

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN TEMA ON FRIDAY THE 17<sup>TH</sup> DAY OF MARCH 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

SUIT NO: E1/014/2023

PATIENCE ABAYATEYE ADABANKA ... PLAINTIFF

VRS

KWAME AGAU

... DEFENDANT

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PARTIES

Plaintiff – Present

Defendant- Present

LEGAL REPRESENTATION

Mr. Livingstone Lartey Ameevor for the Plaintiff/Applicant – Absent

Mr. Benjamin Zigorsh-Nyakpenu for the Defendant/Respondent – Present.

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**RULING**

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Plaintiff/Applicant herein **Patience Abayateye Adabanka** filed this Motion for Interlocutory Injunction under **Order 25 rule 1 of C.I 47** on the **18<sup>th</sup> of November, 2022** praying for an Order to restrain the Defendant/Respondent herein, his Agents, Servants, Workmen, Privies and any other person(s) dealing with the land in dispute

in any manner whatsoever adverse to the Plaintiff/Applicant interest pending the final determination of the instant suit.

It is Plaintiff/Applicant's case that her late father acquired the subject matter land from the Agau family and they have been in possession of the said land for about eight (8) years.

That a private company approached her family for space to erect a mast for MTN. At the commencement of the construction of the same mast, the Defendant led a group of land guards to destroy the ongoing project with the explanation that he was taking the land back.

This resulted in some of the workmen sustaining injuries.

It is Plaintiff/Applicant's case that Defendant's/Respondent's conduct constitutes trespass on the land and is therefore praying the court to restrain the Defendant/Respondent, his Workmen, Privies, Allies, Assigns and anyone working through him from having any further dealings with the land till final determination of this suit.

In opposing this application, Defendant/Respondent filed his Affidavit in Opposition on the 13<sup>th</sup> of December 2022 and states that the late husband of Plaintiff/Applicant purchased the land from his family which he is the current head.

That per the Plaintiff/Applicant's Exhibit 1 (An Indenture dated 19<sup>th</sup> July, 2014), it is clear that the land acquired by the late husband of Plaintiff (Yaw Adabanka Owen) was for residential purpose only.

That Plaintiff has granted a portion of the said land to a Company to erect Telephone Mast on it of which the residents are complaining about the hazards associated with mast in a residential area. He is therefore praying that the Plaintiff's Injunction

Application must be refused because according to him, if the said injunction is granted, it would amount to endorsing an illegality. He is not denying the fact that he went on the land. The issue for determination is whether or not this Application for injunction ought to be granted.

Respective counsel for parties made their legal submissions on behalf of their clients.

The law governing the grant of Interlocutory Injunction is trite as the courts are required to grant interlocutory injunctions in all cases in which they appear to be just and convenient either unconditionally or upon which terms and conditions which are just to them.

That an Applicant praying the Court for an order for Interlocutory Injunction in all cases must establish a right either at law or on Equity and shall suffer irreparable damage, if the Application is not granted, the court is required to exercise its discretion (Judiciously) to preserve the status quo ante.

In the instant Application, gleaned from the Affidavit in Support and also the Affidavit in Opposition, the undisputed fact is that the Defendant/Respondent is not disputing the ownership of the land per se. He is also not denying that he entered the land. He is complaining against the erection of the mast on the said land which he says it is illegal. Per the facts deposed to in the Affidavit in Support by Plaintiff/Applicant, Defendant wants to repossess the land and is threatening her peaceful enjoyment on same.

**Dr. Date-Bah JSC** and his inimitable fashion states the position of that thus in the case of **Welford Quarcoo vrs Attorney General and Anor (2013) 1SCGLR 259 at 260** thus ;

*“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 damages which cannot be remedied by the award of damages unless the Interlocutory Injunction is granted; and finally that the balance of convenience is in favor of granting him or her the Interlocutory Injunction”.*

On the balance of convenience, Plaintiff avers that Defendant has threatened her and her family that he is repossessing the land. Defendant/Respondent is contending that if the mast is allowed to be erected on the said land, then it will amount to illegality. He has not come out to deny the assertion by Plaintiff that he is repossessing the land.

Plaintiff’s legal and equitable right in the said land is not in dispute.

From these are still same triable issues which ought to be determined by the court. Also in determining the balance of convenience which is the weighing up the advantages of granting the relief against the disadvantages of not granting the relief, I am of the view that the balance of convenience will tilt adversely against the Plaintiff/Applicant if this application is not granted.

I must state that though there are triable issues in this Application, the Court is not minded to determine same at this stage. These issues should be addressed during the trial.

**Diplock LJ** in the leading case of **American Cyanamid Co. Vrs Ethicon limited (1975)** AC 396 stated the position of the law thus:

*“it is no part of the courts function at this stage of the litigation to try to resolve conflict of evidence on Affidavit as to fact on which the claim of*

*either party may ultimately depend not to decide difficult question of law which calls for detailed argument and inactive consideration”.*

After analyzing all the evidence adduced it is my opinion that this Application ought to be granted.

For this reason, I will therefore restrain the Defendant/Respondent, his Agents, servants, Workmen, Privies and any other persons from dealing with the land in dispute in any manner whatsoever adverse to the Plaintiff's/Applicant's interest pending the final determination of the suit.

The Plaintiff, her Successors, Agents, Workmen whatsoever are also restrained from erecting the Mast on the disputed land pending the determination of this suit.

Because of the nature of this case, it will be tried as expeditiously as possible.

**H/L: RITA AGYEMAN-BUDU (MRS.)  
(JUSTICE OF THE HIGH COURT).**

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