IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL - ACCRA

CORAM: - PIESARE, JA [PRESIDING]
DOTSE, JA
DUOSE, JA

HI/61/2006

JOWAK SAWMILLS … PLAINTIFF/APPELLANT

V E R S U S

(1) HON. ATTORNEY-GENERAL] … DEFENDANTS/RESPONDENTS
(2) OMEGA WOOD PROCESSING]

Micheal Odame (Accountant) represents the plaintiff-appellant..

Lawrence Opare (Operations Manager) of 2nd Respondent present.

Adjabeng Akrosi for plaintiff-appellant present.

Addo-Atuah for 2nd Respondent present.

No appearance on behalf of the Attorney-General.

J U D G M E N T

PIESARE, JA:- This is an interlocutory appeal from the Ruling of High Court (Commercial Division) Accra, dated 11th October, 2005. The plaintiff-appellant, being aggrieved and dissatisfied with that Ruling against it, brought this appeal upon the following grounds:-

(a) The ruling is against the weight of evidence.

(b) The court erred by holding that notwithstanding the fundamental irregularities and abnormalities surrounding the alleged Timber Utilisation Contract between Defendants, it is fair, just and proper for 2nd Defendant to be allowed to continue to fell and extract timber from the subject matter of the suit, whilst the suit remained undetermined

(c) The Honourable High Court erred, by abandoning its obligation to impose the demand for fairness on 1st Defendant, thereby giving 2nd Defendant an unfair advantage over the subject matter.

(d) The court further erred by denying itself jurisdiction to preserve the Status quo ante having regards to all the circumstances of the case, because of the insertion of an arbitration clause in the agreement between Plaintiff and 1st Defendant.

(e) The court failed to judicially exercise its discretion to preserve the subject matter.

and

(f) The court erred in proceeding on the assumption that the alleged timber utilization contract entered into between the Defendants in 2004 cannot be questioned by any and thereby ignored the issues for determination by the court as well as issues of law which had been raised by the Appellant.

Now, in proceeding to determine these grounds, I will take a cue from the judgment of this court when it was dealing with a similar interlocutory appeal, in the case: **MONTERO & OR.**

V.

REDCO LTD. & OR.

[1984 -86] 1 GLR 712 CA.

At page 714 of that case, Abban (J.A) (as he then was) who delivered the opinion of the court, said:

"Learned counsel for the plaintiffs argued several grounds of appeal and I do not think it is necessary to discuss the various arguments advanced by both counsel, bearing in mind that this is not a final appeal. It is an interlocutory appeal and the substantive case is still pending before the High Court. In fact, it does not appear that summons for directions has even been taken. It is therefore undesirable in a situation like this, to go into detail. This would avoid the temptation of pronouncing on essential issues in the case when the case has not gone to trial. Thus, to my mind, the only important issue to be decided in this appeal is whether or not the learned

High Court judge was right in refusing to grant the injunction having regard to the facts presented to him in the various affidavits."

In this appeal therefore, the only issue which I consider to cater for all the grounds of this appeal is: whether or not the learned trial court judge was right in refusing to grant the injunction sought by the appellant.

Now, the facts which gave rise to this appeal, briefly put, are that, in August 2000 the appellant was granted a Timber Concession otherwise called Timber Utilisation Contract, by the Minister for Lands and Forestry acting on behalf of the Ghana Government. In November, the same year, the appellant's said contract, and those of 41 (forty-one) others, were ratified by Parliament.

Now, in 2002, with the coming into power of a new Government, the Minister for Lands and Forestry decided to review all Timber Urilisation Contracts because of alleged irregularities in the allocation. In pursuit of this purpose, the Minister sought the approval of Cabinet to cancel the existing allocation contracts to enable his streamline the allocation procedure.

The Cabinet gave the approval. Accordingly the contracts of 42 (forty-two) allotees including the appellant, were cancelled or revoked.

