

GHANA / JUDGMENT

TOP KINGS LTD VRS. SINO AFRICA DEV'T CO. LTD AND ANOTHER (LC/152/2022) [2023] GHAHC 602 (12 December 2023)

[2023] GHAHC 602

COURT
High CourtCASE / FILE NUMBER
LC/152/2022

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT 'B' – HELD IN TEMA IN THE GREATER ACCRA REGION OF THE REPUBLIC OF GHANA – BEFORE HER LADYSHIP JUSTICE PATRICIA QUANSAH (JUSTICE OF THE HIGH COURT) ON WEDNESDAY THE 12TH OF DECEMBER 2023

SUIT NO.: LC/152/2022 TOP KINGS LTD PLAINTIFF/APPLICANT VRS. 1. SINO AFRICA DEV'T CO. LTD DEFENDANTS/RESPONDENTS 2. LANDS COMMISSION

PLAINTIFF/APPLICANT REPRESENTED BY DAVID TEYE BAKETAY DEFENDANTS/RESPONDENTS ABSENT

RULING ON AN APPLICATION FOR INTERLOCUTORY INJUNCTION AS MADE BY THE PLAINTIFF/APPLICANT I.

INTRODUCTION

RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR [i] The Plaintiff/Applicant herein instituted a writ of summons against the two Defendants above-named for the following reliefs:

- (1) A declaration of title to all that piece or parcel of land situate and being at Borteyman in the Tema Municipal Assembly of the Greater Accra Region of the Republic of Ghana known as SITE A the boundaries where of commencing at a pillar marked SGGA R152/12/3 and is 26088.46 feet from on a bearing of 112o38' which bearing together with all further bearing herein after mentioned is referred to Meridian 1o West Longitude from a pillar marked SGE 13/73/20 and thence on a bearing 159o29' and distance of 652.47 feet to pillar marked SGGA R152/12/4 thence on a bearing 249o18' and distance of 950.02 feet to pillar marked SGGA

R152/12/1 and thence on a bearing 248o10' and distance of 417.40 feet to pillar marked SGGA R152/12/1A thence on a bearing 248o13' and distance of 468.67 feet to pillar marked SGGA K664/12/1 and thence on a bearing 331o06' and distance of 323.08 feet to pillar marked SGGA K664/12/2 thence on a bearing 280o10' and distance of 570.62 feet to pillar marked SGGA K664/12/3 and thence on a bearing 067o31' and distance of 245.39 feet to pillar marked SGGA D866/12/4 thence on a bearing 067o10' and distance of 742.01 feet to pillar marked SGGA R6152/12/2A and thence on a bearing 069o58' and distance of 397.64 feet to pillar marked SGGA R152/12/2 thence on a bearing 067o45' and distance of 989.76 feet to pillar marked SGGA 152/12/3 containing an approximate area of 29.10 acres more or less.

- (2) An order directed at the 2nd Defendant to expunge the purported recorded transaction of the 1st Defendant from the records of the 2nd Defendant. RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR
- (3) An order directed at the 2nd Defendant to issue land title certificate in favour of the Plaintiff.
- (4) Perpetual injunction restraining the 1st Defendant either by themselves, its agents, assigns, thugs, hirelings, workmen, servants or howsoever described from interfering with the use and/or development of the land subject matter of this suit by the Plaintiff and also restraining the 2nd Defendant from proceeding in any way with the registration of the land in favour of the 1st Defendant.
- (5) Recovery of possession of land of all that piece and parcel of land situate and being at Borteyman in the Tema Municipal Assembly of the Greater Accra Region of the Republic of Ghana known as SITE A ... 12/3 containing an approximate area of 29.10 Acres more or less.
- (6) Costs including lawyer's fees.
- (7) Any further order(s) as the Court may deem fit. II. PLAINTIFF'S APPLICATION FOR INJUNCTION [ii] The Plaintiff subsequently filed this present injunction application against the Defendants herein. In the supporting affidavit, the Plaintiff's representative contended that the Plaintiff originally acquired the land in dispute, the subject matter of the substantive suit, from the Nungua Stool but had to re-acquire same sometime in 2012 from the Nungua Development Trust of Accra. Deeds of transfer were, in both cases, engrossed in favour of the Plaintiff. The Plaintiff's representative proceeded to narrate the history behind the disputed land and added that after the RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR Plaintiff's acquisition, caretakers were placed on the disputed land to farm thereon as notice to the world that the Plaintiff had acquired the disputed land. [iii] Nonetheless, the 1st Defendant has trespassed on the said land, claiming to have acquired a larger parcel of land, including the Plaintiff's portion from the Nungua stool, which, according to the Plaintiff, has no interest whatsoever in the disputed land it had allegedly alienated to the 1st Defendant herein. [iii] The 2nd Defendant has also purported to register the disputed land in favour to the 1st Defendant, when the 1st Defendant has not validly acquired any land and/or at all, and so the Plaintiff prayed the Court to grant the injunction restraining the 1st Defendant from interfering with the Plaintiff/Applicant's intended use of the disputed land, among

others. III. 1ST DEFENDANT'S AFFIDAVIT IN OPPOSITION [iv] The 1st Defendant filed an affidavit in opposition, opposing vehemently the Plaintiff's injunction application. The 1st Defendant, on the other hand, contended that the disputed land, together with some 976.466 acres of land, was vested in the Nungua stool; and that the 1st Defendant/Respondent validly acquired two separate leases in respect of larger portions of the land from the Nungua stool, including the disputed land. The 1st Defendant/Respondent representative, who deposed to the affidavit in opposition continued to state that after the 1st Defendant's acquisition and between RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR 2012 and 2013, the 1st Defendant/Respondent constructed 10 single room structures, a wall and its head office on the land and attached some pictures to demonstrate same. The 1st Defendant had therefore seen no sign(s) of the Plaintiff/Applicant alleged occupation and farming activities on the said land, it was averred. [v] Among others, the 1st Defendant/Respondent concluded that it was the 1st Defendant/Respondent who had displayed some legal and equitable interest in the land and so the Plaintiff/Applicant's motion for injunction ought to be refused as it will cause hardship to the 1st Defendant/Respondent herein. Both parties, per their Counsel also filed their respective statements of case and cited relevant authorities in support of their respective positions. IV. EVALUATION OF THE FACTS AND THE AFFIDAVIT EVIDENCE ADDUCED VIS-À-VIS THE LAW. [vi] From the processes so far file, I find that both parties appear to derive their title from the Nungua stool. The Plaintiff/Applicant, at paragraph 4 of its supporting affidavit averred that it initially acquired the disputed land from the Nungua stool and subsequently acquired the same parcel of land from the Nungua Development Trust of Accra in 2012. The Plaintiff attached 'Exhibit A' dated the 20th April 2012 to its supporting affidavit; and 'Exhibit A' appears to be a sub-lease between the Nungua stool and the Plaintiff's Managing Director. 'Exhibit B', said to be a sublease between the Nungua Development Trust and the Plaintiff, is also dated the same 20th April 2012. RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR [vii] The 1st Defendant/Respondent also attached 'Exhibits SAL' and 'SAL 1' also said to be subleases between the same Nungua stool and 1st Defendant, but both were dated 16th August 2010. A look at the signatories on the subleases of both parties indicate that some common person(s) signed for both sides; and so it may very well be the case that both parties may have an interest to be protected by this Court, after the merits of the case have been gone into. [viii] It is also obvious that the 1st Defendant/Respondent claims a larger portion of land than the Plaintiff/Applicant's 29.10 acres, but there is the need to go into the merits of the case to determine which of the parties herein is entitled to the benevolence of this Court, especially where the Plaintiff/Applicant is claiming declaration of title and recovery of possession. In the intervening period however, the status quo ought to be maintained as held in the case of 18th July Limited v Yehans International Ltd. [2012] 1 SCGLR 167 thus: "Even though it is discretionary, we are of the view that the Trial Court in determining an interlocutory application must first consider whether the case of the Applicant was not frivolous and had demonstrated that he had legal or equitable title which a court should protect. Second, the court is also enjoined to ensure that the status quo is maintained so as to avoid irreparable damage to the Applicant pending the hearing of the matter. The Trial Court ought to

consider the balance of convenience and RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR should refuse the application if its grant would cause serious hardship to the other party”. [ix] The Plaintiff/Applicant also stated it was in occupation of its portion of the land and had farmers thereon, even till date; but I find that no pictorial evidence was adduced before this Court, at least to satisfy and clearly establish that the Plaintiff/Applicant was indeed on the land. The 1st Defendant/Respondent did; I find, but the pictures annexed to the affidavit in opposition of the 1st Defendant/Respondent can unfortunately not establish to this Court that the structures in the pictures are on the Plaintiff’s portion of the disputed land or otherwise. [x] In the circumstances therefore, I would order both parties to submit their respective site plans and survey instructions to the Registry of this Court by the 3rd of January 2024, for onward transmission to the Survey and Mapping Division of the Lands Commission to determine the area in dispute, whether or not there are any structures thereon, and to whom those structures belong. [xi] In the intervening period, both sides are restrained from undertaking any development on any portion of the disputed land until the composite plan is received by this Court and the Court shall make further orders. V.

CONCLUSION

RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR [xii] Motion for injunction granted in part, restraining both sides until the composited plan ordered by this Court is received. There shall be no order as to costs and the substantive matter shall follow its normal course. SGD. H/L JUSTICE PATRICIA QUANSAH HIGH COURT ‘B’ TEMA GREATER ACCRA REGION. 12TH DECEMBER 2023. COUNSEL: CHARLOTTE MENSAH PRESENT, HOLDING BRIEF FOR RALPH POKU ADUSEI ESQ, FOR THE PLAINTIFF/APPLICANT. MILLICENT DEDO OSSOM ESQ, BEING LED BY ROLAND BOADI ATTAFUUAH ESQ. & HOLDING BRIEF FOR D. K. OSAFO BUABENG ESQ. FOR THE 1ST DEFENDANT/RESPONDENT. RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR DOUGLAS OBENG ESQ. FOR THE 2ND DEFENDANT/RESPONDENT PRESENT RULING – TOP KINGS LTD vrs SINO AFRICA & 1 OR 9

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