IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: PWAMANG JSC (PRESIDING)

OWUSU (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

ACKAH-YENSU (MS.) JSC

CIVIL APPEAL

NO. J4/02/2023

14TH JUNE, 2023

SINO AFRICA DEVELOPMENT COMPANY LIMITED	**PLAINTIFF/APPLICANT/ APPELLANT/RESPONDENT**
VS	
1. ROYAL BELL INVESTMENTS LIMITED **2. KWAME BLAY**	**DEFENDANTS/RESPONDENTS/ RESPONDENTS/APPELLANTS**

JUDGMENT

PWAMANG JSC:-

My Lords, this is an interlocutory appeal arising from a case the plaintiff/applicant/appellant/respondent (the plaintiff) filed in the High Court, Land Division, Accra on 9th August 2021 and claimed for declaration of title to a tract of land at Borteman in the Tema Municipality, recovery of possession, perpetual injunction and damages for trespass. The plaintiff's case is, that by a sublease dated 16th August 2010 it acquired the land in dispute from the Nungua Stool represented by the Nungua Mantse and Gborbu Wulomo of Nungua. Before the sublease to the plaintiff, the Stool itself was granted a Head Lease dated 12th August 2010 covering a large tract of land including the disputed land by the Government of Ghana for a term of 99 years. The history of the land is that by Certificate of Title dated 7th March, 1940, the colonial government compulsorily acquired the land from the Nungua Stool for agricultural purposes but as at 2010 a large portion of the land was not being used by the Government so the Nungua Stool petitioned for the release of the land to it as the original owner. The Government acceded to the petition by granting the Stool the lease for 99 years of part of the acquired land.

According to the plaintiff, pursuant to the grant, it went into occupation and exercised acts of ownership by constructing its head office on the land and also put up ten (10) single-room structures at various parts of the land. Further, it built a perimeter wall around the land and the plaintiff says that all these developments were done without any let or hindrance.

By its pleadings, the plaintiff states that it was in peaceful occupation until shortly before filing this case in the High Court when the defendants/respondents/respondents/appellants (defendants) entered onto the land and started demolishing its structures. When the plaintiff confronted the defendants they claimed to have obtained judgment in their favour declaring them owners of the land and granting them an order of recovery of possession. The plaintiff says it had no prior notice of any suit concerning its land as no court process was served on it despite being in

possession. However, the plaintiff later got to know that the 1st defendant brought an action in the High Court against its grantor who purported to sell part of the plaintiff's land to it. That suit was Suit No, LD/1228/2017 but the plaintiff was not made a defendant yet the purported execution was made to affect the land of the plaintiff, hence this action by the plaintiff. The plaintiff first applied for a limited order of interim injunction against the defendants and later brought an application on notice for an order of interlocutory injunction.

When the defendants were served with the processes in the suit they filed a statement of defence with a counterclaim as well as an affidavit in opposition to the application for injunction. Their case basically is that they acquired the land from Nii Abotsi Borlabi Family of Nungua who had through occupation of vacant Nungua Stool land acquired ownership. They state that family's ownership was recognised by the Nungua Stool by the grant to it of a lease dated 28th May, 1996. Subsequent to the lease, the Nii Abotsi Borlabi Family had to litigate to protect its interest in the land and in one of the cases the family joined the Nungua Stool to sue the Lands Commission for recovery of the land from the Government of Ghana. The defendants claim that the government around 3rd October, 2008 came to a settlement with the Nungua Stool and its subjects to release some of the land to them. According to the defendants, the Head Lease signed between the Government of Ghana and the Nungua Stool dated 12th August 2010 was as a result of the settlement which included the Nii Abotsi Borlabi Family.

The defendants pleaded that after the Head Lease a letter was written by the Gborbu Wulomo of Nungua dated 11th December, 2010 to confirm the interest of the Nii Abotsi Borlabi family in the land and with that letter the family was able to register the land in its name and was issued with Land Certificate No TD 0090 dated 7th October, 2015. The family thereupon assigned its interest to the 1st defendant by a Deed dated 20th October, 2015 and they too registered it and were issued Land Certificate No TD 0558 dated 10th

June, 2016. The defendants state that after the 1st defendant got its assignment registered some members of the Nii Abotsi Borlabi Family went onto the land and attempted selling portions to third parties and that made the 1st defendant to file Suit No, LD/1228/2017 which ended in the favour of the 1st defendant. When it executed the judgment was when they met the plaintiff.

In opposing the application for interlocutory injunction, the defendants deposed to an affidavit and made reference to plans they had made for building affordable houses for sale to the general public, which plans they indicated were far advanced so they would suffer hardship if an order of interlocutory injunction was granted on the application by the plaintiff. The defendants also exhibited the documents they relied on to sustain their counterclaim for ownership of the land.

