IN THE HIGH COURT OF JUSTICE AND IN THE HIGH COURT HELD AT ADENTAN – ACCRA ON FRIDAY THE 28TH DAY OF JULY, 2023 BEFORE H/L JUSTICE NANA BREW – HIGH COURT JUDGE

SUIT NO. C1/133/23

CHARLES YEBOAH - PLAINTIFF

VRS

THE DEVELOPER KNOWN AS MAA JANE - DEFENDANT

COUNSEL:

LAWYER SETH DWIRA FOR THE PLAINTIFF

LAWYER AGBENU DOE FOR THE DEFENDANT

R U L I N G

Plaintiff/Applicant initiated the present action by issuing a Writ of Summons accompanied by a Statement of Claim, the following reliefs;

a) Declaration of title to the piece of land at Adjiringanor East Legon, Accra as described in paragraph 3 and 4 of Statement of claim.
b) Recovery of possession.
c) Damages for trespass.
d) Perpetual injunction to restrain the Defendant from entering the said land.
e) Costs.

That Plaintiff/Applicant in his affidavit in support stated that he is the owner of the land in dispute which is exhibited and marked 'A'. That Plaintiff further went into possession by placing gravel, stones and sand on the land in dispute with the intent to develop the land after he had fenced the plot.

The Plaintiff/Applicant stated, the Defendant/Respondent is who is known to him, encroached on the said land and embarked upon a building project and attached a picture as Exhibit 'B'. That Defendant/Respondent normally constructs this building project in the night and all attempts to stop the Defendant/Respondent failed.

Defendant/Respondent vehemently opposed to the instant application in her affidavit in opposition for the following reasons;

i. That she is not the bonafide owner of the land in dispute but an occupier for and on behalf of her father who is ordinarily resident in the USA.
ii. That her father is the owner in possession and occupation of the land who purchased it over two (2) decades ago from Akwra Boye Doku
Family of Atreko We, Teshie represented by Nii Samuel Mensah Adjei Shia.
iii. That her grantor has been adjudged by the High Court, Accra to be the allodial title owner of the said land in dispute.
iv. The Plaintiff/Applicant, on 9th June, 2021, trespassed on the land, broke down part of the wall and removed the gate which she reported to the Accra Regional Police command where she was given permission to continue building on the land.
v. They have been on the land for over 20years and have enjoyed uninterrupted peace and undisturbed occupation until
Plaintiff/Applicant trespassed on the land through the use of force and canny.

It is worthy to note that, even though Defendant/Respondent stated in her affidavit in opposition of an attached Exhibits 1, 2, 3, 4 and 5, they are not attached as stated by Defendant/Respondent.

OPINION AND ANALYSIS

There are a lot of authorities on the settled principles on interlocutory injunction.

It is not doubt that an injunction order is an equitable remedy and discretionary and the Court shall only grant it when it is just and convenient to do so. Not only that, the order is also granted to protect a right where that legal right could be asserted either at law or in equity. In the exercise of that discretion the Court is not bound to follow precedents as each case has to be determined on its own merits.

In the case of **BAIDEN V TANDOH (1991) 1 GLR 98, KPEGAH J**. (as he then was) opined that the Applicant has to establish a prima facie case that the right he was seeking to protect existed. Additionally, he should show that there has been a breach of the same and a threat of it continuing so as to cause him irreparable damage if the Defendant was not restrained. The Applicant having passed that test the Court would then consider the issue of the balance of convenience.

In the case of **18TH JULY LIMITED V YEHANS INTERNATIONAL LIMITED (2012) 1 SC GLR 167**, the Supreme Court delivered itself per his Lordship Anin-Yeboah JSC and opined after analysing the earlier cases including **VANDERPUYE V NARTEY (1977) GLR 428 @ 431 and ODONKOR V AMARTEI (1987-1988) GLR 578** as follows;

> "We are of the opinion that the Court of Appeal did not propose to lay down any hard and fast rules or principles to regulate the determination of interlocutory injunctions. Even though it is discretionary, we are of the view that a trial court in determining interlocutory application must first consider whether the case of the applicant was not frivolous and had demonstrated that he had a legal or equitable right which a court should protect. Second, the court is also enjoined to ensure that the status quo is maintained so as to avoid any irreparable damage to the applicant pending the hearing of the matter. The trial court ought to consider the balance of convenience and should refuse the application if its grant would cause serious hardships to the other party".

The Court has undoubtedly laid down a tripartite test for the Court's consideration in interlocutory injunction applications. It is worthy of mention that in the classic case of **AMERICAN CYNAMID CO. LTD V ETHICON LTD (1985) AC 396** which was adopted by the Ghana Court of Appeal and applied in the case of **VANDERPUYE V NARTEY (1977) GLR 428 @ 431**, The House of Lords through 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.

Equally, the Ghana Court of Appeal in **VANDERPUYE V NARTEY (1977) GLR 428** Coram: Amissah, Kingsley-Nyinah and Hayfron-Benjamin JJ.A.) reiterated the above legal position. Amissah JA speaking for the unanimous Court stated 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. I wish to abide by the

above caution in making my decision in regards to the merits or otherwise of the instant application.

I wish to state that I have closely looked at the Statement of Claim and the affidavit evidence filed in this case and I have also reviewed the statement of cases filed by legal counsel in respect of the application and has also given due regard to all the authorities cited by both Counsel. I am of the respectful view, having regard to the pleadings filed and the affidavit evidence before the court, that this case raises fundamental issues for determination.

In the light of the above, I hold the respectful view that the suit is not frivolous or vexatious.

[24] The law now appears settled that where the court is of the view that the case of the Applicant for injunction is not frivolous or vexatious the application has to be considered on the balance of convenience. In assessing the balance of convenience, it is imperative for the court to take into account all the relevant factors as well as the strength of the respective cases of the parties based on the evidence put before the Court. In the words of Lord Denning:

> "In considering whether to grant an interlocutory injunction the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence and then decide what is best to be done." (Emphasis highlighted). See: **HUBBARD v VOSPER (1972) 2 WLR 389 at p 396**.

But before considering the balance of convenience in the present suit, I pose the question, what is the basic purpose of an interim order?

The question was succinctly answered by the Supreme Court in **ODONKOR v AMARTEI (1987-1988) GLR 578** that the basic purpose was, as much as possible, to hold the balance evenly between the parties pending the final resolution of matters in difference between them, and also to ensure that at the end of the day, the successful party did not find that his victory was an empty one or one that brought him more problems than blessings.

Now, having regard to the competing claims of the parties and given the facts and the background of the case and on the balance of convenience, and basing myself on the rule as stated by the Supreme Court per Kpegah JSC in **EKWAM v PIANIM SUPRA**, having regards to the totality of the evidence so far filed in this case, I hold considering the issue of hardship to be suffered by the parties, keeping faith to the law on the grant or refusal of injunction as stated above and in maintaining the status quo it shall not be just and/or convenient in terms of Order 25 r 1(1) of CI 47 to grant this instant application.

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That from the analysis, I hereby say that the Plaintiff has legal and equitable right and on the balance of convenient, it will not affect the Defendant. In order to maintain the status quo. I hereby grant the order for interlocutory injunction to restrain the Defendant, his assigns, privies etc. until the final determination of the suit.

(SGD)

H/L JUSTICE NANA BREW

(JUSTICE OF THE HIGH COURT)