**ADU 2 COMPANY LTD**

*(PLAINTIFF)*

**vs.**

**KWAKU DUKU**

*(DEFENDANT)*

[COURT OF APPEAL, KUMASI]

CIVIL APPEAL NO: HI/112/2023 DATE: 23RD NOVEMBER 2023

**COUNSEL**

JAMES ASAMOA ESQ., FOR DEFENDANT/APPELLANT.

JAMES GAWUGA NKRUMAH ESQ., FOR PLAINTIFF/RESPONDENT.

**CORAM**

MENSAH-HOMIAH (MRS), J.A (PRESIDING)

BAAH, J.A

OWUSU-OFORI, J.A

**JUDGMENT**

# BAAH, J.A

1. **BACKGROUND**

On 17 February 2021, the plaintiff/respondent (hereafter respondent), which is a registered company, instituted an action against the defendant/appellant (hereafter appellant), whom the respondent described as carrying “*himself out as the chief of Krobo Buoho*’’, for a number of reliefs, including: (a) *a declaration that the respondent is the due and lawful holder of mineral rights or is a licensee of a piece of land described as “Obosomadum Rock and Area’’, measuring an approximate area of 89.78 acres, (b) an order declaring the alleged interference by the appellant and his agents as illegal, (c)damages* and *(d) an order for perpetual injunction.*

On 12 April 2021, the appellant filed a statement of defence in which he denied the assertions of the respondent. Issues were thus joined, and the foundation of a legal battle was set. Before the issues for trial could be settled for the on-set of full legal hostilities, the respondent approached the trial court with an interim prayer for interlocutory injunction. As was expected, the appellant joined issues with the respondent on the application. When the chips were down, the office of the trial judge settled the interim dispute, by issuing a decree injuncting not only the appellant, but also the respondent (therein applicant), from any alienation (in respect of the appellant) or development (in respect of both sides), of the subject land. The ruling, dated 23 August 2021, is found at page 136 of the record of proceedings (hereafter record). The decision of the trial judge to injunct the appellant, in addition to the respondent, has been the source of a second interim contestation, comprising of an application by the respondent to the trial court to invoke its inherent jurisdiction to set aside the first order of interim injunction, the grant of which by the same trial court (as differently constituted) on 6 June 2022, gave birth to the instant appeal.

The legal issues raised by the instant appeal include the: (a) *the proper criteria or standard of proof for grant of an interlocutory injunction (b) the propriety of injuncting an applicant to an application for interlocutory injunction (c) basis for injuncting a going business concern* and (*d) the jurisdiction of a trial court to vary an earlier interim order of interlocutory injunction granted by it.*

# GROUNDS OF APPEAL

The two grounds of appeal communicated by appellant’s notice of appeal dated 14 June 2023, are as follows:

* 1. *The court wrongly applied the principle governing the grant of interlocutory injunction.*
  2. *The court wrongly exercised its discretion in favour of the plaintiff/respondent in setting aside of the interlocutory injunction granted by the court earlier when there was no change in the conditions warranting the setting aside of the interlocutory injunction*.

## Reliefs

The appellant, prostrated at the feet of justice, beseeches this court to set aside the trial court’s variation decision of 6 June 2022, and restore the original order of interlocutory injunction imposed on both parties. The *bona fides* of the grounds of appeal and the reliefs sought, would be self-evident at the close of this speech. Before going to the issues, I shall first consider the preliminary legal objection raised by Counsel for the respondent in his written submission.

# PRELIMINARY LEGAL OBJECTION

In his written submission, Counsel for the respondent, for the first time, raised a preliminary legal objection, premised on Rule 8 (4) of the **Court of Appeal Rules, 1997 (C.I 19)**, which is to the effect that “*Where the grounds of appeal allege misdirection or error of law, particulars of the misdirection or error shall be clearly stated*.’’

Counsel for the respondent took this court through the precedential teachings of the courts in several cases on particularization of alleged errors of law and misdirection in law, including: **Sandema-Nab v Asangalia & Others [1996-97] SCGLR 302; Susan Bandoh v Dr Mrs. Maxwell Apeagyei Gyamfi (Civil Appeal No. J4/16/2016, dated 6 June 2019; Zabrama v Segbedzi [1991] 2 GLR 221, CA; United Bank of Africa v Afrimpex Enterprises Limited [2013] LPER-22603 (CA);** and **Atuguba & Associates v Holam Fenwick William LLP [2018-2019] 1 GLR 1-23.** He equally referred us to the authorial views on

the subject at stake, of the eminent writers Of *Odgers’ Principles of Pleading and Practice in the High Court of Justice (2nd ed. Page 340)* and (S.A Brobbey), *Practice and Procedure in the Trial Courts & Tribunals of Ghana (2nd ed., page 648)*.

Summated, his argument was that the failure of the appellant to provide particulars on the alleged errors of law or misdirection in relation to the two grounds of appeal rendered same incompetent and inadmissible, for which reason they ought to be struck out.

Counsel for the appellant did not exercise his right to file a reply under Rule 20 (6) of C. I. 19, to the preliminary objection. The only material for our determination is therefore the submission of respondent’s Counsel.

