

IN THE HIGH COURT OF JUSTICE, GHANA LAND DIVISION (COURT ELEVEN (11)), LAW COURT COMPLEX HELD IN ACCRA ON MONDAY, THE 27<sup>TH</sup> DAY OF FEBRUARY, 2023 BEFORE HIS LORDSHIP JUSTICE AMOS WUNTAH WUNI

SUIT NO. LD/0715/2020

LIFE GROUP OF COMPANIES LTD ... PLAINTIFF/APPLICANT

VRS

1. NOWAK DEVELOPMENT LTD }  
2. LANDS COMMISSION } 1<sup>ST</sup> DEFENDANT/RESPONDENT

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**RULING**

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On 7<sup>th</sup> May 2020 at 12:20 pm, the Plaintiff/Applicant (hereafter called the Applicant) commenced proceedings in this suit by a Writ of Summons (and statement of claim) for stated reliefs. Also filed, on that day at 12:25 pm, was the instant motion on notice praying this Honourable for the following relief –

*“An order of Interlocutory Injunction restraining the 1<sup>st</sup> Defendant, its assigns, heirs, successors or any person or persons claiming under or in trust for 1<sup>st</sup> Defendant from going onto and dealing with the parcel of land known as Plot 1A measuring an approximate area of 0.97 of an acre situate at Airport Commercial Centre, Accra in the Greater Accra Region of the Republic of Ghana, pending the final determination of the instant suit.”*

The application which was slated to be moved on 27<sup>th</sup> May 2020 stalled, for a wide spectrum of reasons, but was finally heard on 17<sup>th</sup> January 2023 after this Court had directed Counsel for the Plaintiff to cause a Hearing Notice (with Court Notes) to be issued for service, *ex abundanti cautela*, on the 1<sup>st</sup> Defendant as well as its Lawyer.

It is trite learning that the Court's power to grant an Interlocutory Injunction, in Ghana, is circumscribed and regulated by Order 25 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) and, thankfully, the Ghanaian legal landscape is replete with clear and authoritative pronouncements by our Apex Court on **when, why, how** and **who** may be granted an Order of Interlocutory Injunction.

Some notable reported decisions handed down, in recent times, by the Apex Court in respect of interlocutory injunctions include:

- **OWUSU v OWUSU-ANSAH and Another** [2007-08] 2 SCGLR 870;
- **18<sup>TH</sup> JULY LTD v YEHANS INTERNATIONAL LTD** [2012] 1 SCGLR 167;
- **WELFORD QUARCOO v ATTORNEY GENERAL & Another** [2012] 1 SCGLR 259
- **KOJACH LTD v MULTICHOICE GHANA LTD** [2013-2014] 2 SCGLR 1494

On the authorities, it is settled that, the grant of an application for interlocutory injunction, although discretionary, must be carefully considered in the light of the Pleadings and affidavit evidence before the Court. The authorities are also unanimous that, in considering an application for Interlocutory Injunction, the Court is not called upon to embark upon a voyage of discovery to establish which party has better title to the land in dispute. See: *Punjabi Bros v E & J Namih* (1958) 3 WALR 381.

Generally, in an application for interlocutory injunction, the Applicant is required to show that he has put forward a serious case on the merits, that "irreparable harm"

would be done him if the order of injunction is not made; and that the balance of convenience and justice favours the grant of the injunction. (See: Kwami Tetteh, Civil Procedure: A Practical Approach (2011), Chapter 18; I.C.F Spry, Equitable Remedies, 6<sup>th</sup> Edition, and cases cited in both works).

Stated differently, the fundamental requirement for granting an order of interlocutory injunction is that, the Applicant must demonstrate that he or she has a legal or equitable interest worthy of protection by the Court; that, damages will not suffice to placate the Applicant and that, on the balance of convenience, the Applicant will suffer greater hardship and inconvenience should the application be refused.

By Order 25 Rule 1(1), 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*” so to do. Indeed, in clarifying the indicia for determining whether or not to grant an interlocutory injunction, the Supreme Court (per Osei-Hwere JSC) stated in REPUBLIC v HIGH COURT, HO; EX PARTE EVANGELICAL PRESBYTERIAN CHURCH OF GHANA and Another [1991] 1 GLR 323 at 343 that:

*“It has been explained that the words “just or convenient”; must be read as “just as well as convenient”: ... they do not mean that the court can grant an injunction simply for the protection of rights ... because the court thinks it convenient, but mean that the court should do so according to legal principles. They confer no arbitrary or unregulated discretion on the court”.*

Therefore, with the instant application, this Court is cognizant and acutely mindful that, by our jurisprudence, our Courts must refrain from expressing an opinion on the merits of the substantive case when dealing with an application for interlocutory injunction. Nonetheless, the court is equally aware that, it can only form an opinion on

the application based on the processes filed by the parties and submissions made by their Counsel.

Therefore, to underpin and fortify this Ruling, the Court elects to set out, *verbatim* and *ad longum*, the relevant parts of the Affidavits in Support and in Opposition.

