IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2025

CORAM: LOVELACE-JOHNSON JSC (PRESIDING)

AMADU JSC

ASIEDU JSC

KWOFIE JSC

DARKO ASARE JSC

26TH FEBRUARY, 2025

CIVIL APPEAL

J4/44/2024

NAIRAY ESTATE DEVELOPMENT ….. PLAINTIFF/APPLICANT/ RESPONDENT/RESPONDENT

VRS

MOHAMMED ISMAIL ….. DEFENDANT/RESPONDENT/ APPELLANT/APPELLANT

J U D G M E N T

KWOFIE JSC:

This appeal has been launched against the judgment of the Court of appeal dated 16th November 2023 which affirmed a ruling of the trial High Court Accra.

The trial High Court had on 19-7-2022 granted an application for an order of interlocutory injunction pending the final determination of the substantive suit. An appeal by the defendant/appellant/appellant to the Court of Appeal was dismissed on the 16th November, 2023. This Honourable Court is called upon to decide whether the Court of Appeal erred in affirming the trial court's ruling.

The facts which provoked the appeal in this case are not in dispute. By a Writ of Summons filed on 9th March 2022, the Plaintiff/respondent/respondent (hereinafter referred to as the plaintiff claimed against the defendant/appellant/appellant) (hereinafter referred to as the defendant) the following reliefs:

a) A declaration that the plaintiff is the owner of all that piece or parcel of land situate lying and being at Roman Ridge, Ayawaso west, Accra containing an approximate area of 0.50 acre more or less and bounded on the North by lessor's and measuring 181.9 feet more or less, on the South by lessor's land measuring

184.1 feet more or less, on the East by proposed road measuring 99.2 feet more or less and on the west by lessor's land measuring 144.3 feet more or less.

b) An order of interlocutory injunction restraining the defendant, his privies, assigns, agents and workmen from interfering with the plaintiff's peaceful use and enjoyment of its land as described in paragraph (a) above pending the final determination of the suit.

c) An order of perpetual injunction restraining the defendant, his privies, assigns, agents and workmen from interfering with the plaintiff's peaceful use and enjoyment of its land as described in paragraph A above.

d) An order for recovery of possession of any portion of the plaintiff's land trespassed upon by the defendant.

e) Damages for trespass.

f) Costs including legal fees

g) Any other orders that this Honourable Court may deem fit to make.

The plaintiff traced its root of title to the land to a lease granted to it by the Nii Odoitso Odoi Kwao family of Accra sometime in 2014. The plaintiff pleaded that at the time she was granted the land in 2014 by the Nii Odoitso Odoi Kwao family, there was a 4-bedroom house with a 2-bedroom boy's quarters on the land and the land was very bushy. After making full payment for the land, it was put in immediate possession and it cleared all the weeds on the land and made the place more habitable. According to the plaintiff, it proceeded to renovate the building by replacing all the doors, fans, furniture, lighting amongst others and deposited beds, mattresses and Jacuzzi in the building. It was the case of the plaintiff that it had been in lawful possession of the land and the building thereon since 2014 without any hindrance. Sometime in 2022, the plaintiff says it noticed the presence of the defendant on the land and the defendant started laying adverse claim to the land. The defendant hired bulldozers to demolish the four-bedroom house and the two-bedroom boy's quarters that were on the land and destroyed all its properties on the land. The defendant had also removed the plaintiff's gate and replaced it with the intention of blocking entry unto the land and to further develop the plaintiff's land. The plaintiff contends that unless restrained by the Honourable Court, the defendant will continue with its illegal activities on the land.

The defendant did not deny entering upon the disputed land but claimed that the plaintiff's grantors did not have any title to the land. The defendant claimed that the land belonged to one Madam Phyllis Akyea Djamson who was represented at all times by lawyer Capt. Nkrabea Effah-Dartey. The defendant's case is that Madam Phyllis

Akyea Djamson became the beneficial owner of the subject land by virtue of a Vesting Assent executed in her favour by the Administrators of the estate of her late father Mr. Franz Ababio Yao Djamson. The defendant contended that the Government of Ghana acting through the Lands Commission consented to the vesting of the subject land in Phyllis Akyea Djamson and the said consent was required because the land is a government land. It is the defendant's case that by a Deed of Assignment between himself and Phyllis Akyea Djamson, he acquired all of the unexpired interest of Phyllis Akyea Djamson in all that piece or parcel of land described as plot No. 71, Roman Ridge Ambassadorial Estate Extension in the Greater Accra Region.