# PROCEDURE FOR PRELIMINARY LEGAL OBJECTIONS.

Rule 16 (1), C.I. 19, requires an objector to formally raise his objection in an application to enable the court rule on it before the hearing and determination of the substantive appeal. Rule 16 (2) mandates the court to ignore an objection not raised per Rule 16 (1). The rules provide:

### “16. Notice of preliminary objection to be filed.

1. *A respondent who intends to rely upon a preliminary objection to the hearing of the appeal shall give the appellant three clear days’ notice before the hearing of the preliminary objection, setting out the grounds of objection, and shall file tile notice specified in Form 8 in Part I of the Schedule together with five copies of the appeal with the Registrar within the same time.*
2. *If the respondent fails to comply with this rule, the Court may refuse to entertain the objection or may adjourn the hearing at the cost of the respondent or may make such other order as it thinks fit*.

The rule has been elucidated in several cases. In **Republic v Court of Appeal- Respondent, ex parte East Dedekotopon Development Trust-Applicant. The Director, Survey Division, Lands Commission, Accra-Interested Party [2015] GHASC 97**, Anin Yeboah, (JSC) held:

“*…As the appeal was deemed pending before the Court of Appeal, the Court of Appeal Rules, 1997, CI 19, rule 16 makes it mandatory that any respondent wishing to raise a preliminary objection to the Civil Appeal must give the appellant three clear days’ notice of any preliminary objection setting out the grounds thereof in compliance with FORM 8 in Part I of the rules. In the absence of any notice of preliminary objection at the instance of the respondent to the appeal, the Court of Appeal may proceed to hear the appeal if the first requirement in the MERAH v OKRAH case, supra, is met; that is, when the notice of appeal had been properly filed within the law. There is therefore the presumption of regularity in favor of the appeal, and it behaves the applicant as the respondent to the Civil Appeal to have raised a preliminary objection before the Court of Appeal that the conditions of appeal had not been fulfilled by the appellant. This the applicant failed to do…’’*

In the case of **Klenam Construction Ltd v Falcon Crest Investment Ltd & 4 Ors (Suit No. HI/182/2021, Dated April 2022),** this court per Kwofie JA, held at pages 9-11:

“*In our view, it is the grounds of appeal set out in the notice of appeal by an appellant that sets out his complaint against the judgment appealed against. It is based on this ground that an appellant sets out his written submissions setting out the facts of the case and the law applicable. See the case of Obeng vs Assemblies of God Church, Ghana [2010] SCGLR 300.*

*On the other hand, under Rule 15 of the Court of Appeal Rules … a respondent who seeks a relief from the Court does not need to file a cross- appeal but may seek a relief by way of variation of the judgment and clearly state in the written notice, the grounds on which the respondent intends to rely. Alternatively, a respondent who intends to rely on a preliminary objection to the hearing of the appeal shall proceed per the notice of preliminary objection pursuant to Rule 16 of the Court of Appeal Rules.*

*In this instant case, the respondent has neither asked by an application for relief by way of variation of the judgment or more appropriately, filed a notice of preliminary objection to the hearing of the appeal pursuant to Rule 16 of*

*C.I. 19. If the respondent had filed a notice of preliminary legal objection to the hearing of the appeal, then the question of the propriety of the notice of appeal filed by appellant …would have been set down as a preliminary point to be determined by the court. For a preliminary objection once raised, ought to be ruled upon…In our view, the issue of the propriety of the notice of appeal raised in the respondent’s written submissions not being based on a preliminary legal objection or on a notice for variation is contrary to the rules and same is accordingly struct out as not being properly before the court.”*

Evidently, the preliminary legal objection raised by Counsel for the respondent in his written submission was wrong in law, in terms of its form and timing. We dismiss it.

The dismissal however does not foreclose the issue of the propriety of the grounds of appeal. That was because, the court *suo motu*, has the duty and the jurisdiction to examine grounds of appeals and strike out inelegant ones.

Rule 8(4), C.I. 19 to that effect provides:

“*Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.’’*

The courts have either *suo motu*, or on application, and during judgments, applied the above rule to strike out several grounds of appeal. In **Susan Bandoh v Dr Mrs Maxwell Apeagyei-Gyamfi & Alex Gyimah [2019] DLSC,** the Supreme Court per Marful-Sau (JSC) held:

“*On examining the amended notice of appeal, I note that twelve (12) out of the fifteen grounds, namely 1,2,3,4,5,6,7,8,9,10, 12 and 13 alleged errors of law and misdirection, but the appellant failed to particularize the said errors and misdirection, to enable this court effectively address the said grounds as required by law. The errors and misdirection cannot also be inferred sufficiently from the wording of the said grounds. Accordingly, the said twelve (12) offensive grounds of appeal will be set aside as they are non-compliant with the rules of this Court,’’*

In **Addae Aikins v Daniel Dakwa [2013] 58 GMJ 187,** this court held through Ayebi, J.A