The appellant, by immediate inaction, appeared to have reconsciled himself with the cancellation of his said contract.

In January, 2004, the concession which was revoked from the appellant, was granted to the 2nd Respondent as a Replacement. And the 2nd Respondent was put into possession, and has since been in possession.

Then in August, 2005, the appellant issued his Writ of Summons at the Court below claiming inter alia:

(a) A declaration that the Timber Utilisation Contract entered into between the Plaintiff and the 1st Defendant in 2000 is still valid and subsisting.

(b) A Declaration that the purported Timber Utilisation Contract entered into between the 1st and 2nd Defendants on 28-1-4 is void.

(c) An order restraining the 2nd Defendant from entering any part of the

subject matter of the suit for my purpose whatsoever, including felling, cutting and removal of trees therefrom;

(d) An order nullifying the aforesaid purported contract between Defendants the same of which has been registered as Land Registry No. 6/4/2004.

And so on.

The appellant then followed with an application seeking an order for injunction to restrain the 2nd Respondent from entering any part of the said concession for whatever purpose, including felling, cutting, and removal of trees therefrom.

Now, on these facts, was the appellant entitled to an order for injunction? In my humble view, clearly, he was not entitled.

Now, it is trite learning that, granting or refusing an application for an order of interim injunction, or an order for preservation of property, is a discretion of the court.

By Order 25 rule 1(1) of C.I. 47:

"The court may grant an injunction by an interlocutory order in all cases in which it appear to the court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the court considers just."

Now, a party who applies for injunction must show that he has a right, legal or equitable which must be protected.

See the case:

MONTERO & OR.

[1984 – 1986] GLR 710 C.A. per Abban JA (as he then was) said:

"An interim injunction, like all equitable remedies, is discretionary and normally where there is a legal right which can be asserted either at law or in equity, the court has a discretion to grant an injunction in protection of that right. Indeed, the court's jurisdiction to grant an injunction is practically unlimited and would be exercised in any case in which it is right or just to do so, having regard to settled legal reasons or principles."

Then, in the oft-quoted case of **VANDERPUYE V. NARTEY** [1977] 1 GLR 428 (CA) per Amissah (JA) there, was, an application for and order for interim preservation

of property. The court held that the principle governing the granting or refusal of such an application is [quote – Page 432:

> "whether on the face of the affidavits there is the need to preserve the status quo in order to avoid irreparable damage to the applicant and provided his claim is not frivolous or vexatious."

The court continued at the same page:

> "The question for consideration in that regard revolves itself into whether on balance greater harm would be done by the refusal to grant the application than not. It is not whether a prima facie case however qualified and with whatever epithet, has been made."

Now, these authorities sum up as follows:

> A court will grant an application for injunction or an order for preservation of property (1) if it appears to the court to be just or convenient to do so.
> (2) or if the court is satisfied that the applicant has clearly shown that he has a right, legal or equitable, which ought to be protected to avoid irreparable damage to the applicant; and
> (3) or that, if on the face of the affidavits the court is satisfied that there is the need to preserve the status quo in order to avoid irreparable damage to the applicant, provided his claim is not frivolous or vexatious.

Now, on the authority of **VANDERPUYE V. NARTEY** where a judge is seised with an application for an order of injunction, the judge is bound to look at the case or claim of the applicant, as presented on his affidavits, supporting documents, and his pleadings, to determine whether the applicant's claim is not "frivolous or vexatious."

Indeed, in **Vanderpuye V. Nartey**, the court did engage in this exercise as follows (page 432 last paragraph) when it said (quote):

> "Is the appellant's action frivolous or vexatious? We do not think so from a reading of the record. Is the claim for relief sustainable in the light of the papers submitted? Here is a case in which the pleadings, affidavit and supporting documents disclose evidence in support of the appellant's contention that the properties in preservation of which he asks for the appointment of manager pending the determination of the action are part

of the estate left him by his father. There is further evidence that some properties which had at some time been held out by the respondent as part of the estate had been disposed of. No account has been given of the administration by the respondent although one has been called for by the appellant for years. That there is such evidence, cannot be denied, True the respondent explains it. But then at this point there is established the requirement of the seriousness of the claim."

