

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
MONDAY THE 5TH DAY OF DECEMBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C1/55/18

EMMANUEL KWABENA DANQUAH

TANTRA HILL, ACCRA

...

PLAINTIFF/RESPONDENT

VRS.

JOSEPH KWASI AGYEKUM

DEFENDANT/APPLICANT

*PARTIES: PLAINTIFF/RESPONDENT ABSENT REPRESENTED BY BASHIRU
HAMIDU*

*DEFENDANT/APPLICANT ABSENT REPRESENTED BY
SOLOMON OWUSU*

COUNSEL: EDEM AMADZOR ESQ. FOR PLAINTIFF/RESPONDENT

PRESENT

*FRANCIS OSEI BONSU ESQ. WITH BARIMAH NTIAMOAH FOR
DEFENDANT/APPLICANT PRESENT*

RULING

This is an application filed by the Defendant/Applicant (hereinafter referred to as Applicant) on 30th September, 2022 for an order for Interlocutory Injunction restraining the Plaintiff/Respondent (hereinafter referred to as Respondent) whether by himself, servants, agents and privies or whomsoever

from carrying out building constructions on the land or committing any further acts of trespass on the land subject matter of dispute pending the determination of this suit.

By an Amended Writ of Summons and Statement of Claim filed on 26th June, 2019, Respondent claims against Applicant the following reliefs:

- a. "A Declaration of title to ALL THAT piece or parcel of land situate, lying and being at Danchira in the Ga South District of the Greater Accra Region of the Republic of Ghana and containing an approximate Area of 0.134 Acres or 0.55 Hectares more or less and bounded on the NORTH from 1 to 2 measuring 334.5 feet more or less; bounded on the SOUTH from 3 to 4 measuring 199.3 feet more or less; bounded on the EAST to from 4 to 5 measuring 142.1 feet more or less and again bounded on the EAST from 5 to 1 measuring 204.6 feet more or less.
- b. An order for perpetual injunction restraining the Defendants, his agents, servants, workmen and privies from trespassing onto Plaintiff's land.
- c. Recovery of Possession of the said land.
- d. General Damages.
- e. Costs."

By a Statement of Defence and Counterclaim filed on 25th August, 2022, Applicant claims against Respondent the following reliefs:

- a. "A Declaration of title to ALL THAT parcels of land described in the schedules under paragraph 4 of the Amended Statement of Defence above
- b. Recovery of Possession.
- c. An order for perpetual injunction directed at the Plaintiff, his agents, privies, assigns, workmen, and/or any other person(s) claiming

through him and howsoever described from interfering with Defendant's quiet and peaceful enjoyment of his land.

- d. General damages for trespass.
- e. An order for the removal of construction works effected by Plaintiff on the land at Plaintiff's cost or failing which Plaintiff be surcharged with the cost of such removal.
- f. Costs inclusive of defendant's Solicitors fees.
- g. Any other relief(s) which the Honourable Court deems just and equitable."

It is the case of Applicant that he is the owner of the land in dispute having acquired it from the Akwannon family of Ashalaja by two separate Deeds covering 20 plots of land which was executed on 1st August, 1997. According to him, he has been in possession of the land and has relatives resident on a portion where he has built. He says that though Respondent commenced this action, he has commenced construction on the land, and it will be unjust for him to stand aside and helplessly observe the land being further defaced by the Respondent. On this basis, he prays for an order of the court to prevent Respondent from further changing the character of the land and to maintain the status quo till the final determination of this matter in order to avoid irreparable damage to his parcel of land. He says that on a balance of convenience, greater hardship will be caused to him if the Respondent is not restrained by way of injunction.

Respondent filed an Affidavit in Opposition on 20th October, 2022. He contends that he acquired his land from the 4 composite families of Danchira and has registered his interest in the land and obtained a land title certificate. He says that his land is 1.34 acres and he has long constructed a fence wall, four single rooms at different locations on the land as well as 6 stores on part of the land adjoining the road. He says that he commenced this action against

the Applicant when a demolishing notice was posted on his building in execution of a suit no C1/51/2015 titled Kwasi Agyekum vs. Raffick. He says that the land in that suit is different from his land and therefore could not have been affected by the Judgment in suit no. C1/51/2015. According to Respondent, he conducted several Searches which have confirmed that the Applicant and his grantors do not have any interest in the land in dispute. He says that the parties tried to settle this matter and the case became dormant and during this time Raffick entered the bare land of either side of his 6 stores and built a fence wall on his land. Respondent says that he made a report to the Police and in order to stop the said Raffick from coming back, he signed an undertaking not to return on the land. He says that after this undertaking, he pulled down the fence wall and is constructing an extension of his 6 stores to ward off encroachers and it is this extension that Applicant is complaining about. According to him, the extension has reached lintel level and he has invested so much to purchase building materials to cast concrete to the roof therefore granting the Application would result in serious hardship to him.