The plaintiff then applied for an order of interlocutory injunction restraining the defendant, his agents and assigns from interfering with the peaceful use and enjoyment of the plaintiff's land pending the final determination of the suit. The trial High Court judge granted the order of interlocutory injunction and restrained both parties from interfering with the disputed land pending the final determination of the suit. The trial judge's reasoning for granting the application was as follows:

> "It appears from the affidavit evidence consisting of the pleadings, the affidavit in support together with the various exhibits presented to this court by the plaintiff/applicant, that its claim to the disputed land is not frivolous. Once a seeming right has been shown, there is the need for this court to protect that seeming right before the actual hearing of the case. I am also mindful of the fact

that the defendant/respondent has also by his affidavit evidence shown some right or seeming right to the disputed land. With this state of affairs, would it be just or convenient to restrain one party from interfering with the disputed land whilst granting the other party an unhindered right to develop or interfere with the land before a final decision is given by this court? I do not think so. It would serve the course of justice if both parties are restrained from interfering with the disputed land until the final determination of this suit. It has always been my conviction that where parties in a suit demonstrate by their affidavit evidence that they have some right to the disputed land, it would only be just or convenient to restrain both parties from developing the land. In this case, the structure on the land has been demolished implying no one is using same as his residence. The issue of irreparable damage would not arise in this case having regard to the state the disputed land is. So also, is the question of balance of convenience. Consequently, I restrain both parties, either by themselves, their privies, assigns, agents and workmen from interfering with the peaceful use and enjoyment of the disputed land until the final determination of the case"

APPEAL TO THE COURT OF APPEAL

The defendant, being dissatisfied with the ruling of the High Court appealed to the Court of Appeal against the ruling on the grounds that:

a) That the ruling is against the weight of evidence adduced in the application for injunction

b) Further grounds to be filed upon the receipt of a copy of the ruling.

Subsequently, the defendant filed an additional ground of appeal as follows:

a) That the learned trial judge erred when he held that the applicant had shown a right to the land.

Their Lordships of the Court of Appeal found that the defendant argued only the additional ground of appeal. The Court reviewed a host of legal authorities on interlocutory injunctions and appeal against the exercise of discretion by a trial judge including Owusu vs. Owusu Ansah & Another (2007-2008)2 SCGLR 870, 18th July Limited vs. Yehans International Ltd (2012) 1 SCGLR 167 at 168 and Crenstil vs. Crenstil (1962) 2 GLR 171 and held as follows in dismissing the defendant's appeal:

> "We therefore find that the learned trial judge properly applied the law in relation to the grant of injunctions. He thus exercised his discretion rightly and gave the proper weight and consideration to the facts and evidence available to him in restraining both parties until the final determination of the suit. We have arrived at this conclusion since the record presents serious questions to be tried

between the parties and it will be just and convenient to maintain the status quo until the final determination of the action on its merit."

APPEAL TO THE SUPREME COURT

Still unperturbed, the defendant has launched the instant appeal to this Court against the decision of the Court of Appeal on the following grounds:

a) That the Court of Appeal erred when it held that the plaintiff/respondent/respondent had established an interest in the land

b) That the ruling is against the weight of evidence adduced at the hearing of the application for injunction

It is worth pointing out that ground (b) of the ground of Appeal dealing with the omnibus ground i.e. that the ruling is against the weight of evidence adduced at the hearing of the application is clearly unwarranted as the ruling which has resulted in this appeal was not given after a plenary trial but one which was decided based on an application filed by the plaintiff. On that basis, the ground of appeal that the decision was against the weight of evidence seems curious. For it is trite that the purpose of this omnibus ground of appeal is an invitation to the court to consider the case as a matter of rehearing. See the cases of Tuakwa vs. Bosom (2001-2002) SCGLR 61; Djin vs Musah

Boako (2007-2008) SCGLR 686 and Owusu-Domena vs. Amoah (2015-2016) 1 SCGLR 790. That ground of appeal that the judgment/ruling was against the weight of evidence presupposes that the matter has been fought and determined to its conclusion by the parties adducing evidence at trial.

