

GHANA / JUDGMENT

Adams Vrs Adu Kofi Ii [2023]

GHAHC 82 (10 March 2023)

COURT
ghahcDECIDED
10 March 2023

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IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN TEMA
ON FRIDAY THE 10TH DAY OF MARCH 2023 BEFORE HER LADYSHIP JUSTICE RITA AGYEMAN-
BUDU (MRS) Time: 10:16am SUIT NO: E1/067/2022 ABDUL RAHMAN BOSSAH ADAMS ...
PLAINTIFF VRS NII ADU KOFI II ... DEFENDANT

===== PARTIES Plaintiff – Present
Defendant – represented by Solomon Mensah LEGAL REPRESENTATION Mr. Fred Seth-Thomas
Mireku Jnr. holding brief for Mr. Edwin Kusi-Appiah for the Plaintiff/Applicant – Present Mr. Iddi
Baah Kure holding brief of Mr. Raphael Alijina for the Defendant/Respondent- Present
=====

RULING

===== This Ruling is in respect of Motion on notice for Interlocutory Injunction to
restrain Defendant/Respondent herein, their agents, assigns and privies from entering and or
trespassing and making any development on the land as described in Paragraph 6 of the Affidavit
in Support. 1/E1/067/2021 This was filed by Plaintiff/Applicant on the 3rd of August, 2022. It is
Plaintiff/Applicant's case that he is the head of Bossah We Family and then bear the allodial title
for some tracts of land situate, lying and being at Kubekrom near Tema (described in Paragraph 6
of the Affidavit in Support which states as follows: "That the Plaintiff/ Applicant is head of the
Bossah We family, the family that bears the allodial title for some tracts of land situate, lying and
being at Kubekro near Tema from pillar TBEAB 1 to TBEAB 2 bearing of 284.0° at a distance of
305.00' feet more or less. Thence from pillar TBEAB 2 to pillar TBEAB 3 bearing of 249.0° at a
distance of 820.00' feet more or less. Thence from pillar TBEAB 3 to pillar TBEAB 4 bearing of
339.30° at a distance of 620.00' feet more or less. Thence from pillar TBEAB 4 to pillar TBEAB 5 a
bearing of 353.15° at a distance of 300.00' feet more or less. Thence from pillar TBEAB 5 to pillar
TBEAB 6 a bearing of 343.15° at a distance of 530.00' feet more or less. thence from pillar TBEAB 6
to pillar TBEAB 7 a bearing of 357.15° at a distance of 540.00 feet more or less. Thence from pillar
TBEAB 7 to pillar TBEAB 8 a bearing of 352.15° at a distance of 240.00' feet more or less. thence
from pillar TBEAB 8 to pilar TBEAB 9 a bearing of 345.45° at a distance of 580.00' feet more or
less. Thence from pillar TBEAB 9 to pilar TBEAB 10 a bearing of 345.45° at a distance of 490.00'
feet more or less. Thence from pillar TBEAB 10 to pilar TBEAB 11 a bearing of 348,30° at a

