

**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE
AMASAMAN ACCRA REGION HELD BEFORE HER LADYSHIP JUSTICE
PRISCILLA DAPAAH MIREKU (MRS.) SITTING ON TUESDAY THE 4TH DAY OF
JULY, 2023**

SUIT NO. E1/AHC/171/2023

PHILIP KWAKYE

....

PLAINTIFF/APPLICANT

VRS:

MR. ASHITEY

.....

DEFENDANT/RESPONDENT

RULING ON APPLICATION FOR INTERLOCUTORY INJUNCTION

The plaintiff/applicant is praying this honourable court for an order of interlocutory injunction to restrain the Defendant/Respondent herein, his agents, assigns, servants, workmen and privies howsoever called from erecting any structure on the land, subject of the instant suit pending the final determination of the suit.

According to the plaintiff, he acquired the land by a deed of assignment. That the said land overlooks a space on which high tension lines are located. That the said space is an inlet over which he has right of easement, as he uses it to get access to his land. The applicant avers that the respondent is using land guards to intimidate everybody in the neighborhood claiming that the land is his and he is going to erect a structure on same. That his actions have interfered with the plaintiff's right of possession, use, access, easement and enjoyment of his parcel of land. That the respondent has evinced an intention to erect structures on the land unless restrained by this honourable court.

The defendant/respondent is vehemently opposed to the instant application. The defendant avers that he acquired the subject matter from Humprey Quartey Nunoo and Samuel Kwateboi Nunoo head and lawful representatives of the Nii Nunoo Kobla Family of Pokuase. An indenture was prepared in his favour by his grantors. That the road on the eastern boundary of plaintiff's land is the access road being used by all the adjoining properties to the left and right of plaintiff's land. That the respondent has never granted permission or acquiesced to the use of his land by the plaintiff as an inlet to his land. That if the plaintiff's application is granted, it will cause more hardship to him. As the applicant will not suffer any inconvenience if the application is refused because there is an alternative route which he can use to access his land on the eastern side.

The deed of assignment and indenture that the applicant and respondent are both relying on are both not stamped thus this court will not rely on same.

In consideration of the grant of interlocutory injunction, the honourable court must consider the following;

- a. Whether there is a serious question to be tried.
- b. If the plaintiff were to succeed at trial, would he be adequately compensated by an award of damages?
- c. If the defendant were to succeed at the trial would he be adequately compensated in damages for injury he suffered by the award of the injunction?
- d. Where does the balance of convenience lies? And
- e. The interest of the court must be to preserve the status quo.

Also in the case of **OWUSU V. OWUSU ANSAH [2007-08] 2 SCGLR 870**, the Supreme Court held that, *"The fundamental principle in applications for interim injunction is whether the applicant has a legal right at law or equity, which the court ought to protect by maintaining the status quo until the final determination of the action on its merits."*

The applicant alleges that he has a right of easement over the subject matter which same has been denied by the respondent. Making a statement that you have a legal or equitable right that the court ought to be protect is not enough. The applicant attached various land documents to show that he has legally acquired his plot of land that is described in his pleadings and application. The acquisition of that land is not in contention. What is in contention is whether he has a right of easement through the subject matter, whether or not the refusing of this application will cause irreparable harm that cannot be compensated with cost and whether or not the court ought to maintain the status quo. The plaintiff fails to show or prove these requirements. The court is not satisfied that the applicant will suffer irreparable damage or harm if the instant application is refused. Thus, the instant application for the grant of interlocutory injunction is hereby dismissed.

(SGD)

H/L. PRISCILLA DAPAAH MIREKU (MRS.)

JUSTICE OF THE HIGH COURT

AMASAMAN