

**IN THE CIRCUIT COURT BEFORE HIS HONOUR JAMES KOJO BOTAH
SITTING ON MONDAY THE 17TH DAY OF JULY, 2023**

SUIT NO:

C1/03/2021

SAMUEL DARKO

} PLAINTIFF/ RESPONDENT

VS:

AMONOO ABBAN

} DEEFNDANT/ APPLICANT

PLAINTIFF / RESPONDENT – PRESENT

DEFENDANT / APPLICANT – REPRESENTED BY JONATHAN ASKIA

JOHN LISTOWEL SEKLE FOR FRANK K. NIKOI FOR

PLAINTIFF/RESPONDENT- PRESENT

FELIX NANA OSEI FOR DEFENDANT / APPLICANT – PRESENT

RULING ON APPLICATION FOR STAY OF EXECUTION PENDING

APPEAL

1. INTRODUCTION

On 13th October 2020, the Plaintiff instituted a civil action against the Defendant claiming the following reliefs:

- a. Declaration of equitable title to the land described in paragraph 4 of the Statement of Claim;
- b. An order for perpetual injunction restraining the Defendant, his agents, assigns, privies, workmen and successors from interfering with Plaintiff's enjoyment of the land;
- c. Recovery of possession;
- d. Damages for trespass;
- e. Costs and
- f. Any further Order or Orders as the Honourable Court may deem fit.

The Court conducted a full trial on the case and delivered its Judgment on 16th September, 2022 granting the Plaintiff all his reliefs as endorsed on the Writ of Summons and Statement of Claim. The Court awarded GH¢ 5000.00 in favour of the Plaintiff as costs.

On the 4th of November, 2022 the Defendant filed a Motion on Notice for Stay of Execution of the Judgment of the Court pending appeal. The Plaintiff opposed the application by filing an Affidavit in Opposition on 24th November, 2022.

ARGUMENTS OF COUNSEL FOR DEFENDANT/ APPLICANT

Counsel for the Defendant / Applicant simply referred to as the Applicant contended that they have a good chance of succeeding at the appeal. Counsel referred the Court to the case of **Evans Adu Mensah v. Alice Arthur** suit No.

GJ/364/2019 where the Court discussed the principles governing Stay of Execution.

According to Counsel, one of the principles is what the position of the Applicant will be if he succeeded on appeal. Counsel drew the Court's attention to the business the Applicant carries on the land as stated in paragraph 4 and 5 of the Affidavit in Support of the application, and submitted that if the application is refused, the applicant would have to remove his structure and business from the land resulting in the Plaintiff moving in. The applicant has been on the land since 2009, Counsel indicated to the Court.

Counsel for the Applicant further submitted that the Plaintiff/ Respondent simply referred to as the Respondent has also built his business on the land as shown in their Exhibit 4, and that both parties are feeding from the land. No hardship will befall the Respondent if the Court grants the application, because he stands to lose nothing. However, greater hardship will befall the Applicant, if the application is not granted.

ARGUMENTS OF COUNSEL FOR PLAINTIFF/ RESPONDENT

In opposing the application, Counsel for the Respondent referred the Court to page 7 of the Judgment and submitted that the Court ordered for a composite site plan based on the site plans of the parties. The Court accepted the indenture of the Applicant even though it was not stamped. At page 7 of the Judgment, the Court stated that the Applicant does not know his land per the composite site plan. The applicant cannot claim that because he is working on the land and has an office and equipment on the land, it would be against them if the application is not granted. According to Counsel, the Respondent has drawn the Applicant's

attention to the fact that he is operating on his land. The instant application is therefore a ploy to prevent the Respondent from enjoying the fruits of his land. Counsel further submitted that the applicant has trespassed on the Respondent's access to the property. The Respondent left the portion encroached by the Applicant for access to his land. The Respondent is likely to suffer more hardship because he cannot have access to his land. Counsel for Respondent further argued that the Applicant's equipment can be removed and sent to his own land for him to operate there.

ISSUE FOR DETERMINATION

Whether or not the application for Stay of Execution pending appeal against the Judgment of the Court has any merits.

PRINCIPLES GOVERNING GRANT OR REFUSAL OF STAY OF EXECUTION PENDING APPEAL

The principles governing the grant or refusal of an application for Stay of Execution of a Judgment pending appeal has been discussed and set out in our case law. See the cases of **Joseph v. Jebeille** [1963] 1GLR 387 SC; **Nana Kwasi Agyeman VII and Others v. Nana Hima Dekyi XIII and Others** [1982-83] GLR 453-463; **Mensah v. Ghana Football Association** [1989-90] 1GLR 1 SC; **NDK Financial Services Ltd. v. Yiadom Construction and Electrical Works and Others** [2007-2008] 1SCGLR 93 at 96-99; **Livingstone Djokoto and Another v. BBC Industries Co. (GHA) Ltd.** [2011] 39GMJ 16 at 21-24 and **Charles Osei Bonsu v. Dorothy Aboagye and Another.** [2015] 81 GMJ 25.