“*The appellant’s Counsel has patently failed to comply with the rules by stating the particulars of error. Stating of the particulars of error in appropriate circumstances is not without benefit to the parties and the court. Like pleadings, it gives notice of the appellant’s ground of dissatisfaction of the trial judge’s conclusion on the particular issue; it defines the scope of that dissatisfaction and then gives direction in a logical manner, arguments proffered. That being the case in the instant appeal as regards grounds (2) to (4), I will deal with this appeal on the omnibus ground in ground one”.*

In ***Zabrama v Segbedzi [1991] 2 GLR 22,*** Kpegah J.A, in dismissing the appeal held:

*“(1) to state in a notice of appeal, as did the appellant's Counsel, that "the trial judge misdirected himself and gave an erroneous decision" without specifying how he misdirected himself, was against the rules and rendered such a ground of [p.222] appeal inadmissible. The implications of rule 8 (2) and (4) of the Court of Appeal Rules, 1962 (L.I. 218) was that an appellant after specifying the part of a judgment or order complained of, must state what he alleged ought to have been found by the trial judge, or what error he had made in point of law. It did not meet the requirement of those rules to simply allege "misdirection" on the part of the trial judge. The requirement was that the ground stated in the notice of appeal must clearly and concisely indicate in what manner the trial judge misdirected himself either on the law or on the facts. The rationale was that a person who was brought to an appellate forum to maintain or defend a verdict or decision which he had got in his favour should understand on what ground it was being impugned. Therefore, as the ground of appeal alleging the misdirection failed to meet the required standard, it was clearly inadmissible.”*

It is clear from Rule 8(4) of C.I. 19, that where a party alleges a misdirection or error of law but fails to (a) particularize the error or misdirection, and (b) the essence of the error or misdirection cannot be gathered from the alleged inelegant ground of appeal, the court is obliged to strike out the offending ground of appeal, either on application or *suo motu*.

In the notice of appeal dated 14 of June 2022, the first ground of appeal is that: “*The court wrongly applied the principle(sic) governing the grant of interlocutory injunction*.’’

Counsel for the appellant left everyone in the lurch as to which principle(s) were wrongly applied. The first ground of appeal is manifestly vague, imprecise and inelegant. It is inadmissible as a ground of appeal. I *suo motu*, strike it out.

The second ground however gives sufficient basis for the complaint in that ground and is therefore admissible.

# APPEAL AS A REHEARING

It is the statutory command of Rule 8 (1), C.I. 19, that an appeal shall be by way of rehearing. The rule has been elucidated in several notable cases including: **Tuakwa v Bosom [2001-2004] SCGLR 61; Koglex (no. 2) v Field [2000]**

## SCGLR 175 and Brown v Quarshigah [2003-2004] 93.

The appeal is against the High Court’s ruling of 6 June 2022. That ruling was because of a complaint by the respondent herein against a ruling of the same court, as differently constituted, on 23 August 2021. A rehearing must comprise a review of the entire record to remediate errors by the trial court linked to the grounds of appeal. In the instant case, the two rulings are inextricably intertwined by legal fate, and have must be examined under our appellate microscope.

I shall enquire into the *bona fides* of the first ruling, after which I shall examine the propriety and cogency of the second ruling, against which the instant appeal was lodged. Before that however, I shall skeletonize (a) *the affidavit facts of the case, (b) the submissions of Counsel for the parties in this appeal,* and *(c) the standard of proof for applications for injunctions; whether interim or interlocutory.*

# FACTS OF THE CASE

I shall hereunder endeavour to summate the facts of the case of each side at the court below. This is essential, since it is upon the facts that the analysis and decisions were made by the two trial judges, leading to this appeal.

## Case of respondent

In the affidavit filed by the respondent in support of the first application, it deposed, *inter alia*:

* 1. That in the year 2003, it acquired a tract of land called the Obosomadum Rock and Area, for its quarry operations. A copy of its allocation note from the Adomakoaa Atoo Kuafo Stool, was annexed as exhibit A.
  2. That it acquired the necessary permits, licencees and mineral rights to carry out quarry/mining operations. Annexed to the application as exhibit B are the permits etc.
  3. That it went to the site, mined for a period, and stopped, due to some challenges it faced.
  4. That in 2018, it applied for the permits, licencees and mineral rights to enable it to continue its operations, and that was when it came out that the appellant had encroached upon portions of the land, by curving out portions and selling same to unsuspecting persons as residential plots. These buyers, without the necessary permits had begun developing the lands, in the teeth of protests from the respondent.
  5. That the occupant of the Golden Stool, Otumfuo Osei Tutu II even ordered the arrest of the appellant for his alleged illegal, unwarranted, indiscriminate, and unapproved selling of portions of the subject land. The order of Otumfuo was tendered as exhibit C.
  6. That it has a current and subsisting mining permit. The current mining permit over the subject land was tendered as exhibit E.
  7. That upon securing the mining rights, it sent equipment and other materials to the site, but the appellant, with the use of thugs and armed men, has been attacking its workers and others, including police men, destroying its equipment, and preventing the company from carrying out its activities. Probably worse was appellant’s alleged setting of fire to the land, resulting in the destruction of respondent’s equipment, structures, and machinery on the land.
  8. That the acts of the appellant have resulted in untold hardship and irreparable damage, in the face of the huge monies invested in the business, the equipment placed on the site, and the period for which the licence was granted.