In support of the application, the Applicant asseverates in paragraphs 9 to 14; 17 to 20; and 46 to 52 of the accompanying affidavit as follows:

### **Paragraphs 9 to 14**

*“9. That pursuant to a Lease dated on or about 29<sup>th</sup> October 1981, the Government of the Republic of Ghana, acting through Joseph Kwadwo Flinders Adadevoh, the then Chairman of 2<sup>nd</sup> Defendant, granted a parcel of land known as Plot 1A containing an approximate area of 0.97 of an acre to Plaintiff for a term of 50 years commencing the 1<sup>st</sup> day of February 1979.*

- *Attached and marked Exhibit “A” is a copy of the Lease between the Government of Ghana and Plaintiff.*

*10. That per the said Lease, Plot 1A situate at Airport Commercial Centre, Accra in the Greater Accra Region of the Republic of Ghana was bounded on the North-West by an unnamed road, on the South-West by a lane, on the South-East by Independence Avenue and on the North-East by an unnamed road and more particularly delineated on the plan numbered L.D. 8551B/AC3882 attached to the said Lease Agreement.*

*11. That before the date of said Lease, Plaintiff had commenced discussions with 2<sup>nd</sup> Defendant to lease Plot 1A and was already in possession of Plot 1A.*

12. *That after the acquisition of Plot 1A, Plaintiff proceeded to pay the ground rents consistent with its rights in the property. Plaintiff adds that Plaintiff continues to pay the ground rent in respect of Plot 1A.*

- *Attached and marked Exhibit "B" series are copies of receipts evidencing the payment of ground rent in respect of Plot 1A together with other receipts concerning Plot 1A.*

13. *That subsequently, the Plaintiff registered its interest in Plot 1A and thus, obtained Land Registry No.1678/1984 as indicated in Exhibit "A".*

14. *That Plot 1A was primarily acquired for the construction of a restaurant and offices. That sometime after its acquisition, Plaintiff commenced the necessary processes to obtain the required permits for the intended construction."*

### **Paragraphs 17 to 20**

*"17. That Plaintiff has been in possession and enjoyed quiet possession of Plot 1A since its acquisition until its attention was drawn to the fact that the whole of Plot 1A had been encroached upon and converted into a car park.*

18. *That for ease reference and also, owing to the nature of the encroachment by the 1<sup>st</sup> Defendant on Plot 1A, I will refer to a portion of Plot 1A measuring 0.45 of an acre as Parking lot 1 and the other portion of Plot 1A measuring an approximately 0.52 of an acre as Parking lot 2.*

19. *That a three-storey parking lot had been constructed on the portion of Plot 1A which constitutes Parking lot 1. The other portion of Plot 1A which constitutes Parking lot 2 and which stretches from the Opeibea building (Plot 1) to the Grand Oyeeman building*

*(Plot 9) was also being used as a car park save that unlike Parking lot 1, the cars are parked on the pavement by the Opeibea building and the Grand Oyeeman building.*

- *Attached and marked Exhibit "C" series are copies of pictures of the encroachment by way of Parking lot 1 and Parking lot 2.*

*20. That it came to Plaintiff as a surprise because it is a notorious fact in the vicinity that Plot 1A belongs to the Plaintiff."*

### **Paragraphs 46 to 52**

*"46. That it would be in the prime interest of justice for this Honourable Court to grant an interlocutory injunction against the 1<sup>st</sup> Defendant, its assigns, heirs, successors or any person or persons claiming under or in trust for 1<sup>st</sup> Defendant from going onto and dealing with Plot 1A pending the final determination of the instant suit.*

*47. That a refusal of the instant motion for interlocutory injunction against the 1<sup>st</sup> Defendant shall visit untold hardship on the Plaintiff who has a registered interest in Plot 1A but unable to use the parcel of land for the intended purpose of its acquisition.*

*48. That I am advised and verily believe same to be true that should this Honourable Court refuse the instant application, the said refusal, on the one part, would be judicial blessings for the conduct of the 1<sup>st</sup> Defendant who as a squatter is using the portion of Plot 1A which constitutes Parking lot1 for commercial purposes and enriching itself, as against the registered owner of Plot 1A.*

*49. That I am further advised and verily believe same to be true that, on the other part, a refusal of the instant application would signify judicial blessings for an imprudent*

*purchaser who assumed an unjustified risk by failing to conduct the required searches at the registry of the 2<sup>nd</sup> Defendant to ascertain any interest in the property.*

*50. That I am again advised and verily believe same to be true that as a consequence, the 1<sup>st</sup> Defendant is not entitled to any safeguards under law and/or equity.*

*51. That I am advised and verily believe same to be true that this is a proper case in which the Court ought to exercise its discretion to restrain the 1<sup>st</sup> Defendant.*

*52. That I am also advised and verily believe same to be true that under the circumstance it would be just and/or convenient for this Honourable Court to grant Plaintiff's prayer for an interlocutory injunction against the 1<sup>st</sup> Defendant."*

