

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, HELD IN TEMA ON WEDNESDAY THE 5TH DAY OF APRIL 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS.)

Time: 9:43 am

SUIT NO: E1/075/2021

SARAH NAMO MODEN

- PLAINTIFF

VRS

ISAAC NARH MESIAKWA & 9 ORS

- DEFENDANTS

PARTIES:

Plaintiff – Present

1st Defendant – Present

2nd Defendant - Present

3rd Defendant -represented by Mensah Awuley Albert

4th Defendant- Present

5th Defendant present and represents 7th, 8th, 9th & 10th defendants absent

6th Defendant deceased

7th Defendant absent

8th Defendant absent

9th Defendant – Absent

10th Defendant absent

LEGAL REPRESENTATION:

Mr. Robert Allotey for the Plaintiff/Respondent - Present

Mr. Aaron Golightly for the Defendants/Applicants - Present

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RULING

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This Ruling is in respect of Motion on Notice for an Order for Interlocutory and Mandatory Injunction under order 25 Rule (3) of CI 47.

This was filed on the 5th of December, 2022 by Counsel for and on behalf of Defendants/Applicants herein, on the 5th of December, 2022 Defendants/Applicants are praying this Court for an order restraining the Plaintiff/Respondent herein, either by herself her agents, assigns, servants, workmen or whosoever, howsoever or otherwise from developing any portion of the disputed land or from disposing of all or any part of the disputed land to any third party pending the final determination of this suit.

Defendants/Applicants contend in their Supporting Affidavit that Prampram lands are owned and controlled by the Larkpleh Quarter of which the Gberbie Ayiku Family of Larkpleh Prampram constitute one of the gates of the Larkpleh Quarter and the land in dispute falls within lands owned and controlled by the said family to which the 1st-8th Defendants/Applicants belong.

That allodial interest in Prampram lands are vested in families and the land in dispute, the subject matter herein is owned by Larkpleh Quarter. Per their Exhibit 1 which is an extract of the Jackson report (**Transcript Copy of Note No.17**).

In the matter of the Stool Lands Boundaries Ordinance, 1959 Shai Ningo and Prampram Order At Pg. 101, the Chief of Larkpleh –Prampram, Tetteh Efum II testified to this fact before the commissioners of Enquiry, that Larkpleh were the first to arrive in Prampram Exhibit 2 attached is a document headed **Extract from Prampram-Poni Disturbance** Exhibit 3 is attached which is a Copy of the

instrument evidencing the transfer of the Gbebie Ayiku Family of Larkpleh of the lands they granted to the colonial government for use for the Construction of warehouses, custom offices and for the establishment of a port in March 1889.

They have also attached (Exhibit 4) which is a site plan describing the lands owned by the Defendants/Applicants family.

Their (Exhibit 5) series are photographs purporting to be a portion of the disputed land which Plaintiff/Respondent has alienated vacant portions to 3rd parties who are busily developing portions of same.

Defendants/Applicants are also contending that if Plaintiff/Respondent is not restrained and the status quo maintained, they will suffer irreparable and irreversible damage which will change the character and form of the land in dispute as the Plaintiff/Respondent has no capital outlay in the land in dispute and will not suffer any loss or inconvenience that cannot be compensated for damages should they be restrained and the status quo maintained during the pendency of the matter.

The Defendants/Applicants further contend that they are ready to offer undertaking as to damages for any loss that the Plaintiff/Respondent may incur should the instant application be granted and the Plaintiff/Respondent wins the substantive action.

Their prayer is that the status quo ante must be maintained by granting this application.

In an Affidavit in Opposition filed on behalf of Plaintiff/Applicant, she contends that she is the customary successor of her late father Tettey Moden who owned the disputed land during his life time and upon his demise same devolved on Plaintiff

and other beneficiaries of the estate and they have since been in quiet possession of the land without any hindrance until Defendants entered the land and started disposing same to prospective developers.

Paragraph 10 States:

That Plaintiffs who are the Rightful owners of the land are suffering this fate at the hands of the Defendants for the simple reason that the Defendants are aware that Plaintiff is an illiterate and impecunious and therefore has been unable to have the interest of the estate registered in respect of the land.