## Case of appellant

The appellant filed an affidavit in opposition in which the following case was made out:

1. That he had the authority and consent of the Adomakoaa Atoo Kuafo Stool to depose to the affidavit.
2. That previously, three companies carried out quarrying/mining operations in the same area but never acquired any land belonging to his family or stool, and their activities were restricted to the rock, which is controlled by the Minerals Commission.
3. That in 2003, the respondent came to introduce himself to the Queen mother of Krobo Buoho as a grantee of a permit to carry out quarrying/mining operations on the rock called Obosomadum Rock. Respondent gave “drink’’ to the Queen Mother and promised to donate GHC100,000.00 to the family as part of the company’s social responsibility.
4. That one blasting by the respondent in 2003 sent several big particles of rock to the homes of people living around the area, leading to the destruction of their properties. That incident led to stoppage of work by respondent until its mining licence expired.
5. That the Adomakoaa Atoo Kuafo Stool has never issued an allocation note to the respondent. The allocation note being relied on by the respondent was labelled as fake, most importantly, since the type is issued for the purpose of buildings and not mining.
6. That at the time respondent applied for the renewal of the mineral licence, the area around the rock had so developed that any quarrying/mining activity would put the lives and property of those in the community at risk.
7. That there are about 1,500 buildings, including land bought for the Ghana Registered Nurses and Midwives Association, with some of the buildings completed and some at various advanced levels of development. Photos of the buildings on the land were annexed as exhibit “KD6’’series.
8. That on account that the appellant himself and over 1,500 inhabitants stand to suffer inconvenience, hardship and irreparable loss, the application had to be refused.

# SUBMISSIONS OF COUNSEL FOR THE PARTIES

I begin with Counsel for the appellant. With the facts as the background, he first contended that the respondent who has not received the ratification of his licence as required by article 268 of the constitution, is engaging in an illegality and ought not be entertained by the court. He relied on **Amidu v Attorney General, Waterville Holdings (BVI) Ltd. & Wayome (N0 1) [2013-2014] 1 SCGLR** and **The Republic v High Court, Accra, Ex Parte Attorney General (Exton Cubic Group Ltd-Interested Part) [2020] 152 GMJ 189, SC.**

Appellant’s Counsel accused the respondent of not procuring Forestry Commission and Environmental Protection Authority permits, as required by the **Minerals and Mining Act, 2006 (Act 703).**

In his view, the appellant in the first instance established a *bona fide* interest in the subject property, which required protection by the court. He firmly believes that the first trial judge was right in injuncting both parties and found the decision of the second trial judge to set aside the said order as groundless and illegal.

Counsel for the respondent began with a preliminary objection, which I have dealt with *supra*. He addressed the court on the standards for the grant of interim injunctions, including the need to establish a legal right in the subject property, the issue of adequacy of damages in the event of refusal of the application and the balance of convenience, or rather inconvenience. He referred the court to the constitution, legislation, several relevant cases and authoritative writings of legal scholars within and without Ghana.

# STANDARD OF PROOF FOR AN APPLICATION FOR INTERIM OR INTERLOCUTORY INJUNCTION.

Statute has laid down the standards of proof for criminal cases and civil claims. Per sections 11(2) and 13 (1) of the **Evidence Act, 1975 (NRCD 323)** the standard of proof for criminal cases is “*proof beyond a reasonable doubt*’’. In civil cases, the standard set by section 12 (1) of NRCD 323, is “*proof by preponderance of probabilities.’’*

Applications for injunctions are likely the most frequently occurring amongst all interim applications to the trial courts. Besides being bound by the general standard of proof for civil cases, injunction applications have their own subset of standard of proof, which must be met by every applicant. The problem has been the lack of clarity and consistency about the nature and features of the sub- standard of proof. This has been largely due to the conflicting terminology used by judges in their rulings, which also is because of the discretionary nature of the jurisdiction on injunctions.

The problem is as common as common law but permeates the boundaries of the common law. The facts of the case of **American Cyanamid Co v Ethicon Ltd [1975] UKHL 1,** communicates that the plaintiffs in a patent infringement action applied for an interlocutory injunction which was granted by the trial judge but reversed on appeal by the Court of Appeal, mainly on the ground that no *prima facie case* of infringement had been made out. The Court of Appeal decision was reversed by the House of Lords which held that in all cases including patent which was at issue, the fundamental question to be resolved in an application for interim or interlocutory injunction, is whether the applicant had shown a *serious question for trial*, after which the application was to be determined by the balancing of conveniences.

The House of Lords per Lord Diplock deprecated the use of expressions such as *‘’ a probability’’, ‘’ a prima facie case’’*, or ‘*’ a strong prima facie case’’* in the context of exercise of a discretionary power to grant injunctions. Some judges and courts have diverged on the effort by the House of Lords to establish a specific standard of proof for interlocutory applications, which downplays the need to examine the merits of the case. Judge Sir John Pennycuick in **Fellows v Fisher** [1976] 1QB 122, for example, emphasized the importance of the *prima facie* test, especially in applications based largely on interpretation of documents or involving trespass and the internal affairs of a company.