distance of 480.00' feet more or less. Thence from pillar TBEAB 11 to pilar TBEAB 12 a bearing of 51.30° at a distance of 1110.00 feet more or less. Thence from pillar TBEAB 12 to pilar TBEAB 13 a bearing of 99.45° at a distance of 850.00' feet more or less. Thence from pillar TBEAB 13 to Dilar TBEAB 14 a bearing of 159.02° at a distance of 1000.00' feet more or less. 2/E1/067/2021 Thence from pillar TBEAB 14 to pilar TBEAB 15 a bearing of 159.03° at a distance of 520.00' feet more or less. Thence from pillar TBEAB 15 to pilar TBEAB 16 a bearing of 159.03° at a distance of 740.00' feet more or less. Thence from pillar TBEAB 16 to pilar TBEAB 17 a bearing of 159.03° at a distance of 1000.00' feet more or less. Thence from pillar TBEAB 17 to pilar TBEAB 1 a bearing of 223.30° at a distance of 1230.00' feet more or less at a total acreage of 204.65 acres or 83.37 hectares". According to Plaintiff/Applicant, the Bossah We Family members have been rearing animals and also farming on the land as well as having dug wells which they still use. He has attached as (Exhibit A) which is a statutory declaration. Plaintiff/Applicant further avers that the said land is being encroached upon by Defendant/Respondent. He has attached Photographs of ongoing work on the land by Defendant/Respondent as (Exhibit B) series and video of same as (Exhibit C). Also in Supplementary Affidavit, Plaintiff/Applicant has attached (Exhibit D): Kubekro Committee of Enquiry Report and (Exhibit E): Motion to set down capacity of Plaintiff/Respondent. Plaintiff/Applicant further avers that the Bossah We Family has not granted any interest whatsoever to the Defendant to legitimize the Defendants activities on the lands. He is therefore praying the Court to restrain the Defendants/Respondents from continuing his activities on the disputed land. He states in his Paragraph 18 of the Affidavit in Support as follows: Paragraph 18 3/E1/067/2021 That until the Defendant/Respondent is restrained from his unlawful activities, the Defendant/Respondent will continue to be a hindrance to the quiet enjoyment of the lands by the Bossah We Family. Additionally, Plaintiff says that in the absence of a restraint, the Defendant/Respondent's persistent activities would be injurious to the peace and safety of Kubekrom No. 1&2 location. In opposing this Application, Defendant/Respondent aver in their Affidavit in opposition as follows: For the sake of clarity, I will reproduce some of the averments. Paragraphs 6, 7, 14, 15, 17, 19, 20, 21, 22, 27, 28 & 29. Paragraph 6 That the founding father of the Odaitsewe Family founded the KubekroVillage and his descendants have since remianed in possession of Kubekro lands for over 80 decades. Paragraph 7 That Kubekro lands are owned by the Odaitsewe Family of Kubekro and the family has documents including Statutory Declarations and site plans covering its lands. Paragraph 14 That in High Court (Land Division) Suit No. LD/0016/2017 with title Annang Iddrisu Adjete & 4 Ors. vrs. Nii Nuertey Amobi II & 7 Ors. Plaintiff/Applicant and other parties pleaded and testified that Kubekro lands belongs to a family by name Nii Kubekro Family and Plaintiff/Applicant is the elder of the said family and they lost the suit. Paragraph 15 That I have attached copy of Ruling as "Exhibit 6". Paragraph 17 4/E1/067/2021 That Kubekro is a fully developed town with life and brisk activities including businesses, churches, mosques, schools, markets, residences and health centres/clinics. Paragraph 18 That I have attached Photographs as Exhibits "7" "7A", "7B", "7C" "7D" and "7E". Paragraph 19 That grant of a restraining Order in this suit will paralyze economic social and religious activities on the land. Paragraph 20 That the Grantees of the Odaitsewe Family have built and have been living on Kubekro land without objections of Plaintiff/Applicant. Paragraph 21 That some of the Grantees of the family have obtained Land Title Certificates in respect of

their respective parcels of land. Paragraph 22 That I hereby attach a copy of Land Title Certificate as Exhibit 8. Paragraph 27 That I am advised by Counsel and verily believe same to be true that if the Application is granted, a greater hardship will occasion Defendant/Respondent, members of his family, and innocent third parties who are not parties in this suit. Paragraph 28 That I am advised by Counsel and verily believe same to be true that, to the extent that the land is already developed, the status quo ante include the development on the land and no useful purpose will be served with granting of this Application. 5/E1/067/2021 Paragraph 29 That I am advised by Counsel and verily believe same to be true that Plaintiff/Applicant had not demonstrated that it is just and convenient for the Court to grant this Application. An injunction is an equitable remedy and its grantor otherwise is a matter of the Court's exercise of discretion. Order 25 rule 1(1) of C.I 47 states that: "The Court may grant an Injunction by an Interlocutory Order in all cases in which it appears 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" Akuffo-Addo JSC stressed in the Case of Agyeman vrs. Ghana Railway Authority (

1969) CC60, C.A in the realm of the exercise of discretion, there is no binding precedent. But as is also well-known, the Court is also enjoined always to exercise its discretion not capriciously or unfairly, but judiciously." This principle has now assumed constitutional validity by Article 296 of the 1992 Constitution of Ghana. The Law governing the grant of Interlocutory Injunction is trite as 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 an Interlocutory Injunction in all cases must establish a right either at law or in equity and must further demonstrate the hardship or injustice or irreparable injury that Applicant may suffer if the Application is not granted. 6/E1/067/2021 In 18th July Limited vrs Yehans International Limited (2012) 1 SCGLR 167, the Supreme Court speaking through Anin Yeboah (JSC) outlined the conditions for the grant of Interlocutory Injunction as follows: "Even though it is discretionary, we are of the view that a Trial in determining Interlocutory Application must consider whether the case of an Applicant is not frivolous and had demonstrated that he had legal or equitable rights 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 will cause serious hardship to the other party". In cases of Interlocutory Injunction, the Trial Court is required to consider the Pleadings and the Application filed to determine whether a right has been established and that right ought to be protected by maintaining the status quo ante. Where a person has established a right either at law 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 casts the position thus in the Case of Welford Quarcoo vrs. Attorney General & 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 7/E1/067/2021 convenience of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief". Both Parties are claiming ownership of the disputed land in their Affidavits. They have tendered in evidence Exhibits to back their claim. The laid down principle as in 18th July Limited vrs Yehans International Limited (2012)1 SCGLR 167(supra) are;

