IN THE SUPERIOR COURT OF JUDICATURE
THE SUPREME COURT
ACCRA-GHANA

CORAM: BROBBEY, JSC (PRESIDING)
ANSAH, JSC
OWUSU,(MS.), JSC
YEBOAH, JSC
BONNIE, JSC

CIVIL APPEAL
NO. J4/23/2011

30TH NOVEMBER,2011

YEHANS INTERNATIONAL LIMITED - PLAINTIFF/RESP. /RESP.

VRS

MARTEY TSURU FAMILY
(PER FREDERICK SHAMO QUAYE - 1ST DEFENDANT

18TH JULY LIMITED
FORMER REGAL CINEMA - 2ND DEF. /APP. /APPELLANT

J U D G M E N T

ANIN YEBOAH, JSC

On the 30/11/2011 we dismissed the interlocutory appeal from the unanimous decision of the Court of Appeal and reserved our reasons. We now proceed to offer our reasons for the dismissal of the appeal.

The respondent herein commenced an action at the High Court, Accra on 22/12/2006 for declaration of title to a piece of land at the Light Industrial Area, Accra. As usual with actions for declaration of title, other ancillary reliefs were sought against the appellant herein. On the 30/01/2007, the respondent herein filed a motion on notice for interlocutory injunction.

In a rather terse affidavit sworn to by one Pendagrass Borketey Alabi, the respondent exhibited an indenture and Land Certificate and deposed to the fact that the respondent would change the nature of the land in dispute if not restrained by an injunction. The writ was accompanied by a statement of claim in which the respondent pleaded its root of title and long possession of the land.

The writ of summons was issued against THE DEVELOPER but appearance was entered by a solicitor who proceeded to file a statement of defence thereafter. On 6/2/2007, the defendant filed a statement of defence, traversing virtually all allegations of facts pleaded in the statement of claim. Virtually all the facts pleaded in the statement of claim were denied with a counterclaim against the respondent herein. The affidavit in opposition to the interlocutory application was equally supported by exhibits

in the nature of Land Certificate and correspondence which was relied on to resist the application for interlocutory injunction.

The case attracted several interlocutory applications which we do not find it necessary in determining this appeal. When the application for interlocutory injunction was moved against the original defendant who was styled as THE DEVELOPER, His Lordship Justice Abada on the 28/2/2007 granted the application. On the 24/5/2007, however, the second defendant who is the appellant herein filed a motion on notice to vacate the order of interlocutory injunction granted on the 28/02/2007. The application was resisted by the respondent herein but was subsequently withdrawn. The respondent had on record already filed a motion on notice for interlocutory injunction to restrain the appellant herein.

The motion was moved on 24/07/2007 before the same judge and on 26/10/2007 same was granted. The appellant lodged an interlocutory appeal to the Court of Appeal on 6/11/2007. The Court of Appeal on the 18 /02/2010 dismissed the appeal. This appeal is the second appeal in the interlocutory injunction granted by the High Court which was dismissed by the Court of Appeal.

Before us, several grounds of appeal were filed by the appellant which were all argued in detail. The first ground of appeal argued, sought to attack the capacity of the deponent to the affidavit in support of the motion

for interlocutory injunction at the High Court. According to counsel for the appellant, the law clerk lacked capacity to swear positively to the affidavit. According to counsel, this was a fundamental issue which was ignored by the Court of Appeal. This was well addressed in our view, by the High Court. Indeed, the affidavit contained several exhibits concerning the disputed land which the trial judge found to be regular. We have not been referred to any case law or procedure which prohibits a law clerk in the chambers of a lawyer handling the case from swearing to an affidavit in support of an application for interlocutory injunction. If the clerk could disclose his source of information, this will be regular. Order 20 rule 8 (1) and (2) of C147 which regulates this issue, states the position as follows:

> 8(1) An affidavit shall contain only facts that the deponent can prove, unless any provision of these Rules provides that it may contain a statement of information or belief or both.
>
> (2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain a statement of information or belief or both with the source of information and the grounds of the belief. [Emphasis ours]

We are of the opinion that if a deponent can disclose his source of information as it occurred at the High Court, the requirements of the above rules would be deemed satisfied. We find no merit in this ground of appeal.