The standard of proof for an application for interlocutory injunction established by the **American Cyanamid** case has been un-uniformly applied in Ghana. Shortly the House of Lords’ decision in the American Cyanamid case, this court adopted the standard laid down therein in the case of **Vanderpuye v Nartey [1977] 1 GLR 428,** in which the *prima facie* test was equally deprecated and the *serious question for trial* test exalted.

The application of the standard in Ghana has not been uniformed as aforesaid. The *prima facie* test and the *serious question for trial* tests have been applied by different courts and judges in differing ways on different occasions. While some judges and courts have insisted on the *prima facie/serious prima facie* test, for instance in : **Punjabi Brothers v Namih [1953] 3WALR 381; Bilson v Rawlings [1993-94] 2GLR 413; New Patriotic Party v Electoral Commission [1992-1993] 1 GLR1 SC; Frimpong v Nana Asare Obeng [1974] 1GLR16; Annobil v Annobil [1968] GRL 108 and Baiden v Tandoh [1991] 1 GLR 98,** the *serious question for trial* test, or its variant, *legal right at law or equity,* which is an affirmation of the American Cyanamid test, has been dominantly applied, especially by the apex Court. Precedents affirming the legal right at law or equity standard includes: **Quansah v Quansah [1984-86] 1 GLR 718, CA, Contractor Resources v Boohene [1992-93] GBR 1512, CA; Montero v Redco [1984-86] 1 GLR 710 CA; Pountney v Doegah [1987-88] 1 GLR 111, CA; Anane v Osei** Tutu [1976] 1 GLR 111; and Owusu v Owusu-Ansah [2007-2008] SCGLR

**870** and **Welford Quarcoo v Attorney-General [2012] 1SCGLR 559**.

Some judges and scholars however believe that the use of the terms of *prima facie test* or a *legal right test* is only a matter of semantics. To that effect, Canadian judge Steele J held in **Carlton Realty Co v Maple Leaf Mills Ltd [1978] 93 DLR** (3rd) 106,110-111:

“*The cases often refer to* ***a prima facie*** *case,* ***a fair prima facie*** *case,* ***a probability of success****,* ***a serious question to be tried****,* ***a substantial issue to be tried****. These are only some of the many phrases that have been used in dealing with this matter. While there are differences in degree in all these phrases, I do not consider them to be substantially different. Each case must be considered on its own merits and then the discretion of the court must be exercised. The exercise of a discretion by its nature is not an exact science. Different judges may come to different conclusions, and provided that they have exercised their discretion within the jurisprudential framework, it is futile to quibble over the semantics of the words they individually use. The American Cyanamid case set standards that appear in their words to be more lenient than the words ‘prima facie’ or ‘probability of success’. I am of the opinion that there is no serious difference. Surely a serious question to be tried equates to a prima facie case”.*

I concede that indeed, there is little or no practical difference in the terms. I will however largely tow the current trend by which the courts, led by the apex court, has moved away from use of the terms *prima facie, strong prima facie*, and *probability of success* test to the test of a *legal right at law or equity*.

In **Owusu v Owusu-Ansah [2007-2008] SCGLR 870**, the apex court laid down the fundamental principle for grant of an application for injunction (in holding 1) as follows:

*“...The fundamental principle in applications for interim injunction is whether the applicant has a legal right at law or equity, which the court ought to protect by maintaining the status quo until the final determination of the action its merits.”*

The above test, while holding fidelity to the test in the American Cyanamid and Vanderpuye v Nartey cases, only captures only one, albeit the most fundamental, of the three interlinked tests for proof of applications for interim or interlocutory injunctions. The standard of proof in an application for interim or interlocutory injunction comprise a *three-tier composite* test which must all be satisfied unless the applicant fails the first and most fundamental test as outlined in **Owusu v Owusu-Ansah**.

A recent decision of the apex court that most accurately laid down the standard of proof in an application for injunction was in **Welford Quarcoo v Attorney- General [2012] 1SCGLR 259** at 260, where Dr. Date-Baah, JSC, as sole judge, delivered himself 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...”*

His Lordship captured accurately, the *three-tier composite* standard for the determination of applications for interim or interlocutory injunctions. One standard cannot be applied without the other, and the proper places of the tests in the hierarchy were recognised. The decision in **Welford Quarcoo v Attorney- General** (supra), affirms the current criteria applied by the English courts, as reflected in **Factortame Ltd v Secretary of State for Transport (No.2) [1991] 1 All ER 70 at 85**, in which the House of Lords held:

*“(O)n that basis the appropriate criteria will be those which the English courts currently apply with regard to interim relief and which involved the court asking itself: (a) whether there is a serious issue to be tried, or, in other words, whether the action has a ‘rear prospect of success’ (b) if so, whether damages are obtainable and, if they are, whether they constitute an adequate remedy for one side or the other; (c) if not, where the balance of convenience lies as between the parties…”*

I shall hereafter apply the *three-tier test* to the appeal in order to determine as to whether the two rulings under our appellate microscope, appropriately applied the standards set down.