By a ruling dated the 18th October, 2021 the High Court dismissed the application for interlocutory injunction and ordered the defendants to execute an undertaking to reimburse the plaintiff in terms of costs and damages should they lose in the substantive case. The plaintiff appealed to the Court of Appeal who allowed the appeal and made an order of interlocutory injunction restraining both parties from developing the land pending the determination of the case. The Court of Appeal in their judgment dated 14th July, 2022 expressed their dissatisfaction with the manner the High Court Judge relied on the exhibits of the defendants without scrutinsing them and ended up conclusively holding that the defendants incurred huge expenses in preparing for its housing project and already secured funding for their intended project. The Court of Appeal examined the exhibits of the defendants and pointed out that the High Court Judge completely misread the evidence.

The defendants have appealed against the decision of the Court of Appeal to the Supreme Court on the following grounds:

a. The appeal being an interlocutory appeal, the Court of Appeal erred in law in considering the omnibus ground of appeal in the Notice of Appeal of the Plaintiff/appellant/respondent and proceeded to consider that ground of appeal and set aside the ruling of the trial High Court.

b. The Court erred in law in making a finding that the plaintiff/ appellant/ respondent was in possession of the land in dispute before being wrongly evicted from the land, as that finding prejudiced that issue to be determined at the trial court.

c. The court erred in ordering the Registrar of the Court of Appeal to bring the case to the attention of the Chief Justice to transfer same from the trial judge to another High Court differently constituted to hear the substantive matter when the trial judge had almost concluded the trial of the case and when there was no basis for such order.

d. Additional grounds would be filed upon receipt of the records of appeal.

No additional grounds of appeal have been filed and the defendants have argued all the above grounds in their statement of case. The plaintiff too has responded to the arguments of the defendants in a statement of case. We have read both statements of case closely, reviewed the record of appeal and taken note of the reasons for the decisions of the High Court and the Court of Appeal.

In arguing Ground A of the appeal the defendants refers to the cases of **Asamoah v Marfo [2011] 2 SCGLR 832, Zikpuitor & Ors v Attorney-General (2019) 130 GMJ 179** and **Atuguba & Associates v Scipion Capital UK Ltd & Another Civil Appeal No. J4/04/2019 unreported judgment of the Supreme Court dated 3rd day of April 2019** and submits that since the Court of Appeal in this case was dealing with an interlocutory appeal, they erred by considering the plaintiff's ground of appeal which stated that the ruling of the High Court was against the weight of the evidence. In the view of the defendants the Court of Appeal ought, on the authorities, to have dismissed the plaintiff's appeal *in*

limine. In answer, the plaintiff submits that since in interlocutory proceedings evidence was adduced by affidavit in line with Order 38 Rule 2(3) of the **High Court (Civil Procedure) Rules, 2004 (C.I. 47)** a ground of appeal against an interlocutory decision which states that the decision is against the weight of the evidence is a competent ground depending on the circumstances of the case.

It appears that the defendants have misread the jurisprudence of this court on the pleading of the ground of appeal that an interlocutory decision is against the weight of the evidence. In **Asamoah v Marfo (supra)** the Supreme Court in holding (1) of the Headnote held as follows;

"It appears that at the time the motion for judgment was filed, the respondent, who was the defendant, had not filed any defence on record or made any admission on oath or otherwise in any manner or form. It thus sounds strange for counsel for the plaintiff to appeal against the judgment on the ground that the judgment was against the weight of the evidence; that ground is clearly misconceived and without merit."

The above holding, which appears to be the foundation on which in subsequent cases statements were made about this ground of appeal, did not foreclose the possibility of an interlocutory appeal being premised on weight of evidence. In **Zikpuitor & Ors v Attorney-General** (supra) the court said as follows;

"The omnibus ground is usually common in cases in which evidence was led and the trial court was enjoined to evaluate the evidence on record and make its findings of facts in appropriate cases…. We think this ground is clearly misconceived and same is hereby strucked out ***as there were no disputed factual matters which called for findings by the lower court which merely determined the application for stay of proceedings on affidavit evidence which was not in controversy." (Emphasis supplied)***

Accordingly, where in an interlocutory application the affidavit evidence of the respective parties is disputed, a ground of appeal which states that the decision is against the weight of the evidence would not be totally out of place. In this case, the High Court exercised its discretion to refuse the plaintiff's application largely on its understanding of the exhibits attached to the affidavit of the defendants but the Court of Appeal pointed out that the Judge misapprehended the evidence that was before him. It must also be noted that in the case of **Atuguba & Associates v Scipion (supra)** which the defendants referred to in their statement of case, though the appeal was solely on the ground that the interlocutory decision was against the weight of the evidence, the Supreme Court did not dismiss the appeal *in limine* as the defendants submit the Court of Appeal ought to have done in this case.