Indeed, the case of EDUSEI V. DINNERS CLUB SUISSE S.A [1982 – 83] GLR 809 CA established the above principle even though it was decided in a summary judgment application.

After disposing of the appeal, the Court of Appeal in the exercise of its discretion restrained both parties. The appellant herein complains on the grounds that the Court of Appeal failed to consider the balance of hardships and that, if it had considered it, the appellant would not have been restrained. References were made to Land Certificate and the root of title of the appellant to demonstrate that the respondent failed to demonstrate that it was in possession of the land.

The Court of Appeal in its judgment after referring to virtually all the leading cases on this area of the law like AMERICA CYNAMIDE CO. V. ETHICON LIMITED [1975] AC 396, VANDERPUYE V. NARTEY [1977] 1GLR 428, ODONKOR & ORS V. AMARTEI [1987-88] 1GLR 578 SC and others, laid down the basic principles governing application for interlocutory injunction as follows:

I. That the status quo should as much as possible be maintained.

II. That the court should ensure that the successful party does not have a hollow victory at the end of the day.

III. That the order does not work greater inconvenience to either party than is reasonably or absolutely necessary.

IV. That the question of hardship to either party must be seriously considered.

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 consider whether the case of an applicant is not frivolous and had demonstrated that he had legal or equitable right which a court should protect. 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.

Thirdly, 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. See OWUSU V. OWUSU-ANSAH [2007-08] SCGLR 870 and POUNTNEY V. DOEGAH [1987-8] 1GLR III. The question is, did the trial judge consider these principles?

From the judgment of both the trial court and the Court of Appeal, the judges adequately considered the above principles governing the grant. Before us nothing has been urged on us to demonstrate whether the learned judges of the Court of Appeal in affirming the judgment of the High Court misapplied the law or there was misapprehension of fact resulting from relying on irrelevant or unproved matters or that the court below failed to take matters which were relevant into consideration. See CRENSTIL V CRENSTIL [1962 2 GLR 171 and BALLMOSS V MENSAH [1984-86] 1GLR 724. We find no merit in this ground of appeal as the basic principles governing the grant of the interlocutory injunction were adequately considered by both courts.

Another point which was argued related to undertakings in granting interlocutory injunction which point in our view was adequately addressed by the Court of Appeal. We may, however, wish to point out that undertakings could be waived by the trial court as pointed out in the recent case of THE REPUBLIC V HIGH COURT, KOFORIDUA EX PARTE ANSAH-OTU [2009] SCGLR 141. In any case as pointed out in EX PARTE ANSAH-OTU, supra, it is discretionary and it is a discretion vested in the court. This was made clear by LORD DIPLOCK in HOFFMAN – LA ROCHE & CO A – G & ORS V. SECRETARY OF STATE FOR TRADE & INDUSTRY [1974] 2 ALL ER 1128 HL, at 1150 when he said as follows:

"The court has no power to compel an applicant for an interim injunction to furnish an undertaking as to damages. All it can do is to refuse the application if he declines to do so. The undertaking is not given to the defendant but to the court itself. Non – performance of it is contempt of court, not breach of contract and attracts the remedies available for contempt; but the curt exacts the undertaking for the defendant's benefit" [Emphasis ours]

It does appear that the discretion is vested in the court and depending on the circumstances of each case it may decide to exact an undertaking before granting interlocutory injunctions. Since this point was adequately covered by the judges at the Court of Appeal, we do not wish to proceed to discuss it in detail again in this judgment.

We are, however, satisfied that the learned judges of the Court of Appeal adequately considered the appeal both on the facts and the law and arrived at a conclusion which could not be faulted. We accordingly proceed to dismiss the appeal as without merits.

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

J. ANSAH
JUSTICE OF THE SUPREME COURT

R. C. OWUSU
JUSTICE OF THE SUPREME COURT

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