# I. WHETHER OR NOT THE RESPONDENT WAS ABLE TO SHOW A LEGAL RIGHT AT LAW OR EQUITY

In its bid to prove that it has a legal right in the subject property, the respondent produced evidence of a customary grant of the subject land. Per exhibit A, which is a plot or land allocation note, the respondent was granted the “*Obosomadum Rock and Area’*’, by the Adomakoaa Atoo Kuafo Stool. The allocation note is dated 24 January 2003. The respondent tendered a mining licence over the same piece of land which is dated 6 February 2004. Based on the allocation note and the mining licence, the respondent was granted a land certificate on 8 October 2004. The mining licence of the respondent was renewed on 20 May 2020, effective for five years thereafter.

The appellant has conceded that the respondent in 2003, came to introduce itself to the Queen Mother of Krobo Buoho, Nana Amma Mansa, as a grantee of a permit to carry out quarrying/mining operations on the Obosomadum Rock. According to him, the respondent gave the Queen Mother what he considered to be drink. It also promised to donate GHC100,000,00 to the community as his social responsibility.

The acceptance of the drink and the agreement to accept the social responsibility money, signalled the recognition by the stool of Krobo Buoho that the respondent has the legal right to quarry and mine in the Obosomadum rock, based on the mining licence. By the foregoing, the respondent had established a legal right in the subject land which the court was duty-bound to protect.

It is noted that the respondent in paragraph 2 of the statement of claim (page 3 of the record) identified the appellant as follows: “*The defendant carries himself out as the chief of Krobo Buoho in the Afigya Kwabre District of the Ashanti Region and is a resident of Buoho*...’’

The above characterization placed the status and capacity of the appellant into doubt. In paragraph 2 of his statement of defence (at page 77 of the record), the appellant identified himself as “*The Oheneyere head of Family at Krobo Buoho*’’. This presupposes that he is indeed not the chief of Krobo Buoho. In paragraph 12 of his affidavit in opposition to the initial application for interlocutory injunction (found at page 83 of the record), the appellant conceded that one Nana Amma Mansa was or is the Queen Mother of Krobo Buoho. It was the said Queen Mother that the respondent approached to introduce itself in 2003, and she was the one who accepted respondent’s “drink’’.

It is noted that the appellant in the statement of defence, counterclaimed for several reliefs, including a relief 2, which seeks “*A declaration that the land aforementioned land (sic) is vested in the Adomakoaa Atoo Kuafo Stool of Krobo Buoho*’’.

The question is, since the appellant is not the chief or queen mother of Krobo Buoho, and neither is he the head of the Adomakoaa Atoo Kuafo Stool, and further, since he does not possess any power of attorney to act on behalf of the stool family or the chief, in what capacity is he acting or claiming the subject land?

The capacity of the appellant is placed in very sharp focus on account of exhibit “C’’, which is a record of proceedings from a meeting presided by the Otumfuo.

At the said meeting, which was attended by several other prominent chiefs, the Otumfuo ordered the arrest of the appellant as an imposter who was selling lands illegally at the subject area. He declared:

“*I have learnt that one Kwaku Duku has been selling unapproved plots of land at the place in question. According to him, he had won a court suit that supposedly warrants him to sell such plots without approval. I want you to cause his immediate arrest by the police*’’.

In the face of the critical challenge to his status, authority and capacity, all that the appellant could do was to barely claim that he is the “*Oheneyere head of family at Krobo Buoho*’’. Even that bare assertion had been undercut by the statements of Otumfuo regarding that position.

The result being that, whereas the respondent was able to prove by *prima facie* evidence that it has a legal right in the subject property requiring protection by the court, the status, capacity and right of the appellant in the subject property, whether legal or equitable, was clouded even before the beginning of full legal hostilities.

In considering an application for injunction, the court first conducts an enquiry into the first test as I have done above. Where an applicant fails the first test, which is the existence or otherwise of a legal in the subject property, the court must out of duty dismiss the application without consideration of the two other tests. But where the applicant surmounts the first test, the court must proceed to the other two tests.

Since the respondent herein has passed the first test, I move to the second test for the determination as to adequacy of damages.