Paragraph 11

That armed with this information; the 1st Defendant has unknown to Plaintiff engaged and caused a surveyor to pick the land and draw up a survey plan on same in the name of Ayiku-Wem Family and with this document they seek to dispossess Plaintiff of their land by laying adverse claim to same.

Paragraph 12

That Plaintiff as beneficial owner of the property has had a site plan draw covering the land. (Exhibit SP is attached).

Paragraph 13

That contrary to Applicant's assertion, it is Defendants rather who having confidence in their numbers ignore the pending suit and are alienating the land and causing their unlawful grantees to develop same under their protection while the feeble Plaintiff and her siblings watch on helplessly as call to the police usually yield nothing.

Plaintiff/Respondent has attached (Exhibits "AA", "BB", "CC", "DD" and "EE") which are photographs purporting to be of the development of Defendant and their grantees progressing on the said land.

Plaintiff/Respondent is contending that she is in possession of the said land and as such has interest in the land worthy of protection by the Court.

Plaintiff further contends that if the Court is minded to grant this application then both parties be restrained pending the determination of this suit.

Respective Counsel for parties made their legal submission on behalf of their clients.

The issue for determination in this instant application is whether or not this application should be granted.

The law governing the grant of interlocutory injunction is trite as the Courts are required to grant interlocutory injunction in all cases they appear to be just or convenient either unconditionally or upon such terms and conditions which are just to them.

Thus an Applicant praying the Court for an order for interlocutory injunction in all cases must establish a right either at law or in Equity and shall suffer irreparable damage. The Court is required to exercise its discretion (judiciously) to preserve the status quo ante.

Dr. Date- Bah, JSC in his inimitable fashion states this position that in the case of **Welford Quarcoo vrs Attorney -General and Anr.(2013) 1SCGLR 259 at 260.**

“It has always been my understanding that the requirements for the grant of an interlocutory injunction are first that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction.

The balance of convenience of Court means weighing up the advantages of granting the relief against the disadvantages of not granting the relief.

I must state that the issue of ownership of land is a triable issue which is determined after going through full trial.

Both parties have exhibited documents as demonstration of their rights in the land.

Diplock LJ in the leading case of American Cyanamid Co. Vrs Ethicon Limited (1975) AC 396 stated the position of the law thus;

“It is no part of the Court’s function at this stage of the litigation to try to resolve conflict of evidence on affidavit as to facts on which the claim of either party may ultimately depend nor to decide difficult question of law which call for detailed argument and inactive consideration.

The issues of ownership are matters to be dealt with at trial and so I will not attempt to determine them at this stage.

In the circumstance, I am minded to ensure that irreparable damage is not done to parties in this suit before final judgment is delivered in the matter.

In the evidence adduced in this Application, Defendants/Applicants have exhibited evidence as having protectable legal rights in the said land.

The Plaintiff/Respondent has also demonstrated that she is in possession of the said land. As already stated this is not the time to determine the ownership of the land.

For the status quo ante to be maintained, I will restrain both Defendant’s/Applicants and the Plaintiff/Respondent either by themselves, their agent assigns, servants,

workmen or whosoever, howsoever or otherwise from developing any portion of the disputed land or from disposing of all or any part of the disputed land to any hired party pending the determination of this suit.

I have taken this decision on the Authority of the Principle in Odonkor & Ors vrs Amartei (1987)⁸⁸ where Adade J.A opined that;

“ The basic purpose of interim Orders is 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 does not find that his victory is an empty one and brings him more problems than blessings...To help the public limit their risks, and to avoid likely multiplicity of land suits as well as to hold the balance evenly between the Plaintiff and Defendant. It is meet and proper that not only the Defendants, but the Plaintiff and his family should be restrained from dealing with the land pending this suit”.

The status quo ante is to be maintained.

I make no Order as to Cost.

**H/L: RITA AGYEMAN-BUDU(MRS)
(JUSTICE OF THE HIGH COURT).**

R.A.A.