

GHANA / JUDGMENT

NII MANTEY SACKY & ANOR. VRS MADAM DOROTHY JOHNSON (LD/0733/2021) [2024] GHAHC 196 (27 February 2024)

COURT
ghahcDECIDED
27 February 2024

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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE GHANA (LAND COURT 7) HELD IN ACCRA ON THE TUESDAY THE 27TH DAY OF FEBRUARY, 2024 BEFORE HIS LORDSHIP ALEXANDER OSEI TUTU (J.) SUIT NO. LD/0733/2021 NII MANTEY SACKY HEAD OF KWASHIE DJABUM FAMILY, KROKROBITRE – ACCRA :: 1ST PLAINTIFF DANIEL NII ARDEY TAGOE :: 2ND PLT/JUDG.DEBTOR/APPL. VRS MADAM DOROTHY JOHNSON:: 2ND DEFT/JUDG. CREDITOR/RESP. MCCARTHY HILL – ACCRA

===== PARTIES: PARTIES
ABSENT EMMANUEL YEBOAH GYAN ESQ., WITH JUSTICE OSEI BOAMAH ESQ., HOLDING BRIEF FOR BOBBY BANSON ESQ. FOR 2ND PLAINTIFF/ JUDGMEMENT DEBTOR/APPLICANT
PRESENT ROBERT NKANSAH BOATENG ESQ., HOLDING BRIEF FOR ALFRED PAAPA DARKWAH ESQ., FOR DEFENDANT/JUDGMENT CREDITOR/RESPONDENT PRESENT

===== R U L I N G The 2nd
Plaintiff on 13–11–2023 filed an Application for Stay of Execution of the Judgment pending appeal. The ground of the Application was that the Court in its Judgment found the Respondent's root of title fraudulently obtained, because the persons who were alleged to have signed the document were dead before the date of execution of the document. For that reason, it was submitted that every step taken pursuant to that fraudulent document is a nullity. RULING DELIVERED BY J. ALEXANDER OSEI TUTU IN SUIT NO. LD/0733/2021 AT LAND COURT '7' ON 27 TH DAY OF FEBRUARY, 2024 1 In the view of that Applicant, the appeal raises several arguable points of Law such as: i. ii. Whether a beneficiary of a fraudulent document can be deemed to be an innocent purchaser without notice. Whether or not the Court has the jurisdiction, to order a land owner to regularize an interest of a purported grantee which has been vitiated by fraud. iii. Whether a Court has the jurisdiction to determine the consideration payable in respect of a lease. iv. Whether or not a provisional land Title Certificate creates an indefeasible interest in land. Applicant believes that the application has greater chance of success since some of his grantees have developed their lands and are in possession, if the execution is not stayed, it will render the appeal nugatory. The Application was opposed by the Respondent. He contended that during the pendency of the substantive suit, one Nour Seklaoui, who was in occupation of the land and entered a notice of claim that was eventually dismissed, entered into unlawful possession of the

land and started developing same. The Court granted interlocutory injunction restraining the parties, their agents, assigns etc. from having anything to do with the subject matter land pending the determination of the suit. Despite the injunction, the Claimant continued to build. It was argued further by the Respondent that the Court, differently constituted, made some findings of fact in the Interpleader Application as follows:

- a. That the 1st Plaintiff was in the known that the Respondent was already in possession of the subject land at the time he made oral grants to the Claimant.
- b. The pendency of the suit notwithstanding, the 2nd grantor went ahead to execute an indenture confirming the oral grant to the Claimant.
- c. Despite the existence of an Injunction Order, the 2nd Plaintiff proceeded to execute an indenture for the Claimant.
- d. At the time of the Injunction Order, the Claimant had just started with his development on the disputed land but blatantly ignored the Injunction Order and proceeded with his construction on the disputed land. RULING DELIVERED BY J. ALEXANDER OSEI TUTU IN SUIT NO. LD/0733/2021 AT LAND COURT '7' ON 27 TH DAY OF FEBRUARY, 2024 2 Based on the above, the Respondent contends that the Applicant's hands are tainted with iniquity for clearly interfering with the subject matter land by selling same to the Claimant to construct a building on the land during the pendency of the suit and it is the same building the Applicant is praying to protect. According, to the Respondent, the Applicant and the Claimant, whose lawyer is now prosecuting the Application labored under the erroneous impression that once they complete the building on the land they would receive a favourable decision. On the submission by Counsel for the Applicant that there are arguable issues to be determined on appeal, I find it tenable. However, I do not think that is the only consideration in Application of this nature. The Respondent had endeavoured to demonstrate how the equities are against the Applicant when he spurred the Court's Order of Interlocutory Injunction and proceeded to alienate the land to the Claimant who also ignored the Court's Order and proceeded to build on the disputed land. These facts were not debunked by the Applicant. It is trite that equity has never lent support to a party whose hands are unclean. The Court of Appeal in DANKWA VRS AMARTEY [1994-95] GBR 848 held of a party in similar circumstance thus "He had shown no respect for Court Orders and it would not be proper for the Court to exercise its discretion in his favour. The equitable maxim he who comes to equity must come with clean hands must apply". In KOFI SARPONG (deceased) substituted by NANA KWASI KODUAH VRS FRANKLIN ADUBOBI JANTUAH, Civil Appeal No. J4/15/2015, dated 17th day of February, 2016, the Supreme Court per Benin JSC held "the Plaintiff could not act in violation of the law and ask a Court of equity to come to his aid". On the strength of these authorities, I believe that this is a perfect case which the Court must resist the Applicant to take advantage of his perceived "smartness". The Application for stay is hereby dismissed with costs of Three RULING DELIVERED BY J. ALEXANDER OSEI TUTU IN SUIT NO. LD/0733/2021 AT LAND COURT '7' ON 27 TH DAY OF FEBRUARY, 2024 3 Thousand Ghana Cedis awarded (GH¢3,000.00) in favour of the Defendant/

Judgment Creditor/Respondent. (SGD.) H/L ALEXANDER OSEI TUTU JUSTICE OF THE HIGH COURT REFERENCES: CASES CITED: 1. DANKWA VRS AMARTEY [1994–95] GBR 848 KOFI SARPONG (DECEASED) SUBSTITUTED BY NANA 2. KODUAH VRS FRANKLIN ADUBOBI JANTUAH, J4/15/2015 KWASI CIVIL APPEAL NO. RULING DELIVERED BY J. ALEXANDER OSEI TUTU IN SUIT NO. LD/0733/2021 AT LAND COURT ‘7’ ON 27 TH DAY OF FEBRUARY, 2024 4

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Prepared on 29 October 2026 · Esheria