In **Evans Adu Mensah v. Alice Arthur** cited and referred to the Court by Counsel for Applicant, His Lordship Justice Kweku T. Ackaah-Boafo of High

Court 6, General Jurisdiction, Accra analysed the cases and then set down the acceptable and well established principles for Stay of Execution pending appeal.

The principles are:

1. What the position of the appellant would be if the Judgment was enforced and he succeeded on the appeal;
2. The application for stay ought to be refused if the Court is satisfied upon any Affidavit or facts proved of the conduct of the defeated party that he is bringing the appeal not bona fide to test the rightness of the Judgment but for some collateral purpose;
3. A Court should not stay execution unless there are exceptional circumstances warranting a stay because it is well established that a successful litigant should not be deprived of the fruits of his victory;
4. The Court ought to refuse an application for stay where the Court is satisfied that the appeal is frivolous because the grounds of appeal contains no merit and therefore there is no chance of it succeeding;
5. Whether or not the grant or refusal of the application will work greater hardship on either party;
6. Whether or not the applicant would be returned to the status quo ante should the appeal succeed; and
7. Whether or not a successful appeal would be rendered nugatory should the application be refused and the effect of the ruling on the Applicant.

ANALYSIS OF THE MERITS OF THE APPLICATION

I shall apply to the instant application those principles on Stay of Execution that I consider to be germane to the facts of the case. To succeed in his application for stay, the applicant is required to demonstrate exceptional circumstances

warranting a stay. At paragraph 16 and 17 of the Affidavit in Support; the applicant stated that he established his cement blocks moulding business on the land and developed goodwill years before he Respondent occupied his space on the land. The Applicant further stated that the business he is operating on the land is his source of livelihood. Applicant annexed Exhibit 4 and 5 which are pictures of his business on the land. The applicant at his paragraph 12 of the Affidavit in Support stated that should the instant application be refused, the Respondent will take over the land and evict his workers from the land. In Ground 3 Roman Numeral III of the Notice of Appeal, the Applicant attacked the Judgment of the Court on the ground that the trial judge held that the Applicant encroached on the Respondent's land when the evidence on record showed that the Applicant was the first in time to occupy the disputed land which is State Land.

At paragraph 10 of the Affidavit in Opposition the Respondent averred that the Applicant has not shown any exceptional circumstance to warrant Stay of Execution of the Judgment. At page 5, paragraph 2 of the Judgment, the Court acknowledged that both parties have structures on the land. In my opinion, the presence of the Applicant's office and business equipment on the land constitutes enough exceptional circumstances for the Court to take into consideration in granting the application, contrary to the Respondent Counsel's submission that the Court should overlook those facts and refuse the application.

I shall now consider the matter of the balance of hardship on the parties. Exhibit 6 and 7 attached to the Affidavit in Support depicts the Respondent's business on the land. In fact, both parties have established businesses on the land and are running same for their livelihoods. Since the Judgment is in the favour of the

Respondent, he has nothing to lose if the application is granted except that he may not be able to go into execution whilst the appeal is being fought at the Court of Appeal. On the other hand, if the application is refused the Respondent will go into execution against the Applicant whilst the appeal is still pending. Considering the fact that the applicant has structures on the land just like the Respondent, the Applicant in my humble opinion is likely to suffer greater hardship if the application for stay is refused.

The applicant has indicated to the Court through his Counsel that the appeal has a good chance of success. I have considered the exceptional circumstances stated by the Applicant for the Stay of Execution and re-echoed in the Notice of Appeal and I am of the opinion that the grounds of appeal are not frivolous and therefore a stay of execution ought to be allowed for the appeal to be determined on its merits. If the stay is refused and the Applicant succeeds at the appeal his success will be rendered nugatory and it may be impossible to restore the Applicant to his former position since the Respondent would long have taken steps to execute the Judgment. In **NDK Financial Services Ltd. v. Yiadom Constructional and Electrical Works and Others (Supra)** Atuguba 1SC stated in his dissenting Judgment that if the appeal is not frivolous and a refusal to stay will render the appeal nugatory, a stay ought to be granted.

For all the reasons discussed herein. I find merit in the Applicant's application for Stay of Execution pending appeal and hereby grant same. The execution of the Judgment of this Court dated 16th September, 2022 is hereby stayed pending the determination of the Applicant's appeal against the Judgment at the Court of Appeal in Accra.

BOTAH

JUDGE)

JAMES KOJO

(CIRCUIT COURT