

GHANA / JUDGMENT

# BAFFOUR OSEI ASANTE VRS IBRAHIM DODOO & ANOR [2024] GHAHC 370 (31 October 2024)

COURT  
ghahcDECIDED  
31 October 2024

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## Source record

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
HELD AT KIBI ON 31ST DAY OF OCTOBER, 2024 BEFORE HER LADYSHIP RUBY  
NAA ADJELEY QUAISON (MRS) HIGH COURT JUDGE.

SUIT NO C1/31/2017

BAFFOUR OSEI ASANTE : PLAINTIFF/APPLICANT

SUING PER HIS LAWFUL ATTORNEY

YOUNG EFFA ADDAI

ACCRA

VRS

1.

IBRAHIM DODOO : DEFENDANTS/RESPONDENTS

UNNUMBERED HOUSE

LATEBIOKOSHIE-ACCRA

2. QUEENCY COMPANY LTD.

UNNUMBERED HOUSE

ACCRA

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## Parties:

Plaintiff absent and represented by Alfred Kweku Afrah

Defendants absent

Counsel: Kweku Ahenkan Oware holding brief for Daniel Nii Ayi Ankrah for  
plaintiff present

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Joseph Wellington Bowuah-Blay holding brief for Sika Ablah Addo for  
defendants present

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Motion on Notice: Application for an order of interlocutory injunction

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Application Opposed by Counsel for 1st Defendant/Respondent

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**RULING**

I have heard the parties. Counsel for Plaintiff/Applicant has filed this application for an order of interlocutory injunction restraining the Defendants/Respondents herein whether by themselves, their privies, agents, assigns, workmen personal representatives or anybody else claiming through them from continuing developing the disputed land or any portion thereof or dealing with it in any manner that is inconsistent with the proprietary interest of the Plaintiffs until the final determination of the substantive suit. This instant application for interlocutory injunction, was filed on 23/01/2024 by the plaintiff/applicant together with the statement of case and attached annexures marked Exhibit A and Exhibit B. The Counsel for 2nd Defendant/Respondent has filed an affidavit in opposition on 2/2/2024 together with statement of case and annexures marked Exhibit QCL 1 to QCL 19. Construing carefully the Plaintiff/Applicant's affidavit in support of the motion, particularly paragraphs 3 -18; it is to the effect that the disputed piece or parcel of land was acquired by the plaintiff/applicant from 1st defendant by a deed of assignment dated 8th day of January 2004. The said deed of assignment has since been stamped as No. LVB3279A /04 and indexed as No. AR/1517A /2004 at the Land Valuation Board, Accra upon the advice of the 1st defendant. The plaintiff/applicant and other assignees namely 2 Rita Effah and Joseph Oti contributed and erected a wall to protect their properties from trespassers. Recently, the 1st defendant/respondent unlawfully entered plaintiff/applicant's land with agents of the 2nd defendant company for the purpose of granting the same disputed land which plaintiff/applicant

acquired through the deed of assignment to the 2nd defendant company. The 2nd defendant company and its agents have trespassed unto plaintiff's land and unlawfully demolished a building which plaintiff has constructed up to lintel level without any legal justification. The 2nd defendant company intends to construct a building on the land and is further using land guards to threaten plaintiff's agent on the land. The matter was reported to the Pokuase police who referred parties to the Property Fraud Unit of the Ghana Police Service Headquarter, Accra. At the office of the Property Fraud Unit, plaintiff's lawful attorney was asked to produce documents showing plaintiff's root of title to the land which he did. After the police conducted their investigation, the police warned Edmund Palmer, a director of the 2nd defendant's company not to step on the land again. The 2nd defendant/respondent company in their affidavit in opposition particularly paragraphs 7 to 63 is vehemently opposed to plaintiff's application. The 2nd defendant/respondent avers that plaintiff is not entitled to the grant of the interlocutory injunction on the basis that the land the subject matter of this dispute has already been granted to 2nd defendant/respondent by the 1st Defendant/respondent. The 2nd defendant/respondent immediately went into possession without any encumbrances. That the plaintiff/applicant has not been able to establish a prima facie case or right whether legal or equitable to entitle same to the grant of this instant application. It is the case of plaintiff/applicant that upon their acquisition of the said land the 1st defendant executed the deed of assignment in favour of 2nd defendant/respondent. The 2nd defendant/respondent counsel categorically says the 1st defendant never executed any 3 deed of assignment in favour of the plaintiff. The court differently constituted on 26th November 2019 made an order directed at the Criminal Investigation department of Ghana Police Service to conduct a forensic examination of the applicant's deed of assignment. Pursuant to the order of the court differently constituted the forensic examination was conducted by the Ghana Police Service. The said report corroborates respondents claim that applicant's deed of assignment is not authentic as the 1st defendant/respondent never executed any indenture of deed of assignment in respect of the land in dispute. It is not in dispute and the plaintiff/applicant admits that the land in dispute belongs to the 1st defendant. The 1st defendant has rightfully sold same to the 2nd defendant who has a land Certificate. The Counsel for respondents therefore pray that the application for injunction should be refused as the said deed of indenture of applicant has been proven by CID to be forged. BY COURT: The procedure for dealing with Injunction under our civil jurisdiction is regulated by Order 25 rule (1) of CI 47 which states that "The Court may grant injunction by an Interlocutory Order in all cases in which it appears to the court to be just and convenient to do so and the order may be made either conditionally or upon such terms and conditions as the court considers fit". In respect of an injunction whatever form it maybe, if it is before the determination of the case, the court shall restrain itself from expressing opinion on the merits of the case. See: Republic v High Court Kumasi Exparte Mobil oil Ghana Ltd. (Hagan interested party) (2005-2006) SCGLR 312. In effect where the court was considering an application for interim injunction while the substantive suit was still pending for determination on its merit, the court has no duty at this stage of the litigation to resolve conflicts of evidence on affidavits as to facts on which the competing claims of parties may ultimately depend. 4 That notwithstanding, In National Lottery Authority v Airtel Ghana [2011] 36 GMJ 190, the Court of Appeal per Dennis Adjei focusing on the legal and equitable right in the

determination of an interlocutory injunction said that the court must be satisfied that the applicant can be said to have the right, title or interest claimed in the writ, in protection of which the court may grant the application. See: S. Kwame Tetteh in his book *Civil Procedure: A Practical Approach* @ pg 492. Again in *18TH JULY LIMITED v. YEHANS INTERNATIONAL LIMITED* [2012] 1 SCGLR 167 the Supreme Court per his Lordship Anin Yeboah JSC stated as follows: “...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 an interlocutory application must first consider the case of the applicant was not frivolous and had demonstrated that he had a legal or equitable right 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 should refuse the application if its grant would cause serious hardships to the other party...” This court in the circumstances would restrain itself from making any definitive statement on the attached annexures of the parties. It is trite that the grant or refusal of an application for injunction is within the discretion of the court. The court in granting or refusing, an application for injunction must take into consideration whether it is just or convenient. The need for the grant of an injunction invariably arises where a respondent engages in an act before or during the pending action that is likely to cause irreparable or serious damage to the applicant. See: *Agyei & Ors. V. Similao* (2012)1 SCGLR 127. See: *Centracor Resources v Boohene* (1992-93) GBR 1512, CA See: S. Kwame Tetteh in his book *Civil Procedure: A Practical Approach* @ pg 209. 5 It is also trite learning that an application for interim injunction is basically factual, and each case must be determined on its own facts with a guide from established principles of Law. In *BAIDEN v TANDO* [1991]1 GLR 98, the High Court held at page 121 thus: “Where a plaintiff seeks an order of interim injunction, he must first of all establish a prima facie case that the right he is seeking to protect exists and that there has been a breach and a threat of is continuing so as to cause him irreparable damage if the defendant is not restrained. The Court will then consider the issue of balance of convenience; that is whether it is proper to grant or refuse the interlocutory relief.....the relative strength of the defence is a relevant consideration in the process”. In *ODONKOR & OR VRS. AMARTEI* [1987/88]1 GLR 578 at page 581 where the Supreme Court stated the basic purpose of the order of interlocutory injunction is as much as possible to hold the balance evenly between the parties pending the final resolution of the matter between them and to ensure that at the end of the day a successful party does not find that his victory is an empty one or brings him more problems than blessings. Similarly, the Supreme Court in the case *RE: YENDI SKIN AFFAIRS, YAKUBU II V. ABDULLAI* [1984-86] 2 GLR 231 at 235 to 236 noted thus: “...it is relevant to observe that these courts have consistently operated on the principles that where two parties are litigating every care must be taken to ensure that the party who eventually wins does not find his judgment useless in his hands. Hence at first instance there are rules for interim preservation of the subject of litigation and for injunction to prevent waste. At the same time, the courts try to hold the balance evenly between the parties so that one does not take undue advantage of the other during the course of litigation. These principles are applied subject to the balance of convenience in a particular situation and to the hardship while the making or refusal

of an order may have on one of the other of the parties.” There must be very cogent reasons to grant an injunction in these circumstances. An injunction may be granted provided that damages will not adequately compensate the Applicant if the dispute were resolved in its favour at the time of concluding the trial or the applicant cannot be restored to the status quo. See also: DERRICK ADU – GYAMFI, LAW AND PRACTICE RELATING TO MOTIONS AND AFFIDAVITS IN GHANA (WITH PRECEDENTS (2018) BUCK PRESS LTD PAGE 34. In WELFORD OUARCOO VRS ATTORNEY GENERAL AND ANOTHER [2012] 1 SCGLR 259, the Apex court stated as follows: “...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 convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo...” I have heard the parties. After carefully examining and considering the affidavits filed and statement of case submitted as well as the authorities cited, it would be proper, fair and just to restrain all parties from interfering with the said land as follows:

- a. The status quo prior to the filing of this suit should be maintained by all parties. 7
- b. All parties are restrained from building, constructing, or changing the nature and or the character of the land.
- c. All parties are not to grant any portion of the land to any persons.
- d. All parties are not to lease any portion of the land or to use the whole land or portion of it to secure a loan or to enter into a legal contract, or sell, pledge any portion of the land or the whole land to any third party until the final determination of this suit. I make no order as to cost. H/L RUBY NAA ADJELEY QUAISON [MRS.] JUSTICE OF THE HIGH COURT 8

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Prepared on 26 October 2026 · Esheria