In a Supplementary Affidavit filed on 4th November, 2022 by applicant, he says that Applicant has obtained a Land Titled Certificate hurriedly while this case is still pending, and the owner of the land has not yet been determined.

In the case of **OWUSU V. OWUSU ANSAH AND ANOTHER [2007-2008] 2 SCGLR 870 at 876**, it was held by Adinyira JSC as follows:

“The fundamental rule therefore is that a trial court should consider whether the applicant has a legal right at law or in equity, which the court ought to protect by granting an interim injunction. This could only be determined by considering the pleadings and affidavit.”

Applicant says that he is the owner of the land in dispute and in proof of this he attached *Exhibits SO2 and SO3*. *Exhibit SO2* is an Indenture dated 1st

August, 1997 between the Akwanor Family of Ashalaja and Mr. Joseph K. Adjekujm for land described as “ALL THAT PIECE OR PARCEL land situate lying and being at ASHALAJA in the Ga District of the Greater Accra Region of the Republic of Ghana and bounded on the North-West by Lessor’s land measuring 560 feet more or less on the South-East by proposed road measuring Road measuring 560 feet more or less on the North-East by an open space measuring 200 feet more or less and on the South-West by Lessor’s Land measuring 200 feet more or less and containing an approximate area of 2.57 Acres more or less as the same is more particularly delineated on the plan attached hereto and thereon edged PINK”. *Exhibit SO3* is an indenture dated 1st August, 1997 between the Akwannon family of Ashalaja and one Mr. Ernest Asante. Clearly, *Exhibit SO3* does not bear the name of Applicant. Also, the land in dispute in suit No. C1/51/2015 is described as “being at Ashalaja in the Greater Accra Region of Ghana bounded on the North-West by proposed road, on the South-East by lessor’s land, on North-East by lessor’s land and containing an approximate area of 0.724 acres more or less.”

Respondent on the other hand relies on *Exhibit 1* which is a Land Certificate dated 3rd September, 2019 as proof of ownership of the land in dispute.

Therefore, at this stage of the proceedings, I am not satisfied that the Applicant has put anything before the court to show that he has a legal interest in the land in dispute that needs protection from the court. **Section 111** of the **LANDS ACT, 2020 (ACT 1036)** provides that an entry in the lands register shall be conclusive evidence of title of the holder of the interest specified in the land register. No issue of Fraud has been raised as to the Land Certificate obtained by Respondent. Thus, considering the pleadings, affidavits and evidence before me, I am of the opinion that for the time being, Respondent has shown a better right to the disputed land than the Applicant.

Though the land in dispute in this matter is described as being at Danchira, *Exhibit SO2* which Applicant relies upon describes the land as being at Ashalaja. Respondent has averred that the land in dispute is different from that which is being claimed by the Applicant. This issue of whether or not the lands are different could only be determined if a surveyor is appointed to draw a composite plan based on the Site Plans of the parties. And this is in fact one of the issues which have been set down for trial since 2018.

In the case of **EKWAM V. PIANIM (NO. 1) [1996-97] SCGLR 117**, it was held that in deciding whether or not to grant an order of interim injunction, the court would consider the justness and convenience of the order. In this case, the Respondent has a legal right over the land in dispute and has committed resources in carrying out construction works on the land as evidenced by *Exhibit 7*.

In the case of **CENTRACOR RESOURCES LTD V. BOOHENE AND OTHERS [1992 – 93] 4 GBR 1512** it was held as follows:

“Where a plaintiff in an application for interlocutory injunction could not show that the legal right sought to be protected really existed or where either party would suffer great disadvantage, which could not be adequately compensated in damages, it would be permissible in such case to consider the relative strength of the parties’ cases.”

I am of the opinion that for the time being, Respondent has shown a better right to the disputed land than the Applicant and a preservation of the status quo as prayed therefore will not be just and convenient as the balance of convenience tilts in favour of the Respondent. I consider that greater hardship would be caused to Respondent if the Application is granted considering that he has ongoing construction with materials on the land. I consider that should

the Applicant succeed in this action, his loss, if any, would be financial and damages would lie to compensate him.

Based on the foregoing reasons, the Application is hereby dismissed.

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN