

GHANA / JUDGMENT

Gordor And 2 Others Vrs Torvor (C1/08/2024) [2024] GHAHC 248 (20 March 2024)

COURT
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20 March 2024

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THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON WEDNESDAY THE 20TH DAY OF MARCH, 2024 BEFORE HIS LORDSHIP JUSTICE DANIEL MENSAH, ESQ., JUSTICE OF THE HIGH COURT. ===== SUIT NO: C1/08/2024

1. S.K. GORDOR
2. WITTY AWUKU ADUSU AHORKLU PLAINTIFFS/APPLICANTS
3. AKUMANI GORDOR VS.

1. TOGBE TORVOR DEFENDANTS/RESPONDENTS
2. MENSAH KPORKU
3. BESA EGBENYA
4. DOTSE TORVOR
5. MAWUSI AZILA

6. LAND SECRETARIAT =====
PARTIES: PLAINTIFFS REPRESENTED BY SENYO GORDOR 5TH DEFENDANT PRESENT.
6TH DEFENDANT REPRESENTED BY DANIEL KAVI. COUNSELS: MR. KORBLA HLORTSI
AKAKPO, ESQ., COUNSEL FOR PLAINTIFFS/ APPLICANTS PRESENT. MR. AWUKU ATAKLI,
ESQ., COUNSEL FOR DEFENDANTS/RESPONDENT/ - PRESENT. Page 1 of 6

===== R U L I N G On the
31/05/2023 the Plaintiffs/Appellants/Applicants herein filed a motion for stay of execution pending appeal of the ruling of this Honourable Court dated 22/11/2021. Attached to the said motion was an affidavit in support detailing the basis of the application. Thereafter the Plaintiffs/Appellants/Applicants went on to file a Supplementary affidavit in support dated 12/07/2023. The 6th defendant/respondent/respondent upon being served with the motion for stay and the supplementary affidavit in support filed a notice of legal objection to the application filed by the applicants. The grounds for the said legal objection was that the

ruling of the court that the applicants wanted to stay was given simpliciter on grounds of brazen abuse of the process based on a previous decisions in favour of the Fievie Clan against the Soga family represented by the plaintiffs/Applicants which ruling is not executable hence the cannot be stayed. To help understand the basis of the preliminary legal objection by Counsel for the 6th Defendant/Respondent, a brief summary of the facts leading to the ruling dated 31/05/2021 ought to be given. On the 06/09/2021 the Plaintiffs/Appellants/Applicants caused a writ against 6 Defendants including the 6th Defendant/Respondent/Respondent for certain reliefs including declaration of title, recovery of possession, perpetual injunction and damages covering the land in dispute being at Awusakope near Sogakope. Page 2 of 6 The 6th Defendant/Respondent/Respondent upon being served with the said writ together with the accompanying Statement of Claim filed an application to set aside the writ on grounds of abuse of process. In the said application, the 6th Defendant referred to earlier judgments of the court between the parties which referred to the same land in dispute. Even though the Plaintiffs/Appellants/Applicants denied the said claim by the 6th Defendant/Respondent/Respondent this Honourable Court ordered written submissions to be filed which order was duly complied with. On the 22/11/2021, this Honourable Court granted the said Application filed by the 6th Defendant/Respondent/Respondent. At page 13 of the said ruling of the Court, the learned High Court Judge expressed herself as follows: "it is evident that the plaintiffs herein per their instant writ of summons before this Honourable Court are in brazen abuse of the Court process and the applicant invocation of its inherent jurisdiction of this Honourable Court to dismiss Plaintiffs instant writ and all processes accompanying same succeeds. The Court grants the application and proceeds to dismiss plaintiffs instant suit as an abuse of process". It is in pursuance of this ruling of the Court that the Plaintiffs/Appellants/Applicants have filed an application for stay of execution of the ruling of the Court provoking the instant legal preliminary legal objection by Counsel for the 6th Defendant/Respondent/Respondent. Page 3 of 6 In arguing his preliminary Legal Objection, Counsel for the 6th Defendant/Respondent/Respondent stated that it was trite that an application for stay can be granted when same is executable. According to Counsel, the ruling of the Court dated 22/11/2021 was dismissed on grounds of abuse of the process. The said ruling of the Court is not executable. Counsel referred to certain decision of the Court to buttress his point and invited the court to dismiss the application. In his submission, Counsel for the Plaintiffs/Appellants/Applicants told the Court that the Plaintiffs/Appellants/Applicants have been thrown out of Court and if they should sit idle the Defendants/Respondents would go ahead to develop the land. And to him the grant of the instant application would seek to prevent the Defendants/Respondents from working on the land. In that regard, Counsel prays the Court to dismiss the preliminary point. It is based on these submissions by both Counsel that this Court being called upon to determine the ambit of the preliminary legal objection. The venerable Taylor JSC and Ex parte SIDI [1987-88] 2 GLR 170 @ 176 opined that stay of execution simply means the suspension of any process or procedure that would postdate the judgment. If an applicant ask for such stay pending the hearing and determination of his appeal, then what he is in effect asking is that all processes that can be taken after judgment for the purpose,

no doubt satisfying the judgment should be stayed until the appeal is finally heard and a decision on it given' Page 4 of 6 The criterion for the grant of application for stay of execution is clearly spelt out in the case of GOLDEN BEACH HOTELS(GH) LTD VS. PACK PLUS INTERNATIONAL LIMITED [2012] 1GLR 452 is whether the appeal would be rendered nugatory upon succeeding and if so whether there are any exceptional circumstances to necessitate the suspension of the decision. In the case beforehand the ruling of the Court is that the claim or reliefs by the Plaintiffs/Appellants/Applicants have already been determined in some previous cases such that it is in an abuse of the process for same to be ventilated again in this Court. It is the said decision that the applicants are dissatisfied and have filed an appeal. The said decision by this Honourable Court may or may not be right. In fact, the applicants have a right to pursue an appeal. Because in my view, I do not see how such a ruling dismissing a suit from an abuse of the process can lead to a process, to be filed by the 6th Defendant/Respondent/Respondent. In my view the said decision rendered on the 22/11/2021 only recognized the existence of a previous judgment on the disputed plot by the parties or their agents or assigns. The said ruling clearly in my view is not executable to warrant the present stay of execution by the plaintiffs/Appellants/Applicants. It is in this vein that I agree with learned counsel for the 6th defendant/Respondent/Respondent that the ruling of the court dated 22/11/2021 is not executable to warrant the application for stay of execution. Page 5 of 6 In that regard I would strike out the said application. Cost of Two Thousand Five Hundred Ghana Cedis (GH¢2,500.000) in favour of 6th Defendant/Respondent. [SGD] H/L JUSTICE DANIEL MENSAH, ESQ. JUSTICE OF THE HIGH COURT. Page 6 of 6

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