In the case of Asamoah vs. Marfo (2011) 2 SCGLR 832 where judgment was taken at a time when there was no statement of defence filed, the first ground of appeal was that the judgment was against the weight of evidence. Anin Yeboah JSC (as he then was) speaking for the apex court noted as follows:

> "The first ground of appeal to us is completely misplaced given the facts of this appeal. The judgment obtained at the High Court, Kumasi did not go beyond the close of pleadings as no statement of defence was even filed..... it appears that at the time the motion for judgment was filed, the respondent who was the defendant had not filed any defence on record or made any admission on oath or otherwise in any manner or form. It thus sounds strange for counsel for the appellant to appeal against the judgment on the grounds that the judgment was against the weight of evidence. In our opinion, this ground is clearly misconceived and same is dismissed as unmeritorious"

Also, in the case of Zikpuitor Fenu & others vs. The Attorney General and others (2018) DLSC 2489 @ page 3 the apex court noted as follows on the omnibus ground as a ground of appeal in instances where there had not been a plenary trial that:

> "The omnibus ground is usually common in cases in which evidence was led and the trial court was enjoined to elvaluate the evidence on record and make its findings of fact in appropriate cases. In cases in which no evidence was led but the order which has been appealed against is interlocutory, such ground of appeal are not canvassed at all ..... We think this ground is clearly misconceived and same is hereby struck out as there were no disputed factual matters which called for findings by the lower court which merely determined the application for stay of proceedings on affidavit evidence which was not in controversy"

Finally in the case of Atuguba & Associates vs. Scion Capital (UK) Ltd & Another (2017-2020) 2 SGLR 196 the Supreme Court speaking through Amegatcher JSC on the formulation of grounds of appeal and the misuse of the omnibus ground of appeal stated as follows:

> "It has long been the practice among some legal practitioners to shirk the responsibility imposed on them to formulate specific grounds of appeal stating where the trial judges erred for the consideration of the appellate court. The

> omnibus ground has been a hideout ground; the responsibility in even minor appeals is shifted to the appellate judges to comb through the record of appeal, review the evidence and identify the specific areas the trial judge erred before coming out with the court's opinion on the merits or otherwise of the appeal. The situation is worrying when no viva voce evidence is proffered and a judge is called upon to exercise judicial discretion, such as in applications for injunction, stay of execution, amendment, joinder, judicial review and consolidation, just to mention a few. In our opinion, though the rules of court allow the omnibus ground to be formulated as part of the grounds of appeal, it would greatly expedite justice delivery if legal practitioners formulate specific grounds of appeal identifying where the trial judge erred in the exercise of discretion"

Clearly, ground (b) of the appeal is misconceived and is struck out as there were no disputed factual matters which called for findings by the lower court which merely determined the application for interlocutory injunction basically on affidavit evidence.

Ground (a) of the ground of appeal was that the Court of Appeal erred when it held that the plaintiff/respondent had established an interest in the land, It ought to be noted that this ground of appeal is against the concurrent findings made by the trial court and the Court of Appeal as the first or intermediate appellate court to the effect that the defendant had established an interest or legal right in the land.

This Court, being the second appellate court will be slow to interfere or disturb the concurrent findings unless the appellant is able to demonstrate that the concurrent findings are not supported by the evidence on record or that wrong principles of law were applied.

In the case of Koglex Ltd (N0. 2) vs. Field (2000) SCGLR 175 this court held in holding 2 thereof that;

> "(2) Where the first appellate court had confirmed the findings of the trial court, the second appellate court would not interfere with the concurrent findings unless, it was established with absolute clearness that some blunder or error, resulting in a miscarriage of justice was apparent in the way in which the lower court dealt with the facts"