Besides, it must be noted, that in considering any appeal from a decision of a lower court, the Court of Appeal is entitled to rehear the case as if it were the court of first instance and to give the judgment that the lower court ought, in the view of the Court of Appeal, to have given. Article 137(3) of the Constitution, 1992 provides as follows;

(3) For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any appeal, and, for the purposes of any other authority expressly or by necessary implication given to the Court of Appeal by this Constitution or any other law, the Court of Appeal shall have all the powers, authority and jurisdiction vested in the court from which the appeal is brought.

Also, Rule 32 of the **Court of Appeal Rules, 1997 (C.I. 19)** provides as follows;

32. Power of Court to give judgment and make an order

(1) The Court shall have power to give any judgment and make any order that ought to have been made, and to take such further or other order as the case may require including any order as to costs.

(2) These powers of the Court may be exercised notwithstanding that the applicant may have asked that part only of a decision be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although the respondents or parties may not have appealed from or complained of the decision.

We recognise that the Court of Appeal in the exercise of its jurisdiction in this case based itself on the settled principles on which an appellate court would interfere with the exercise of discretion by a lower court as stated in **Crentsil v Crentsil [1962] 2 GLR 171**, where the Supreme Court held as follows;

'In Blunt v. Blunt where the judgment of the House of Lords on appeal from the Court of Appeal was delivered by Viscount Simon, L.C. it was held that:

"An appeal against the exercise of the court's discretion can only succeed on the ground that the discretion was exercised on wrong or inadequate materials if it can be shown that the court acted under a misapprehension of fact, in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matter into account; but the appeal is not from the discretion of the court to the discretion of the appellate tribunal."'

From the pleadings, the claim of the plaintiff for ownership of the disputed land is not frivolous as its pleaded root of title provides a legal basis for its claim. As noted by the Court of Appeal, the High Court Judge in this case showed that his decision to refuse the plaintiff's prayer for an interlocutory injunction was influenced by the weight he gave to unproven matters. The High Court Judge also failed to take into account the highly relevant deposition by the plaintiff, supported by pictorial evidence, that it was in possession of the land in dispute haven built a number of structures on it before the

defendants entered the land and destroyed its development leading to the action in court and the application for interlocutory injunction. We agree with the Court of Appeal that if the High Court Judge had properly assessed the affidavit evidence before him and taken into account the manner the defendants entered into occupation of the land, he would have exercised his discretion differently.

The arguments of the defendants on Ground B of its appeal are misconceived since what the Court of Appeal meant was that the High Court Judge failed to take account of the affidavit evidence of the plaintiff about its earlier acts of occupation of the land before the entry of the defendants resulting in this suit. The High Court Judge, by his ruling allowing the defendants to develop the land in disputed, effectively endorsed the actions of the defendants who, it appears, wrongfully dispossessed the plaintiff and then turned round to argue that they were in possession anyway so the court should allow them to develop the land. That would be setting a dangerous precedent in land cases in our jurisdiction and we think the Court of Appeal acted properly in promptly reversing the High Court.

Under Ground C of the appeal, the defendants complain that in the Court of Appeal the plaintiff did not pray for the transfer of the case from the High Court Judge who determined the motion for interlocutory injunction but the Court of Appeal on its own motion directed that the case be reported to the Chief Justice for it to be transferred to a different Judge. The plaintiff submits that the Court of Appeal is justified in making that order because the High Court Judge in his ruling made prejudicial statements against the merits of the case of the plaintiff, especially by saying that the plaintiff failed to exhibit a site plan as part of its sublease and that it was fatal to its claim to the land. As provided for under article 137(3) of the Constitution reproduced above, the Court of Appeal has power to make such an order which the High Court is empowered to make under section 105 of the **Courts Act, 1993 (Act 459)** which provides as follows;

105. (1) Any Judge of the High Court or Chairman of a Regional Tribunal may on his own initiative or on application by any person concerned, report to the Chief Justice any case civil or criminal pending before him which in his opinion ought for any reason to be transferred from him to any other court, Judge or Regional Tribunal.

(2) If the Chief Justice is satisfied that a transfer is desirable he shall specify the court or tribunal to which or the Judge to whom that case is to be transferred for hearing and determination and give such other directions as may be necessary.

By subsection (2) of section 105, it is for the Chief Justice to determine if a transfer is desirable on the grounds stated by the Court of Appeal for reporting the case for transfer. We do not deem it appropriate to interfere with the Chief Justice's exercise of her power under the statute so we shall dismiss Ground C of the appeal.

To conclude, we have not been persuaded by the defendants that the decision of the Court of Appeal was wrong and we hereby dismiss the appeal against the interlocutory judgment of the Court of Appeal dated 14th July, 2022.

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

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