IN THE HIGH COURT OF JUSTICE AND IN THE HIGH COURT HELD AT ADENTAN – ACCRA ON THURSDAY THE 27TH DAY OF JULY, 2023 BEFORE H/L JUSTICE NANA BREW – HIGH COURT JUDGE

SUIT NO. C1/89/2023

AFRICA HOUSING (SOFOL) LTD. - PLAINTIFF

VRS

EDENBURGE PROPERTIES LTD. - DEFENDANT

COUNSEL:

LAWYER SETH DWIRA FOR THE PLAINTIFF

R U L I N G

Plaintiff/Applicant claims he initiated the present action by issuing a Writ of Summons accompanied by a Statement of Claim, the following reliefs;

a) A declaration to title to ALL THAT PIECE OR PARCEL of described as paragraph 7 (supra) of the statement of claim.

b) Recovery of possession.

c) Perpetual injunction restraining the Defendants, their assigns, privies and agents from interfering with Plaintiff's quiet enjoyment of their plots of land.

d) An order for the demolition of the unauthorized structures put up by the Defendant's company on Plaintiff on Plaintiff's plot of lands.

Plaintiff/Applicant says that he has a leasehold agreement and is for 99years from the 9th day of January, 1997 (with an option to renew it for a further term of 45years subject to the restrictions, reservations, encumbrances, lens and interests.

That the title document was sent to Lands Commission and was given Land Title Certificate numbered GA 33971 volume 05 with folio 393 dated 14th October, 2010 and marked as Exhibit.

That Plaintiff/Applicant says he is in possession and exhibited overt acts of ownership by putting up several units of estate houses on a portion of the plots of land. That the Defendant from nowhere and without authority or consent has resorted to trespassing unto a portion of the land and the botanic and economic tress thereon.

That the matter was reported to the Police. That the Defendant's company is hurriedly and under cover of darkness developing portions of my plot of land in dispute inspite of several warnings and protestations from the Police and my good self.

Plaintiff/Applicant says that the Defendant has evinced clear intention to appropriate his plots of land with brutal force if it is not restrained and/or compelled to put a complete stop to its unauthorized activities. That based on the follow circumstances he prays for an interlocutory injunction.

Defendant denies the affidavit of paragraph 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17. That the Defendant entered into an oral agreement with the Plaintiff for the assignment of a parcel of land of an area of approximately 3.00 acres of the unexpired residue of the 99yhears lease described in paragraph 4 of the affidavit in support at the total consideration of GH₵60,000.00. That the particular land was referred to by the parties

as “Mountain Foot Land or Mountain Foot Estate or Eastern Cluster Mountain Foot Estate”.

That the parties agreed that the Defendant would get the grant from three separate parcels of land situated on the same land as the whole 300 acres could not be gotten from one single grant due to other grounds.

That based on the preceding agreement, the parties entered the land where Defendant was shown the exact boundaries of the land, the Plaintiff intended to assign to him, the Defendant.

That, following the parties visit to the land and after payments made to the Plaintiff, the Plaintiff instructed the Defendant to have a Surveyor to demarcate the boundaries and draw up a site plan.

That the Defendant has paid GH₵400,000.00 to the Plaintiff in respect of the land. That Plaintiff has failed to sign the indentures.

That Defendant has already bought materials and has developed the property to roofing level and that serious economic hardship will befall the Defendant if the application is granted.

OPINION AND ANALYSIS

There are a lot of authorities on the settled principles on interlocutory injunction.

It is not doubt that an injunction order is an equitable remedy and discretionary and the Court shall only grant it when it is just and convenient to do so. Not only that, the order is also granted to protect a right where that legal right could be asserted either

at law or in equity. In the exercise of that discretion the Court is not bound to follow precedents as each case has to be determined on its own merits.

In the case of **BAIDEN V TANDOH (1991) 1 GLR 98, KPEGAH J**. (as he then was) opined that the Applicant has to establish a prima facie case that the right he was seeking to protect existed. Additionally, he should show that there has been a breach of the same and a threat of it continuing so as to cause him irreparable damage if the Defendant was not restrained. The Applicant having passed that test the Court would then consider the issue of the balance of convenience.

