

IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN TEMA ON FRIDAY THE 31ST DAY OF JULY, 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-BUDU (MRS)

Time: 11: 25 am

SUIT NO:E1/042/2023

MR. HENRY DOE SAMLAFO -

PLAINTIFF

VRS

ASHAIMAN MUNICIPAL ASSEMBLY -

DEFENDANT

PARTIES:

Plaintiff's Attorney (Mrs. Dora Samlafo) Present

Defendant – represented by Seth Agbottah

LEGAL REPRESENTATION

Mr. Edward Mettle Nunoo for the Plaintiff/Applicant - Present.

Mr. Emmanuel Kumadey for the Defendant/Respondent- Absent

RULING

Plaintiff/Applicant herein **Mr. Henry Doe Samlafo** filed this motion for Interlocutory Injunction against Defendant; **Ashaiman Municipal Assembly** for an order to restrain the Defendants whether by themselves, their servants, their agents, workmen, privies or otherwise howsoever from carrying out any acts of construction of any structures on the land, unlawful entry, disturbing Plaintiff's use and occupation of the land, from carrying out any form of construction works including

the construction of any building or other on the Plaintiff's acquired land until the final determination of the pending suit.

Plaintiff/Applicant avers that he acquired the said property described as **Plot No. Ash/Mkt/A/138 Ashaiman, Tema** from TDC on or about the 2nd of February 2017. He has exhibited **Exhibit A and B. (Offer letter and Right of Entry Letter respectively).**

It is Plaintiff/Applicant's case that he has been in peaceful and unchallenged occupation and possession of the property until Defendant trespassed on the said land for which he caused his lawyer to write to Defendant "*Exhibit G*".

Plaintiff/Applicant is therefore praying the Court to grant an order for Interlocutory Injunction against the Defendant/Respondent herein.

In their Affidavit in opposition, Defendant/Respondent states that Plaintiff/Applicant before instituting this action failed to comply with **Section 210 of the Local Governance Act 2016.**

That Non-compliance with a mandating statutory provision renders the Writ of Summons and Statement of Claim null and void.

Defendant/Respondent avers that Plaintiff/Applicant's *Exhibit G*, which is a letter to Defendant/Respondent stating their intention to seek redress in Court is self-serving.

It is further averred by Defendant/Respondent that a letter dated 7th June 2023 from TDC, Applicant's Grantor shows that the land on which the Respondent is conducting his construction works is different and not the same which was granted to the Applicant herein (*Exhibit EK series*).

Paragraph 14 states that:

That the Applicant having failed to comply with mandatory statutory requirement and also coupled with the fact that his own Grantor T.D.C has indicated that where the Respondent is engaging in its construction works is on a different land and that land does not belong to the Applicant herein then clearly there is no legal basis to support the instant Injunction Application, so the instant application is frivolous and unmeritorious and same should be dismissed with punitive cost.

The issue to be determined is whether or not the instant Application for Injunction ought to be granted.

In cases of Interlocutory Injunction, the trial court is required to consider the Pleadings and the Affidavit filed to determine whether a right has been established and that right ought to be protected by maintaining the status quo.

Where a person has established a right at law or in equity and shall suffer irreparable damage, the Court is required to exercise its discretion judiciously to preserve the status quo.

Dr. Date-Bah opined in *Welford Quarcoo vrs. Attorney-General and Anor.* (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 course, means weighing up the advantages and disadvantages of granting the relief against the disadvantages of not granting the relief.

In the instant Application, Plaintiff/Applicant has exhibited **Exhibits A, B, C, D and E**.

Also *Exhibit G, Letter Notifying Defendant/Respondent of Plaintiff's intention to institute a legal action.*

It seems to be that per the principles governing the grant or otherwise of Interlocutory Injunction Plaintiff has demonstrated that he has protectable legal and equitable interest in the disputed land and also if this Injunction is not granted the balance of convenience will tilt adversely against him. Also he will suffer irreparable damage if this Injunction is not granted.

Section 210 of the local Governance Act 2016 (Act 936) provides:

Notice of suit to be served on District Assembly

- 1) *A suit shall not be commenced against a District Assembly until at least one month after a written notice of intention to commence the suit has been served on the District Assembly by the intending Plaintiff or an agent of the Plaintiff.*
- 2) *The notice shall state the cause of action the names and place of the abode of the intending Plaintiff and relief which the Plaintiff claims.*

Plaintiff/Applicant has attached *Exhibit G* which is dated 19th January 2023 is a letter signed by counsel for Plaintiff herein and it is headed:

Demand for Cessation of Unlawful Entry, Possession and Development of Plot Number Ash/Mkt/A/138 Ashaiman, Tema.

This suit was filed on 22nd February 2023 and *Exhibit G* also states the intention of Plaintiff to institute legal action if Defendant/Respondent herein does not stop its development on Plaintiff's land.

I am of the view that Plaintiff/Applicant per *Exhibit G* has complied with the Requirement of section 210 of the Local Governance Act.

After analyzing all the evidence adduced in this Application, I am of the considered opinion that the Plaintiff/Applicant has fully complied with the requirement of **Section 210 of the local Governance Act** and has also satisfied the condition for the granting of an Injunction.

I hereby grant the Application for Injunction and make an order that the Defendant/Respondent herein Ashaiman Municipal Assembly, whether by themselves, their servants, agents, workers, privies or otherwise howsoever from carrying out any acts of construction of any structure on the land, unlawful entry, disturbing Plaintiffs use and occupation of the land, from carrying out any form of construction works including the construction of any building or other on the disputed land (**Plot No, Ash/MKT/A/138 Ashaiman** pending the determination of the suit .

Cost of Five Thousand Ghana Cedis (GH¢5000.00) is awarded in favour of Plaintiff/Applicant and against Defendant/Respondent.

H/L: RITA AGYEMAN-BUDU (MRS)

(JUSTICE OF THE HIGH COURT).