

IN THE CIRCUIT COURT "A", TEMA, HELD ON WEDNESDAY, THE
14TH DAY OF DECEMBER, 2022, BEFORE HER HONOUR AGNES
OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. C1/14/21

THOMAS NASH BOAMAH ---- PLAINTIFF/APPLICANT

VRS.

1. FREDERIC ADORKE
2. YAW KWACHIR
3. SHEILA OHENEWAA ----
4. LORETTA AGYEIWAA
5. SELINA ACHBOD ORLANDO
6. MOHAMMED DAUTEY

} DEFENDANTS/RESP.

PLAINTIFF /APPLICANT

PRESENT

DEFENDANTS /RESPONDENTS

ABSENT

SUSANA TETTEH, ESQ. BEING LED BY MOHAMMED ATTAH, ESQ.

ABSENT

PRINCE KWEKU HODO, ESQ. FOR THE 4TH AND 6TH DEFENDANTS/
RESPONDENTS

PRESENT

ANTHONY KPEDZE, ESQ. HOLDING THE BRIEF OF KWESI

DADZIE-YORKE, ESQ. FOR THE 5TH DEFENDANT/RESPONDENT

PRESENT

RULING

FACTS:

This is a ruling on a Motion on Notice for Interlocutory injunction filed by the plaintiff/applicant (hereinafter called "the Applicant) against the defendants/respondents (hereinafter called the respondents) on 1st November, 2021, praying this court for an order for interlocutory Injunction restraining the Defendants/Respondents herein, their agent, workmen, privies assigns e.t.c. and any other person claiming through them from dealing with Applicant's quiet enjoyment of the disputed land which the defendants/Respondents have trespassed on and for any other further order(s) as this Honourable Court may deem fit.

The background to this application is that on 26th May, 2021, the Plaintiff/Respondent herein caused a writ of summons to issue against the defendants for the following reliefs:

- a. A declaration that the plaintiff is the owner of 2 ½ acre of land described as *Plot No. 8B N.E, Kpone Barrier, Tema.*
- b. Recovery of possession of 2 ½ acre of land described as *Plot No. 8B N.E Kpone Barrier, from the defendants, their agents, assigns, workmen etc.*
- c. General damages for trespass.
- d. Perpetual Injunction against the defendant, their agents, assigns, privies, workmen etc. from dealing with the 2 ½ acre of land in dispute described as *Plot No. 8B. N.E Kpone Barrier.*
- e. Costs.

Pursuant to an Order of the Court, the 6th defendant was joined to the suit. The applicant has therefore filed the instant application seeking to restrain the respondents from dealing with the land, the subject matter of the dispute pending the final determination of the suit.

The plaintiff in the affidavit in support deposed that, he acquired the plot of land in dispute on or about September, 1992, from Mohammed Dautey, the 6th respondent in the instant suit and paid the full purchase price. The said property is described as Plot No. 8B N.E Kpone Barrier, Gold City measuring 2 ½ acres. In support, the applicant has annexed as **Exhibit "A" series**, evidencing this fact. The applicant further deposed that, after his vendor had demarcated and put him in possession, one Isaac Ocansey who also bought half plot of the land from the defendant also resold same to him. According to him, he litigated over the half plot of land with the vendor and obtained judgment and in support he tendered the Entry of judgment admitted and marked as **Exhibit "C"**.

The Applicant further maintains that the defendants have trespassed on his 2 ½ acre plot of land and are causing him a lot of inconvenience, hardships and economic loss and unless restrained, by this Court, they will continue in their trespass with impunity. In support, the Applicant annexed **Exhibits "D", "E" and "F"** which are photographs showing the various developments allegedly made on the disputed land by the defendants and states that the first defendant was developing at a fast pace. According to the Applicant, he will suffer greater hardship if the application is not granted. The Applicant states that it is just and convenient to grant the application since his claim is not frivolous or vexatious and irreparable damage will be caused to him if the application is not granted.

The application for injunction was duly served on respondents but only the 5th respondent opposed the application and filed an affidavit with copious annexures and a statement of case. The 5th respondent in her affidavit in

opposition denied trespassing on the land of the applicant. The 5th respondent maintains that the wife of the applicant sold the disputed land measuring 0.21 acre to her husband. According to her, they have put up stores on the land and rented it out the tenants. The 5th respondent deposed further that, the land, the subject matter in dispute, is a subject matter of litigation in a matrimonial suit between the applicant and his wife who sold the land to her at the High Court, Accra. The 5th respondent states that the applicant's wife has alleged in the said petition before the High Court that the Applicant is dissipating the assets and there is also terms of settlement between the applicant and his wife who is their vendor. The 5th respondent annexed **Exhibits "4" and "4A"** showing the stage of the development on the land in dispute and maintains that she has completed the building and put tenants in the stores and states that the present application ought to be dismissed since it is an attempt to deny their grantor, the wife of the applicant, herself and her husband their right to the property in dispute.

ANALYSIS

I have determined this application based on the motion paper, the supporting affidavits, the annexures, the statement of case filed by counsel for the applicant, the affidavit in opposition filed by the 5th respondent and the statement of case in support of the affidavit in opposition. I also rely on the oral submissions made by counsel for the applicant.

Order 25 rule 1(1) provides that:

"The court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions that the Court considers just"

It trite law that the grant or refusal of an application for interlocutory injunction is at the discretion of the court. In the case of **Welford Quarcoo v. Attorney-General & Anor** [2012] 1 SCGLR 259 at 260, Dr. Date-Baah JSC (Sitting as a single Justice of the Supreme Court.), the Supreme Court stated the conditions for the grant of interlocutory injunction held as follows:

“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 damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally, that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief.”

In the case of **Odonkor v. Amartei** [1987-88] 1 GLR 578, the court held in its holding 1 that:

“the basic purpose of interim orders was, as much as possible, to hold the balance evenly between the parties, pending a final resolution of matters in difference between them, and also to ensure that at the end of the day the successful party did not find that his victory was an empty one, or one that brought him more problems than blessings.”

In the instant case, the Applicant on the affidavit evidence and the exhibits attached has demonstrated that he has an interest in the property in dispute which this court must protect. The gravamen of the contention of the 5th respondent that the wife of the Applicant who is litigating over the property in a matrimonial suit with him, sold the disputed land to her, in my view,

shows that the applicant has demonstrated that he has a legal right in the property in dispute which this court must protect. Also, on the pleadings, there are serious questions of law and of fact to be decided by the court. The 5th respondent traces her root of title to the wife of the Applicant and states that the property in dispute is a subject matter of a divorce proceedings before an Accra High Court. The 5th respondent also contends that there is terms of settlement with respect to the property in dispute but annexed proceedings of a mediation which counsel for the applicant has raised issues of privilege. There is no consent judgment in respect of the property and having admitted that it is a subject matter of a matrimonial cause demonstrates that the Applicant's application is not frivolous nor vexatious and that he has an interest which this court must protect.

Under the circumstances, to maintain the status quo and to hold the balance evenly between the parties, I will grant an order of interlocutory injunction restraining the respondent's their agents, workmen, privies, assigns e.t.c. and any other person claiming through them from dealing with the property in dispute pending the final determination of the suit. The 5th respondent who from the photographs, **Exhibit 4 series** annexed to the affidavit in opposition has completed a building and put tenants in the stores, shall maintain the status quo and is restrained from further developing the property in dispute until the final determination of the suit.

In accordance with **section 25 rule 9** of the High Court (Civil Procedure) Rules, 2004 C.I.47, the Applicant shall give an undertaking as to damages to the 5th defendant/respondent.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)