In the case of **18TH JULY LIMITED V YEHANS INTERNATIONAL LIMITED (2012) 1 SC GLR 167**, the Supreme Court delivered itself per his Lordship Anin-Yeboah JSC and opined after analysing the earlier cases including **VANDERPUYE V NARTEY (1977) GLR 428 @ 431 and ODONKOR V AMARTEI (1987-1988) GLR 578** as follows;

> "We are of the opinion that the Court of Appeal did not propose to lay down any hard and fast rules or principles to regulate the determination of interlocutory injunctions. Even though it is discretionary, we are of the view that a trial court in determining interlocutory application must first consider whether the case of the applicant was not frivolous and had demonstrated that he had a legal or equitable right which a court should protect. Second, the court is also enjoined to ensure that the status quo is maintained so as to avoid any irreparable damage to the applicant pending the hearing of the matter. The trial court ought to consider the balance of convenience and should refuse the application if its grant would cause serious hardships to the other party".

The Court has undoubtedly laid down a tripartite test for the Court's consideration in interlocutory injunction applications. It is worthy of mention that in the classic case of

AMERICAN CYNAMID CO. LTD V ETHICON LTD (1985) AC 396 which was adopted by the Ghana Court of Appeal and applied in the case of **VANDERPUYE V NARTEY (1977) GLR 428 @ 431**, The House of Lords through Lord Diplock expressed himself by asserting the traditional opinion that where the court was considering the application for interim injunction while the substantive suit was still pending for determination on its merits, it has no duty at that stage of the litigation to resolve conflicts of evidence on affidavits as to facts on which the competing claims of the parties may ultimately depend.

Equally, the Ghana Court of Appeal in **VANDERPUYE V NARTEY (1977) GLR 428** Coram: Amissah, Kingsley-Nyinah and Hayfron-Benjamin JJ.A.) reiterated the above legal position. Amissah JA speaking for the unanimous Court stated that the general and obviously safer rule is that, in interlocutory applications, adjudicators must avoid making definitive findings on disputed issues, particularly where the facts are not only material but are for some reasons obscure or highly contentious. I wish to abide by the above caution in making my decision in regards to the merits or otherwise of the instant application.

I wish to state that I have closely looked at the Statement of Claim and the affidavit evidence filed in this case and I have also reviewed the statement of cases filed by legal counsel in respect of the application and has also given due regard to all the authorities cited by both Counsel. I am of the respectful view, having regard to the pleadings filed and the affidavit evidence before the court, that this case raises fundamental issues for determination.

In the light of the above, I hold the respectful view that the suit is not frivolous or vexatious.

[24] The law now appears settled that where the court is of the view that the case of the Applicant for injunction is not frivolous or vexatious the application has to be considered on the balance of convenience. In assessing the balance of convenience, it is imperative for the court to take into account all the relevant factors as well as the strength of the respective cases of the parties based on the evidence put before the Court. In the words of Lord Denning:

> "In considering whether to grant an interlocutory injunction the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence and then decide what is best to be done." (Emphasis highlighted). See: **HUBBARD v VOSPER (1972) 2 WLR 389 at p 396**.

But before considering the balance of convenience in the present suit, I pose the question, what is the basic purpose of an interim order?

The question was succinctly answered by the Supreme Court in **ODONKOR v AMARTEI (1987-1988) GLR 578** that the basic purpose was, as much as possible, to hold the balance evenly between the parties pending the 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.

Now, having regard to the competing claims of the parties and given the facts and the background of the case and on the balance of convenience, and basing myself on the rule as stated by the Supreme Court per Kpegah JSC in **EKWAM v PIANIM SUPRA**, having regards to the totality of the evidence so far filed in this case, I hold considering the issue of hardship to be suffered by the parties, keeping faith to the law on the grant

or refusal of injunction as stated above and in maintaining the status quo it shall not be just and/or convenient in terms of Order 25 r 1(1) of CI 47 to grant this instant application.

OPINION AND ANALYSIS

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That from the analysis, I hereby say that the Plaintiff has legal and equitable right and on the balance of convenient, it will not affect the Defendant. In order to maintain the status quo. I hereby grant the order for interlocutory injunction to restrain the Defendant, his assigns, privies etc. until the final determination of the suit.

(SGD)
H/L JUSTICE NANA BREW
(JUSTICE OF THE HIGH COURT)