# ADEQUACY OF DAMAGES

The issue of irreparability of injuries or adequacy of damages is determined by the facts of each case. The *“irreparable injury rule”,* according to the Black’s Law Dictionary (9th ed. P 906) is the:

*“Principle that equitable relief (such as an injunction) is available only when no adequate legal remedy ( such as monitory damages) exist...”.*

In **Okafor v Onwe [2002] WRN** 34 at 51, it was held:

“*The main consideration in deciding whether damages alone would be adequate compensation for an applicant or is not usually dependent on what was claimed by the applicant in his substantive suit. If his claim was for pecuniary compensation only, then no injunction, whether interlocutory or perpetual would be granted to him.*

*But if, as is usually the case in most trespass cases he claims not only damages for trespass, but also for injunction to restrain defendants from further acts of trespass, injunction (interlocutory or perpetual) will be granted to protect the plaintiff’s possession…*’’

## See also: Bonsu v Agyemang [2012] 2 SCGLR 978 and Ahumah v Akorli (No 2) [1975]1GLR 473.

The judge as the trier of facts must determine whether a refusal of the application would result in irreparable injury, or whether damages would be adequate remedy if the application was refused, and the applicant prevailed in the end. These considerations are based on subjective analysis because there is, nothing of worth, including life, that cannot be “compensated’’. The judge’s duty is basically preventive. The judge prevents needless injuries from being inflicted on parties. For instance, a judge will not allow a dangerous activity that can cause life to proceed because the family of the deceased can seek damages for wrongful death. In the same vein, the court will not restrain a lawful activity of a respondent because the applicant has recklessly and lawlessly decided to remain in the dangerous area.

The right of the respondent in the subject land is the right to operate a quarry/mining in the site. To begin with, all minerals are vested in the State through the President. Accordingly, neither the Krobo Buoho Stool nor any other authority has the right to allocate the site to any other person for mining or building purposes. It is trite legal knowledge that the lands around minerals sites are buffer zones that cannot be allocated by stools or even the government for ordinary building purposes by members of the community.

By the words of the appellant, the community grew so close to the mining site after the expiration of the first licence granted the respondent. The appellant whose capacity to allocate to the developers, according to the respondent is being questioned, was fully aware that the site is for mining. He deposed in his affidavit in opposition that three companies had operated at the site before the respondent. He knew or ought to have known that there is a buffer zone around the site which cannot be breached. He never tendered any document from the District Assembly indicating a rezoning of the land around the Obosomadum Rock from mineral to residential. He appears to have allocated encumbered land, for residential buildings in such a manner as to elicit the rebuke of the Asantehene himself.

Since the mining licence allocated to the respondent is for a limited period, and on account of the investment in equipment and structures the respondent has already made in relation to the land, we determined that damages would not be adequate remedy, in the event of refusal of the application and success of the action of the respondent. If the respondent is restrained, the licence would expire and its investments would be lost, in a circumstance where the appellant does not appear to be in the position to remedy same by the payment of damages.

On the other hand, the appellant at this stage has not shown any legal right in the subject land. His sale of parts of the land appears to be of doubtful authority, a position echoed by the Otumfuo himself. None of the parties he has allocated plots to has seen it fit to join the suit. The appellant cannot fight their case as their proxy. Under the principle of *Jus tertii*-third party rights, the appellant cannot fight for third parties who are aware of the suit but have opted to stand aloof. If it turns out that the allocations made by the appellant are within the mining site or its buffer zone, neither the appellant nor its grantees would be entitled in law to damages. The grantees would only be entitled to damages and the retrieval of their consideration from the appellant. Should the appellant prevail at the close of the case, the respondent which is a business concern is in a position to pay him damages. We conclude under this heading that whereas damages may not be adequate, and the appellant whose very status is in doubt, and is not likely to be in the position to compensate the respondent in the event of the grant of the application and the loss of his cause, the second test also favoured the respondent over the appellant.

# BALANCE OF CONVENIENCE/INCONVENIENCE

Giving legal and intellectual base for consideration of this test, the Nigerian Court of Appeal per Tobi JCA, in **ACB v Awogboro [1991] NWLR (Part 176) 711 at 719,** held**:**

“*The balance of convenience (the opposite of inconvenience) between the parties is a basic determinant factor in an application for interlocutory injunction. In the determination of these factors, the law requires some measurement of the scale of justice to see where the pendulum tilts. While the law does not require mathematical exactness, it is the intention of the law that the pendulum should really tilt in favour of the applicant’*’.

Under the third test, the “*conveniences*’’ are balanced. This terminology however appears to be a misnomer. That was because, there is nothing “*convenient*’’ about the grant or refusal of an application for interlocutory injunction. What is considered or balanced, is the relative “*inconvenience’*’ that each party is likely to suffer in the event of grant or refusal of the application.

In balancing the likely inconveniences, the court looks at the cold facts on the ground. In the instant case, the respondent produced affidavit evidence which *prima facie* shows that (a) it has a licence to operate a quarry/mine in the subject rock and its buffer zone (b) that it has a customary right to undertake the activities, evinced by the allocation note (which the appellant disputes) and the provision of “drinks’’ to the Krobo Buoho Stool (which the appellant concedes)

(c) that the respondent has acquired equipment and made other investments to enable it carry out its business.

On the other hand, appellant’s *locus standi* at this stage is in doubt. His allocations so close to the quarry/mining site appear to be within the buffer zone to the mineral site.

Counsel for the appellant asserted that the second trial judge was wrong to consider the investments made by the respondent in reviewing the first order. He was very far from the truth. The principles for determination of injunction applications are not abstract theories in the sky with no relevance to facts on the ground. The principles are applied to real facts on the ground, which comprises of the history of the dispute, actions, and inactions of the parties as well as the applicable laws.

