture as **Exhibit "EA2"**. The applicant further states that she moved into possession and exercised overt acts of ownership over the land by constructing a footing and a sandcrete dwarf wall to secure

and demarcate the boundaries of the land without any challenge, let or hindrance from any stool, family and or person(s) including the respondent. She has remained in uninterrupted and undisturbed possession until the year 2019, when the respondent forcibly entered unto the land to lay a rival claim. The applicant says that she had information that the respondent had entered the land, destroyed the sandcrete dwarf wall, the footings and had placed trips of sand on the land. This compelled her to confront her vendor to inquire whether they had sold the property to the respondent or any third party and she found out that one Henry Gateinu, a member of the applicant's grantor family, unaware of the earlier sale to the applicant had resold the land to the respondent.

The applicant further deposes that at a meeting held between the parties and the grantor family, the family admitted selling the land to the applicant earlier in time and further informed the applicant that there had since been a change in leadership of the family and that the sale was made by an unauthorised member of the family. They therefore requested her to make new payments to one Henry for the preparation of new documents to cover the land. At another meeting, the applicant's grantors interrogated respondent on how he acquired the land, in the presence of applicant, her husband and lessor's surveyor (Mr. Annan) and Henry Gateinu and both defendant and Henry Gateinu admitted to the presence of a dwarf wall on the land upon their inspection of the land before the purported sale.

Due and owing to the nature of the relationship between the applicant's husband and the respondent, both parties agreed to resolve the matter amicably among themselves and the family (lessor). The family proposed to grant another land to either party and applicant's husband consequently was shown another land which was rejected after due diligence revealed it was encumbered. As a result, the applicant's lessor instructed both parties to exercise some restraint in respect of developing the land while they make arrangements to find and grant an unencumbered alternative land to resolve the dispute amicably. However, the applicant states that recently, she noticed that without her

permission and that of the lessor, the respondent has entered the land and is frenetically undertaking constructional activities to her chagrin. The applicant states that she lodged an official complaint at the Dawhenya police station but the respondent refused to honour the invitation and the police advised the parties to commence a civil suit in court for title to be determined. The applicant avers further that, the respondent is persisting in his blatant and apparent trespassory activities on the land, despite repeated warnings to desist from developing the land in dispute. The applicant maintains that she is a bona fide owner of the land without notice of any encumbrance whatsoever and if the respondent had done diligent search, he would have discovered that the land had been previously sold to her and she had been in possession by the construction of the dwarf wall on the land.

The applicant further states that notwithstanding her acquisition being first in time, the defendant having stood by and allowed her to develop the land, by constructing a footing and dwarf sandcrete wall around it without any protestation, is estopped by his own conduct from challenging his title to the land. She therefore maintains that the respondent has no interest in or title to the land, and he is bent on continuing with his illegal activities on the land, unless he is specifically restrained from doing so.

The respondent vehemently opposed the grant of the interlocutory injunction and in the Affidavit in Opposition, avers that the applicant has no interest in the land in dispute worthy of protection by this Honourable Court and relies on his averments in the statement of defence. The respondent in the said statement of defence states that he acquired the land in dispute in the year 2009 from his lawful grantors and has since been in undisturbed possession till date. The respondent further avers that the applicant does not have good title over the land in dispute and did not secure lawful registration in her name. The respondent avers that the applicant's own **Exhibit "EA2"** is not executed by the plaintiff's purported grantor to confer any interest in the land in dispute to the applicant. The respondent maintains the applicant has woefully failed to demonstrate any interest in the land in dispute and as such has demonstrated no interest

in the land which the relevant laws in Ghana require to even consider the present application. Also, the applicant's own processes filed in support of the application has demonstrated that she is bereft of any title in the said land and her claims are without basis and should be dismissed without further waste of time.

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.

The grant of interlocutory injunction is governed by **Order 25** of the High Court (Civil Procedure) Rules, 2004 (C. I. 47). **Order 25 rule 1(1)** (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”

The meaning of the words “just and convenient” have been defined by the learned authors of Halsbury's Laws of England, 4th End, Vol. 24, paragraph 919 that:

“The words “just or convenient”... must be read ‘just as well as convenient’. They do not mean that the court can grant an injunction simply because it thinks it convenient, but means that it should grant an injunction for the protection of rights and prevention of injury according to legal principles. They confer no arbitrary nor unregulated discretion on the court and do not authorise it to invent new modes of enforcing judgments in substitution for the ordinary modes”

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.”

The applicant in her pleadings and the affidavit evidence claims that she acquired the property in dispute and had been in undisturbed possession of the property before a member of her grantor’s family granted same to the respondent. The plaintiff also raises issues of estoppel by conduct. Thus, there are issues of facts and law which this court has to determine between the parties. The applicant has also demonstrated that her case is not frivolous and that she has an interest in the property in dispute which this court must protect by the grant of the injunction application.

Learned Counsel for the respondent raises issues about the indenture of the plaintiff not having been signed by her grantor. Indeed, the said indenture attached to the application is not signed by the said Numo Narh Mensah, the applicant’s alleged grantor of the disputed land. The defendant has equally not attached any document evidencing the grant of the disputed land to him. I am mindful that documentary evidence is not the only means by which a person can prove ownership to land. The duty of the court at this stage is not to pronounce on the merits of the respective cases of the parties but to determine whether there are genuine issues for trial and that the

applicant's case is not frivolous. 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”

The applicant in the statement of claim and the affidavit in support of the motion paper, raises issues of bona fide purchaser for value without notice, possessory title, laches, fraudulent acquiescence and estoppel by conduct. These are serious issues of law which this court must determine. 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 and Ors. 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 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 pending 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 respondent who opposed the application.

There shall be no order as to costs.

The suit shall take its normal course.

SGD.

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