**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE COURT OF APPEAL**
**ACCRA - GHANA** **CIVIL APPEAL**
**NO. HI/98/2005**
**11TH FEBRUARY 2005**

**CORAM – ADINYIRA [MRS] J.A. [PRESIDING]**
**DOTSE, J.A.**
**HEWARD-MILLS [MRS] J**

**MADAM CATHERINE OSEI … PLAINTIFF/APPELLANT**

**V E R S U S**

**FRANK ADDO … DEFENDANT/RESPONDENT**

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**J U D G M E N T**

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**ADINYIRA [MRS.] J.A. -** On 12 March 2004, the High Court Accra gave a ruling in which it refused to grant an application for an interim injunction. The ruling is the subject of this appeal.

The plaintiff/appellant [hereinafter appellant] had sued the defendant/respondent [hereinafter respondent] per her writ of summons for:

"(1) the plaintiff's claim is for a declaration for the cancellation of the lease agreement between the appellant and the respondent on the grounds of unconscionability.

(2) Perpetual injunction restraining the defendant, his servants, agents, privies and attorneys from developing and or carrying out any constructional work on the said land situate at Plot. No. 126, Block 5, Section 4, North Airport Residential Area, Accra.

(3) Recovery of three thousand (3,000) blocks and seven (7) trip of sand which was on the premises at the time that the defendant demolished the building.

**ALTERNATIVELY**

(4) A declaration that the said agreement shall not be renewed after the expiration of the thirty (30) years period of the said lease."

In her statement of claim the appellant alleged that she was rushed into the agreement and there was no valuation of the said property. She claimed the price of

US$80,000; the respondent paid for the lease was less than half its valued price. She conveyed her intention to rescind the agreement but the respondent would not agree to the said rescission. She further complained that the respondent had without her consent pulled down her existing building on the land and had thereby breached the agreement. The respondent denied the plaintiff's claim and averred that he was given vacant possession of the property without any precondition. He claimed the agreement was entered into with the concurrence of the Lands Commission, which holds the head lease.

Meanwhile the respondent started to construct a building on the land, the appellant therefore applied for an interim injunction to restrain the respondent from developing or carrying out any constructional works on the said land.

In her affidavit in support the appellant restated her averments in her statement of claim and stated in paragraphs 12, 13 and 15 thereof that:

> "12. That the said sub-lease agreement did not give the defendant authority to demolish my existing building.
>
> 13. That the defendant has started putting up a building on the land and must be stopped since there is no agreement as what type of building to put up.
>
> 15. That the said lease agreement is silent as to what structure the defendant should put on the said land if not restrained will create problem at the expiry of the agreement."

The respondent in paragraph 8 of his affidavit in opposition stated:

> there was no condition for development and that the only stipulated was that "(8) That in reference to paragraphs 12 to 16 the respondent say that he defendant would hand over whatever development he had done on the land at the end of the period envisaged by the agreement."

In paragraphs 8 and 9 of his supplementary affidavit in opposition the respondent stated that:

"(8) That pursuant to the agreement between the parties and the undertaking by the plaintiff the defendant has mobilized building materials like cement, sand, stones, wood etc. and workforce at considerable cost not to mention architectural drawings application for electricity and other facilities and expert consultancies.

(9) That the defendant will suffer considerable financial loss and irreparable business injury if the application is granted more so when from the records any alleged negligence was caused by the plaintiff."

In arguing the application for interim injunction before the trial judge, counsel for the appellant urged upon the court that without express authority from the appellant, the respondent had no right to demolish the existing structure on the land. He said by demolishing the structure the respondent had breached a fundamental clause of the lease. He further submitted that the building the respondent would put up would be in breach of the head lease and the appellant therefore stood the chance of loosing everything. He concluded by saying that that from the balance of inconvenience the appellant stands the risk of suffering irreparable damage and hardship, which cannot be compensated by money. Counsel for the respondent in response said the proposed building was not for commercial purposes; and that whatever was on the land has already been demolished. The trial judge however refused the application and the appellant appealed against this decision on the grounds that:

(1) "The learned High Court Judge was wrong in ruling that the damages the plaintiff/appellant will suffer can be adequately compensated for in case the plaintiff wins her case.

(2) The Learned High Court Judge wrongly exercised his discretion in the circumstances of this case in refusing the appellant's application for the interim reliefs which wrong refusal has occasioned the appellant's substantial miscarriage of justice."

