

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE AMASAMAN IN THE GREATER ACCRA REGION SITTING ON WEDNESDAY THE 14TH DAY OF JUNE, 2023 PRESIDED OVER BY HER LADYSHIP JUSTICE PRISCILLA DAPAAH MIREKU (MRS.)

SUIT NO: E1/AHC/250/2022

SETH NII DODOO
POKUASE

..... **PLAINTIFF/APPLICANT**

VERSUS

**1. STREC SOCIAL INCLUSION
FOUNDATION**

POKUASE, ACCRA

2. ROLAND UYIREFE

OSAHENVEMWEN

} **DEFENDANTS/RESPONDENTS**

RULING

The Plaintiff is praying this honourable court for an order of interlocutory injunction to restrain the defendants, their privies, assigns, agents and workmen from trespassing and interfering with the peaceful use and enjoyment of the Applicant's land pending the final determination of this suit.

According to the applicant, he acquired the subject matter sometime in May, 2010 from the lawful representative Nii Amoo Dodoo of the Dodoo Clottey Family. That after acquiring same he was given an indenture. The applicant claims that he was enjoying peaceful possession of the land until the respondent trespassed on the land and is busily constructing permanent structures on same. That respondent will not stop his trespassory acts unless restrained by this Honourable Court.

The Respondent is vehemently opposed to the instant application and the 2nd Respondent avers that it acquired the subject matter from the 1st Respondent

which same is part of a larger portion of land with land certificate number GA.40247. According to the 2nd Respondent he has been in possession of the land since 2020 and has already completed his building with a caretaker residing in same. That the applicant's pictures alleging showing the stage of the said construction is aimed to mislead the court.

Both parties allege that they will suffer irreparable damage if the application is granted or otherwise.

The issue before this court is that whether or not the instant application ought to be granted.

Order 25 Rule 1 of the High Court (Civil procedure) Rules, 2004, C.I 47 states that

(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 to do so, and the order may be either unconditionally or upon such terms and conditions as the court considers just.*

(2) *A party to a cause or matter may apply for the grant of an injunction before, or after the trial of the cause or matter whether or not a claim for the injunction was included in the party's writ, counterclaim or third party notice.*

(3) *The applicant shall attach to the Motion paper and supporting affidavit, a Statement of Case setting out fully arguments, including relevant legal authorities, in support of the application.*

(4) *A respondent who desires to oppose the application shall file an affidavit in opposition as well as a Statement of Case containing full arguments and legal authorities to be relied on.*

There are numerous authorities that deal with application of interim or interlocutory injunction. One of such case is the case of **OWUSU V. OWUSU ANSAH [2007-08] 2 SCGLR 870**, in which the Supreme Court held that, **"the granting or refusal of an injunction is at the discretion of the trial**

court but that discretion has to be exercised judiciously.” The Supreme Court further stated, ***“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.”***

In the grant of an order for injunction it was held in the case of **America Cyanamid Company v. Ethicon Ltd (1975) 1 ALLRE 504** that,

- a. There must be 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? If not, then
- 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? If not, then
- d. Where does the balance of convenience lies? And
- e. The interest of the court must be to preserve the status quo.

Both parties argue that they have a legal title which ought to be protected. They both argue that they will suffer irreparable damage which cannot be compensated by cost. They both tender land documents to prove their claim.

Per Exhibit “ SND” series tendered by the applicant that the respondent is construction on the subject matter of the suit, the pictures were taken as far back as June and July 2022 and that was when the applicant filed the instant application for determination.

The instant application was filed on 21st July, 2022 and same was served on the respondents’ counsel on the same date. One Christine Owusu (Mrs.) deposed to an affidavit in opposition filed on 4th October, 2022. That before the instant application could be moved, the original 1st and 2nd defendants were non-suit and the current 2nd defendant/Respondent was joined to the suit. The 2nd Respondent attached Exhibits “RO4” and “RO4A” to show that he has completed construction of the said building and has an occupant in same. This court finds that, at all material time, the court was dealing with other interlocutory matters, the 2nd Respondent had notice of the instant application and that the applicant did not mislead the court with the exhibits

aforementioned but rather, the respondent ignored the application pending and further went on to complete the structure thereon.

Upon consideration to the fact that currently the respondent are done with the construction of the structure the applicant is praying for the respondent to be enjoined from constructing same, there will be no need for the said order but the respondent are to undertake that they will bear any cost or expense the applicant may incurred should they succeed in this litigation. The instant application is hereby dismissed. There will be no order as to cost.

(SGD)

H/L JUSTICE PRISCILLA DAPAAH MIREKU

(MRS.)

(JUSTICE OF THE HIGH

COURT)

PARTIES: PLAINTIFFS	-	ABSENT
1ST DEFENDANT	-	ABSENT
2ND DEFENDANT	-	PRESENT

COUNSEL: E. AMEKPLEAME HOLDING BRIEF OF	
SIKA ABLA ADDO FOR PLAINTIFF	- PRESENT
NOEL BEMPONG HOLDING BRIEF OF	
PETER ZWENNES FOR DEFENDANT	- PRESENT