

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL SITTING AT ACCRA
ON THURSDAY THE 17TH DAY OF NOVEMBER,
2005

CORAM - FARKYE, JA [PRESIDING], ABBAN [MRS] & DOTSE, JJA

H3/542/2005

ANTHONY KWADWO BOAKYE ... PLAINTIFF/RESPONDENT

V E R S U S

NANA TUTUYEHENE ... DEFENDANT/APPELLANT

**MOTION ON NOTICE FOR INTERLOCUTORY INJUNCTION
AND APPOINTMENT OF RECEIVER AND MANAGER**

R U L I N G - This ruling is in respect of Motion on Notice for interlocutory injunction and appointment of Receiver and Manager.

On 15th November 2005, the Plaintiff/Respondent/Applicant herein by his counsel moved this court for an order of injunction and for the appointment of a receiver and manager pending the hearing and determination of his appeal at the Supreme Court. The claim which gave rise to this application was instituted by the Plaintiff/Respondent herein (herein called the applicant) at the Kumasi High Court against the Defendant/Appellant/Respondent herein (hereinafter called the Respondent) for

- (1) a declaration of title and recovery of possession of a parcel of land at Kwamang Woroman.
- (2) a order setting aside an arbitration award in favour of the Defendant by the Kumasi Traditional Council dated 2nd November 1993.
- (3) General damages for trespass;
- (4) An order of perpetual injunction restraining the Defendant, his privies, assigns, agents, servants and/or workmen from interfering with the Plaintiffs use and enjoyment of the said land.”

The High Court, Kumasi gave judgment in favour of the applicant herein and the Respondent herein appealed on 3rd April 2001. The central issue was whether or not in

the absence of summons for directions the trial was null and void. This court held on 17th December 2004 that indeed the trial at the court below was void because no Summons for Directions was filed to identify the issues for trial thereby reversing the judgment of the court below.

On 17th February the applicant herein filed an appeal to the Supreme Court.

Whilst the record of appeal is being prepared for the Supreme Court, the applicant has applied to this court for the grant of interlocutory injunction and the appointment of receiver and manager as stated supra; in order to preserve the subject matter in dispute, pending the determination of the appeal. It was supported by an affidavit filed by him on 8th July 2004.

We rule that the motion by the applicant for an order of injunction and for the appointment of a receiver and manager, pending the hearing and determination of the appeal was not properly before this court since this court is functus officio as this court has already given its judgment.

Accordingly this application is refused. Counsel for Respondent asks for c2 million cost.

By Court - Respondent is awarded cost of c2 million.

S.T. FARKYE
JUSTICE OF APPEAL

MR. S. ADDO FOR THE DEFENDANT/APPELLANT/RESPONDENT.
**MR. W.A.N. ADUMUA-BOSSMAN FOR PLAINTIFF/RESPONDENT/
APPLICANT.**