The granting or refusal of an interim application, such as was in this case involves the exercise of a trial court's discretion. It is trite law that an appellate court will not interfere with the exercise of a court's discretion except in exceptional circumstances. In the case of **Crentsil v. Crentsil [1962] 2 GLR 171 at 175,SC, Sarkodee-Addo JSC** Stated

'An appeals from the exercise of the court's discretion, it is a rule of law deep rooted and well established that the Court of Appeal will not interfere with the exercise of the court's discretion save in exceptional circumstances……

**In Blunt vs. Blunt [1943] A.C 517 at p. 518 ( head note ) H.L.** where the judgment of the House of Lords on appeal from the Court of Appeal, ws delivered by Viscount Simon, **LC** 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 he court acted under a misapprehension of fact, in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matters into account, but the appeal is not from the discretion of the court to the discretion of the appellate tribunal" See also the case **of In re Bob Kwame and Co, Gyingyi vs. Bernard [1989-90] 1GLR 87 C.A**

In the light of the above principles and the authorities cited, any appeal from the exercise of a court's discretion must relate to the manner in which such discretion was exercised. The burden would therefore lie on the appellant to demonstrate to the appellate court that the court below did not exercise its discretion judiciously. What were the reasons given by the court below in refusing the application ? The reasons were so short that I reproduce the whole ruling.

**Court Ruling** "It is a well-held view that interlocutory injunction would only be granted where the applicant would suffer irreparable damage i.e. damage so substantial that it could not be adequately be (sic) remedied by a pecuniary payment. In my view whatever was on the land had been pulled down, defendant is ready to build. In the event or the case going against defendant, plaintiff would be adequately compensated by cost. Secondly on the balance of inconveniences it is my considered view that equity would be due more by refusing the injunction than by granting it. Motion for granting of injunction is hereby refused, with cost of 1 million against plaintiff"

In the appeal before us learned counsel for the appellant argued both grounds of appeal together and virtually repeated the same submissions he made before the trial court. His appeal seem to turn on the main point whether the trial judge was right in holding that the appellant can be adequately compensated for the destruction of her structure on the land in the event that she was successful at the end of the trial. She claimed the house was worth US$100,000.00 meanwhile she is holding on to the purchase price of

US$80,000,00. In my opinion that sum alone which could cover 4/5 of he alleged value of the demolished structure, is substantial guarantee to set off any damages or loss that she might be able to prove at the trial in case she succeeded in the action.
In **American Cyanamid Co. v. Ethicon Ltd. [1975] 1 A11 E.R 504** the House of Lords **per Lord Diploct at p.509** stated in a case of interim injunction that :

**"**The objective of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if uncertainty were resolved in his favour at the trail, but the plaintiff" undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the balance of inconvenience lies"
And at **p 5 10**:

"The governing principle is that the court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage." Applying the above principles to the facts of the case I quite agree with the trial judge that this is a case where damages will be an adequate remedy for the destruction of the plaintiff's structure were she to succeed on her claim.

Counsel also stated that the appellant might loose her reversionary interest in case the building that the defendant puts up is not for residential purposes. It is my considered opinion that counsel is being speculative as the respondent in paragraph 5 of his affidavit in opposition stated that the building he was putting up conformed to the terms of the head lease and the appellant has not controverted this. Furthermore under the agreement the respondent was to yield any building constructed on the land to the appellant at the expiration of the sublease so that in any event the appellant stands to gain.

The trial judge also considered the balance of inconvenience and decided in favour of the respondent. I think he was right, for here is a case where the property was advertised for sale and the parties have entered into a lease agreement with the consent of the head lessor, the Lands commission, then the applicant after given up vacant possession to the respondent then turns round and issues a wit to rescind the contract because she feels she sold out at too low a price and seeks to restrain the respondent from exercising his legal right in putting up a building on the said land. In considering the balance of inconvenience, in the case of the appellant in the event that she is successful, whatever her loss, in this case the destroyed structure, can be compensated for in cost and she can have the respondent pull down the house he puts up if she so wishes. Whereas in the case of the respondent apart from having been restrained from exercising his legal rights acquired under the lease, he would suffer more substantial hardship than the appellant as some of his building materials like cement would have gone waste, and he would be put to extra cost to carry on his building due to inflation and other factors which I need not elaborate here. An interim injunction is an equitable relief and should therefore not be granted if it will cause unnecessary hardship to a respondent as would have happened in this case. I am not convinced that the trial judge wrongly exercised his discretion as to entitle this court to interfere with his exercise of discretion. The appellant has not succeeded in demonstrating that the judge proceeded on wrong principles. This is a case where I think damages will be an adequate remedy should the appellant succeed in her claim.

The ruling of the High Court is sound and should not be disturbed. In the circumstances the appeal fails and is accordingly dismissed.



**S.O.A. ADINYIRA (MRS).**
**JUSTICE OF APPEAL**

**'eb'**