Now, applying **VANDERPUYE V. NARTEY** to the facts of the instant appeal, I ask myself: Was the appellant's claim "not frivolous or vexatious?"

On the appellant's own showing, he was granted the Timber Utilisation Contract (to be referred to simply as the "Allocation") pm 14th August, 2000. The appellant's allocation, and the allocations of 41 (forty-one) others, were ratified by Parliament on 2nd November, 2000.

In 2002, upon the coming into power of a new Government, the new Minister in charge of Lands and Forestry decided to review all Timber Utilisation Contract Allocations, because of alleged irregularities, lack of transparency in the allocations, unauthorized excess acreages in some allocations, and to ensure competitive bidding.

Accordingly, acting with the approval of the Cabinet, the Minister cancelled the allocations of the said 42 (forty-two) allotees (including the appellant).

Now subsequently, and in particular, on 28th January 2004, the allocation which had been revoked from the appellant, was re-allocated to the 2nd Respondent herein as a replacement, without competitive bidding, and the 2nd Respondent was put into possession, and has since been in possession.

The appellant did not immediately react to the cancellation of his said allocation, and appeared to have resigned himself to the cancellation, and fallen into slumber, until August 2005, when he issued the Writ of Summons at the trial court, claiming inter alia:

(a) A declaration that the Timber Utilization Contract entered into between the Plaintiff and the 1st Defendant in 2000 is till valid and subsisting.

(b) A Declaration that the purported Timber Utilisation Contract entered into between the 1st and 2nd Defendants on 28/1/04 is void ab initio as

Defendants lacked the capacities.

(c) And order restraining 2nd Defendant from entering any part of the subject matter of the suit for any purpose whatsoever, including felling, cutting and removal of trees therefrom.

(d) An order nullifying the aforesaid purported contract between Defendants the same of which has been registered as Land Registry No. 614/2004.

After issuing the Writ of Summons. The appellant followed with an application seeking an order to restrain the 2nd Respondent from entering the subject matter, that is the Timber concession granted to the 2nd Respondent in 2004. The trial judge dismissed the application on the ground that on balance of convenience, the 2nd Respondent would suffer irreparable damage that could not be compensated for in costs.

I am of the view that the trial judge came to the right decision, in dismissing the appellant's application for the interlocutory injunction. The reliefs claimed on the applicant's Writ of Summons, are at least, an admission that the Timber Concession has been taken away from him. They also imply that the 2nd Respondent is in possession of same.

Now, the appellant's allocation having been cancelled, and the appellant having appeared by his conduct, to have accepted the cancellation, and waited until the Concession had been allocated to the 2nd Respondent, and the 2nd Respondent has been put into effective possession since 2004, the appellant was left with no other right in the Concession, which this court or the trial court could protect in his favour.

The appellant's claim is clearly "frivolous and vexatious." I agree entirely with the trial judge, that if she had granted the application, the 2nd Respondent who is lawfully in possession of the Concession, would have suffered an irreparable damage which could not be compensated for in costs.

In the result, I am satisfied that there is no merit in the appeal; I accordingly dismiss it, in its entirety, and affirm the decision of the court below dated 11th October, 2005.

E.K. PIESARE
JUSTICE OF APPEAL

I agree**.** **J. DOTSE**
JUSTICE OF APPEAL

I also agree**.** **I.D. DUOSE**
JUSTICE OF APPEAL

COUNSEL: MR. AGYABENG AKRASI FOR PLAINTIFF/APPELLANT.

MR. ADDO ATUAH FOR 2ND DEFENDANT/RESPONDENT.

MRS. DOROTHY AFRIYIE – PRINCIPAL STATE ATTORNEY.

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