- a) Is the Applicant's case not frivolous?
- b) Has the Applicant demonstrated that he has protected legal or equitable right?
- c) Will the Applicant suffer an irreparable damage if the status quo is not maintained?
- d) Will the balance of convenience tilt adversely towards Respondent if the application is granted? In determining this application I will address the above principles. The Plaintiff/Applicant has exhibited a Statutory Declaration (Exhibit A) and mostly relied on traditional evidence of his right in the said disputed land and also the long settlement of their ancestors who have been farming and have also dug wells some of which are still in use. The question is will this suffice as protectable legal or equitable right? In *Re-Adjancote Acquisition Klu v. Agyeman II* (1982-83) GLR holding 1 states among others thus: There are guiding principles on which the Court had treated and accepted traditional evidence as sufficient to establish title to land. 8/E1/067/2021 As already indicated, I am not going into the merits of the case at this stage but the evidence on record in my opinion does not give Plaintiff/Applicant protectable legal or equitable rights which will warrant the granting of an injunction. On the issue of status quo, I will state that there is already development and commercial activities on going on the disputed land. According to Defendant/Respondent's pleadings some of the occupants on the disputed land already have registered land title certificate and there are a lot of commercial activities going on the disputed land. The grant of an injunction against them will not be just and convenient. It is Defendant/Respondent's contention that this is the status quo ante which ought to be maintained. The Plaintiff /Applicant has described the disputed land as a very large stretch of land which according to him is being encroached by Defendant/Respondent. Plaintiff/Applicant states in paragraph 13 of his Supporting Affidavit that the Bossah We Family has not granted any interest whatsoever to Defendant legitimize the Defendant's activities on the land. This I deem it as a triable issue and from (Exhibit B and C) adduced, the town has already developed to a stage that to restrain the Defendant/Respondent, their agents, assigns etc. from embarking on their activities on the said land will tilt the balance of convenience adversely towards the Defendant/Respondent, his agents, assigns and even third parties who have derived their interest in the land through Defendant/Respondent. 9/E1/067/2021 Plaintiff/Applicant again states in paragraph 13 of their Supporting Affidavit that neither Defendant/Respondent nor his family possess any valid documents that warrant their presence on the disputed land. This is also a triable issue which ought to be determined at the trial. On the issue of whether or not on the balance of

convenience, the Plaintiff/ Applicant would suffer harm if the order sought is refused; it is my considered opinion that as already stated, the balance of convenience will rather tilt adversely towards the Defendant/Respondent if this application is granted. On the issue of whether damages will adequately compensate the Plaintiff/Applicant in the event that the uncertainty is resolved in favour of the Applicant, Plaintiff/Applicant is contending that Defendant has not shown to this Court that he has sufficient means to satisfy Plaintiff/ Applicant. I am of the view that in the event that this happens, there will be remedies for Plaintiff/Applicant. At this stage the Court is not minded to go into the merits of the case though there are identifiable triable issues. In an Application for the grant of an Interlocutory Injunction, the Court must not be saddled with issues that go to the merit of the case. The issue of ownership of land is a triable issue which is determined after going through trial. Diplock L.J in the leading Case of American Cyanamid Co Vrs. Ethicom 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 conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law 10/ E1/067/2021 which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.” In the circumstance, it is my considered opinion that though per the pleadings, Plaintiff/ Applicant may have some legal and equitable right in the disputed land, they have not convincingly demonstrated to this Court that the said legal equitable rights if not protected by this Court by granting this application will cause irreparable damage to Plaintiff/Applicant. It is also my opinion that from the evidence adduced the balance of convenience tilts adversely towards the Defendant/Respondent if this application is granted. This Application does not fully satisfy the laid down principles for the grant of an injunction and since the Court has the discretionary power in the granting or otherwise of an injunction application when it has considered whether it is just and convenient, and in my opinion I do not deem it just and convenient to grant this application and so I hereby dismiss this application and same is dismissed accordingly. There is no order as to cost. This matter will take its normal course. H/L: RITA AGYEMAN-BUDU (MRS) (JUSTICE OF THE HIGH COURT) sb.a 11/E1/067/2021

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Prepared on 25 October 2026 · Esheria