

**CORAM: HER WORSHIP MRS ADWOA AKYAAMAA OFOSU, MAGISTRATE,  
DISTRICT COURT EJISU, ASHANTI REGION ON 10<sup>TH</sup> MARCH, 2023**

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**SUIT NUMBER A1/14/2023**

**ASOKWA BONSU - PLAINTIFF**

**V**

**1. KWADWO GYAMFI - DEFENDANT**

**2. CHARLOTTE GYAMFI**

**3. UNKNOWN DEVELOPER**

.....  
**TIME: 11:15**

**PLAINTIFF PRESENT**

**1<sup>ST</sup> & 2<sup>ND</sup> DEFENDANTS PRESENT**

**3<sup>RD</sup> DEFENDANT ABSENT**

**ABDUL HANAAN OSMAN ESQ FOR THE PLAINTIFF/APPLICANT PRESENT**

**HENRY OHEMENG KUMI ESQ FOR THE DEFENDANTS ABSENT**

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**RULING: MOTION ON NOTICE FOR INTERLOCUTORY INJUNCTION**

The plaintiff issued out a writ of summons against the defendants on the 23<sup>rd</sup> of November, 2022 praying for the following reliefs against the defendants:

- a. A declaration of title to all that piece and parcel of land measuring two acres bounded by Accra – Kumasi Highway to the west, V.R.A. High Tension poles to the East, an oil palm plantation farm to the south and a ware house to the north situated and being at a place commonly called Barrier, Kubease, near Ejisu – Ashanti to the plaintiff*
- b. An order for recovery of possession of the said land from the defendants*
- c. An order for perpetual injunction restraining defendants, whether acting by themselves or through their Agents, assigns, workers relatives or whomsoever described from disrupting, hindering and or interfering with the plaintiff's interest in the land*
- d. General damages for trespass and costs*

On the same date, the instant motion was filed by the plaintiff seeking an interlocutory injunction against the defendants and subsequently a supplementary affidavit in support was filed on the 14<sup>th</sup> of February, 2023.

The plaintiff (herein after called the Applicant) deposed in his affidavit in support of the motion and the supplementary affidavit in support that he bought the disputed land from the deceased father of the 1<sup>st</sup> and 2<sup>nd</sup> defendants Opanin Kwame Gyamfi in the year 2002 and the said Opanin Gyamfi led him to the Chief of Kubease for an allocation note and site plan to be issued to him. The Applicant attached the site plan and the allocation paper as exhibits A and B.

The Applicant further deposed that after acquiring the said land, he built a two bedroom house on a portion of same and left the building in the care of a care taker and travelled to Canada. In further deposition, the Applicant says that he has been in peaceful possession till 2022 when he returned and got to know that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had sold the land to the 3<sup>rd</sup> defendant who upon purchasing same ejected the caretaker from the two bedroom house and demolished same. That the 3<sup>rd</sup> defendant has subsequently cleared the land in dispute and made it ready for construction. The Applicant attached photographs of the present state of the land as exhibit C series.

The Applicant thus prayed the court that he is the legitimate owner of the disputed plot and if the defendants are not stopped from all construction works or any further dealing with the subject land it will cause irreparable damage to him by the time this case is finally determined.

In an affidavit in opposition filed by the 1<sup>st</sup> defendant for himself and the 2<sup>nd</sup> defendant, (hereinafter called “the Respondents”) the 1<sup>st</sup> respondent deposed that the disputed land is the self- acquired property of the late Opanin Kwame Gyamfi. The Applicant some time ago trespassed on the said land and Opanin Kwame Gyamfi served him with ejectment notice. Opanin Kwame Gyamfi built a two bedroom house on the said land and put same in the care of another person and that the Applicant has never been in possession of the disputed land.

The 1<sup>st</sup> Respondent further deposed that the Application brought by the Applicant is frivolous, has no merits and brought in bad faith with the intention to deceive the court to grant the reliefs endorsed on his writ of summons. That the Applicant has not demonstrated any exceptional circumstance to warrant the grant of the application.

The 1<sup>st</sup> Respondent in further deposition stated that the writ of summons discloses no chances of success and that the Applicant will not suffer any irreparable damage in the unlikely event that the Application is not granted in his favour. The Respondents thus prayed that the application be refused.

The Applicant moved the court on the 22<sup>nd</sup> of February, 2023 and prayed the court for an order of injunction because the development on the land is still on going.

Opposing the Applicant’s submission, counsel for the Respondents submitted that the Respondents are opposed because the disputed land cannot be identified on the face of the attached allocation paper and the site plan is also not readable and that it will be an order in futility since the plot has not been identified and it will be difficult for those to be enjoined not to be in disobedience of the order. Counsel for the respondent further submitted that greater hardship will be caused to the

respondents considering the high cost of building materials if they are enjoined from developing the land. That in the likely event that the suit goes into the Applicant's favour, he will get the benefit of everything on the land. He thus prayed that the Application be refused.

It is trite learning that an injunctive order is an equitable remedy and discretionary and the court shall only grant it when it is just and convenient to do so. The order is also made to protect a right where that legal right could be asserted either at law or in equity.

In deciding this application therefore I take a cue from the locus classicus case on injunction applications, that is, **American Cyanamide Co. Ltd v Ethicon [1985] AC 396** where Lord Diplock expressed himself by asserting the traditional opinion that where the court was considering the application for interim injunction while the substantive suit was still pending for determination on its merits, it has no duty at that stage of the litigation to resolve conflicts of evidence on affidavits as to facts on which the competing claims of the parties may ultimately depend. This position has also been expressed in various decisions of the Superior Courts of Ghana among which is **Vanderpuye v Nartey [1977] 1 GLR** where the court of appeal noted that:

*"the general and obviously safer rule is that, in interlocutory applications, adjudicators must avoid making definitive findings on disputed issues, particularly where the facts are not only material but are for some reasons obscure or highly contentious.*

It is my view that having regard to the processes filed by both parties and the submissions made before this court, and also having regard to the fact that the Respondents did not exhibit any document to support their position, any attempt by the court to delve into the merits of the application will seriously prejudice the case. Even though the allocation paper the Applicant relies on does not describe any land, same has been described in the writ of summons and the affidavit in support and the Respondents per their depositions in paragraphs 7,8,9 and 10 of their affidavit in opposition, appear to know the exact land in dispute.

It is my further view that there are triable issues which warrant the status quo to be preserved pending the final determination of the matter.

In the circumstance, the Application for injunction is granted. It is hereby ordered that the Defendants, their Agents, Assigns privies, workmen and any persons claiming through them be and are hereby restrained from interfering with the subject land until the final determination of the matter. There will be no order as to costs.

**ADWOA AKYAAMAA OFOSU (MRS)**

**DISTRICT MAGISTRATE**