Acquah JSC further gave instances where such concurrent findings may be interfered with as follows:

i. "Where the said findings of the trial court are clearly unsupported by evidence on record; or where the reasons in support of the findings are unsatisfactory: see Kyiafi vs. Wono (supra)

ii. Improper application of a principle of evidence: see Shakur Harihar Buksh vs Shakur Union Parshad (1886) LR141 A7; or where the trial court has failed to draw an irresistible conclusion from evidence see Fofie vs. Zanyo (1992) 2 GLR 475 at 490

iii. Where the findings are based on a wrong proposition of law: see Robins vs. National Trust Co. Ltd (1927) AC 515, where it was held that where the findings is so based on an erroneous proposition of law, that if that proposition is corrected, the finding disappears; and

iv. Where the findings is inconsistent with crucial documentary evidence on record. The very fact that the first appellate court had confirmed the judgment of the trial court does not relieve the second appellate court of its duty to satisfy itself that the first appellate court's judgment is like the trial court's also justified by the evidence on record; for an appeal, at whatever stage, is by way of rehearing. And every appellate court has a duty to make its own independent examination of the record of proceedings."

In this instant case, the learned justices of the Court of Appeal after going through the record determined as follows:

"From the above, the trial judge believed both parties had established some right to the disputed land and since there was no one residing in the demolished property then, it was just and convenient to restrain both parties"

The court further went on:

"The record reveals that the respondent was in possession of the property before he was removed. It is the claim of the respondent that he had been in undisputed possession of the land for close to 8 years. The respondent has attached pictures of clear acts of possession and the violence that ensued before the respondent was removed from the land. (See Exhibit NED 3 series pages 24 to 37). The appellant from his pleadings and affidavit evidence has indicated that he is responsible for demolishing the building on the land and taking possession of the land. Based on the above facts and the affidavit evidence available in this appeal, the case of the respondent is not frivolous. Serious issues have been raised by the appellant attacking the root of title of the respondent as well as the judgments attached in support of the respondent's case. All these matters are serious questions to be tried. We are of the view that only by conducting a comprehensive trial and presenting evidence can one unravel these complex matters, prima facie the respondent has raised serious questions to be tried and has established a right to be protected at this stage"

In making these finding that the plaintiff's case is not frivolous and that he has established a right to the land that has to be protected, the Court of Appeal concurred with the findings made by the trial High Court. These findings are supported by the affidavit evidence and this Court as a second appellate court will not therefore with the concurrent findings of the 2 lower courts.

The concurrent findings of the trial judge and the Court of Appeal that the plaintiff has established a right over the land and its claim is not frivolous is in line with the factors that ought to guide a court to either grant or refuse the request before it. The guiding principle in such applications is whether an applicant has by his pleadings and affidavit established a legal or equitable right which has to be protected by maintaining the status quo until the final determination of the action on its merit; See the case of Thorne vs. British Broadcasting Corporation (1957) 1 WLR 1104.

As Amissah JA put it so clearly in the case of Vanderpuye vs. Nartey (1997) 1 GLR 428 at 432:

> "The governing principle should be whether on the face of the affidavits there is need to preserve the status quo in order to avoid irreparable damage to the applicant and provided his claim is not frivolous or vexatious. The question for consideration in that regard resolves itself into whether on balance greater harm

would be done by the refusal to grant the application than not. It is not whether a prima facie case however qualified and with whatever epithet, has been made"

Finally, it also has to be noted that in granting the application for interlocutory injunction, the trial High Court was exercising a discretion. But that discretion had to be exercised judiciously. In the exercise of such discretion, the trial judge ought to take into consideration the pleadings and affidavit evidence before it; See the case of Pountney vs. Doegah (1987-88) 1 GLR 111 at 116. There is a long line of cases that show that an appeal against the exercise of a court's discretion may succeed on the ground that the discretion was exercised on wrong or inadequate materials if it can be shown that the court acted under a misapprehension of fact in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matters into account, but the appeal is not from the discretion of the court to the discretion of the appellate tribunal – See the cases of Blunt vs. Blunt (1993) AC 517 at 518, Owusu vs. Owusu-Ansah &Another (2007-2008) 2 SCGLR 870.

This interlocutory appeal against the exercise of the High Court's discretion has travelled all the way to the highest Court of the land when the substantive matter has been literally abandoned for the past 3 years at the trial court. The defendant has not been able to show that the trial court and the Court of Appeal were both wrong in the exercise of their discretion. We find no merit in the appeal and we hereby dismiss same entirely.

(SGD.) H. KWOFIE
(JUSTICE OF THE SUPREME COURT)

(SGD.) A. LOVELACE- JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

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