The Respondent opposed the application for interlocutory injunction and filed an affidavit in opposition on 16<sup>th</sup> July 2020. The pith and core of the affidavit in opposition is captured in paragraphs 46 to 55 as below:

*"46. That I am informed by Counsel and verily believe that assuming, without admitting, that Plot 1A was validly leased by the Government to the Plaintiff on or around 1979. In that event the Plaintiff's title to Plot 1A may be extinguished by the Limitations Act, 1972 (NRCD 54) due to its long delay in commencing the related suit, unless the Plaintiff establishes that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted with intent to defraud and despite using reasonable diligence, the Plaintiff could not have established the alleged fraud at a much earlier point in time.*

47. That, alternatively, I am informed by Counsel and verily believe that if the 2<sup>nd</sup> Defendant forfeited the Plaintiff's alleged lease to Plot 1A by due process, the said suit by the Plaintiff cannot succeed.

48. That, I deny paragraph 46 of the Affidavit in Support and say in reply that, in all the circumstances, it would be unjust for this Honourable Court to grant the order of interlocutory injunction sought by the Plaintiff.

49. That, I deny paragraph 47 of the Affidavit in Support and say that if the instant application is successful, the 1<sup>st</sup> Defendant will suffer immeasurable damage to its business operations and reputation, given the inordinate and inexplicable delay by the Plaintiff in bring [sic] the instant action and given the substantial investments and improvements that the 1<sup>st</sup> Defendant has made to the land in dispute.

50. That, I deny paragraph 48 of the Affidavit in Support and in reply repeat that the 1<sup>st</sup> Defendant is not a squatter on Plot 1A, since it has a valid and subsisting lease to Unnumbered Plot on which it has built and operates a car park.

51. That in further answer to paragraph 48 of the Affidavit in Support, I repeat that, absent the Unnumbered Plot, the balance of the land comprised in Plot 1A has been in the 1<sup>st</sup> Defendant's possession and control with the knowledge consent and concurrence of the 2<sup>nd</sup> Defendant since 1999.

52. That in further answer to paragraph 48, I say that I have been told by Counsel and I verily believe same to be true that if the instant application is successful, it will embolden parties to bring applications for interlocutory injunction against innocent parties, long after the relevant limitation period has expired, by trumping up baseless



*and unfounded allegations of fraud, as a means of holding them hostage, by interfering with the quiet and peaceful enjoyment of their land, when the relevant substantive suit has little or no chance of succeeding.*

*53. That, I deny paragraph 49 of the Affidavit in Support and in reply repeat paragraphs 45 and 46 hereinbefore.*

*54. That I deny paragraph 50 of the Affidavit in Support and I have been advised by Counsel and verily believe that contrary to the sentiments expressed in the said paragraph, all [sic] defendants including the 1<sup>st</sup> Defendant is entitled to any and all the safeguards under law, particularly in the absence of proven fraud.*

*55. That I deny paragraph 51 of the Affidavit in Support and I have been advised by Counsel and verily belief [sic] the instant application is a proper case in which this Honourable [sic] should not exercise its discretion to grant the said orders sought by the Plaintiff, for all the aforementioned reasons stated in this Affidavit in Opposition.”*

Upon very close and careful reading of the affidavits in support and against the instant application; the respective statements of case as well as the entire pleadings; and upon hearing Counsel and guided by the settled principles and authorities relative to applications for injunctions highlighted in this Ruling, it is my respectful opinion that:

1. The Applicant has established that there is a serious question to be tried or a right to be protected;
2. On the balance of convenience, the Applicant stands to suffer more harm than the Respondent if the injunction is not granted, particularly so, as the Respondent is using *“Parking lot 1 for commercial purposes and enriching*

*itself*" as against the Applicant "*who continues to pay the ground rent in respect of Plot 1A*" and

3. It is just and convenient for the Court to grant the injunction.

The application for Interlocutory Injunction is therefore granted as prayed.

Accordingly, it is hereby ordered that the 1<sup>st</sup> Defendant, its assigns, heirs, successors or any person or persons claiming under or in trust for 1<sup>st</sup> Defendant be and is hereby restrained from going onto and dealing with the parcel of land known as Plot 1A measuring an approximate area of 0.97 of an acre situate at Airport Commercial Centre, Accra in the Greater Accra Region of the Republic of Ghana, pending the final determination of the instant suit.

The Court stands ready for an expeditious trial to commence soonest to afford the parties an opportunity to be heard and for all matters in controversy to be determined on the merits.

**(SGD.)**

**AMOS WUNTAH WUNI (J)**

**JUSTICE OF THE HIGH COURT**

**COUNSEL:**

YAW KYERE AMPADU WITH THERESA BOAHEMAA BENIN FOR DR. KWEKU  
AINUSON FOR THE PLAINTIFF

KWAME AUGUSTUS WILLIAMS FOR GEORGE BEKAI FOR THE 1<sup>ST</sup> DEFENDANT