It cannot be a correct statement of the law that the investments that a party has made in good faith and in accordance with the law, and which he is likely to lose without a likely recompense from his opponent is not a legitimate factor to be considered in balancing the likely inconveniences.

Ordinarily and absent an illegality, an injunction is not granted against an operating business, religious body, or the government. In the case of the **Trustees of the Saviour’s Church of Ghana v Essien & Anor [1984-86] 1 GLR 265**, HC, Twumasi J, speaking for the court, held *inter alia*:

“(2) *… In any event, an injunction would not be granted to stop a going business concern or religious worship…’’*

There are good reasons for not injuncting a going business concern.

1. Firstly, the state relies on taxes from businesses to embark on development. An injunction against a going business concern is an attack on the government’s revenue and tax targets. It will indirectly affect the development agenda of the state for the period of the injunction and even beyond.
2. In a largely market economy such as that of Ghana, government’s ability to employ citizens is quite limited. Worse is the case when financial bodies such as the IMF is dictating the economic direction. Injunctions on businesses that provide some leeway on employment of citizens would result in hardships, not only on the business owners, but on the employees and their families. This is in addition to the income taxes the government would lose from the employees.
3. The community in which the business is sited equally stands to lose, in terms of petty trading engaged in usually by the women’s folk around the businesses.

Since the mineral is vested in the State and it is the State grants licencees for its exploitation, an injunction against the respondent, indirectly is an injunction against the State. If the argument of the appellant prevails, the net effect would be that no business even beside the respondent can ever carry out mining or quarrying activities in the site, because it would offend the developers whose presence is of doubtful basis and require explanation. It will mean that by appellants actions, the State has lost or would lose the benefit in the mineral in the site.

When the (in)conveniences are balanced, it is easy to conclude that respondent will suffer inordinately, as compared to appellant. The purpose of an interim or interlocutory injunction is to preserve the *status quo (ante bellum)* until the suit is determined on its merits. That principle has been stated in cases including **Chief Tsokosi v Alhaji Abbas [1972] 1 GLR 257; Owusu v Owusu-Ansah [2007-**

## 2008] SCGLR 870 and Odonkor v Amatei [1987-88] 1 GLR 578.

The *status quo* is the existing state of affairs. The *status quo ante* or fully the *status quo ante bellum*, is the state of affairs that existed before the occurrence of the event or dispute, see **Black’s Law Dictionary** (9th ed, p 1542). Historically, the *status quo ante bellum* referred to the state of affairs that existed before a war, see Fellmeth, Aaron X.; Horwitz, Maurice (2009), “*Status quo ante bellum”, Guide to Latin in International Law, Oxford University Press*.

The *status quo* in this case, which the state of affairs before appellant allocated plots of land to members of the public is that the Obosomadum Rock and area is a mineral site that is vested in the State of Ghana. Quarrying and mining have always taken place in the site. In paragraph 9 of his affidavit in opposition, the appellant revealed that three companies, namely, Industrial Development Company (IDC), United Company Limited and Osei Bonsu and Associates “*carried out quarrying/mining operations in the area*’’. If these three companies carried out quarrying and mining operations in the area, as the appellant alleged, without even formal agreement with the stool, why can’t the respondent who has sought leave of the stool not do same?

If the previous companies carried out their activities without any trouble, why can’t the respondent do same?

It is obvious from appellant’s own showing that he has made allocations so close to the site that he fears an accident. The question is, can the appellant be allowed to make what appears to be illegal allocations so close to a mineral site that the state and the Ghanaian public should lose the benefit of the mine? What happens to the rule of law if citizens who allocate land around mineral and other state resources are protected to the degree of the State losing the benefit of the minerals?

The *status quo ante* that ought to be preserved, is the constitutional right of the State to the mineral in the Obosomadum Rock, and its right to grant licences for mining and quarrying, which right cannot be exercised if the buffer zone around the mineral site is encroached upon as the appellant and his grantees appear to have done. The balance of the likely (in)conveniences by far favours the respondent as against the appellant.

Having laid out the applicable principles for determination of an application for interlocutory injunction and the strength of each side relative to same, I shall now proceed to a review of the two rulings of concern.

# RULING OF 23 AUGUST 2021

In this ruling, the first trial judge determined that (a) each side had shown a legal right in the subject matter of the dispute (b) that damages was not likely to be adequate for either side in the event of grant or refusal of the application and (c) that the conveniences or rather inconveniences were fairly equally balanced between the parties. It was based on those considerations that the order of injunction was placed on both parties.

The foregoing analysis of the injunction principles and the affidavit evidence of the parties show clearly that the first trial judge was wrong in imposing the order on the respondent.

Firstly, whereas the respondent was able establish a legal right in the subject property, based on the State’s constitutional right to the mineral in the Obosomadum Rock and Area, from which right a mining licence was issued to the respondent, the appellant could not show the legal basis for his allocation of land anywhere in Krobo Buoho or so close to the mine in the Obosomadum Rock and Area. As aforesaid, appellant’s allocation has been labelled illegal, not only by the respondent, but also by Otumfuo the Asantehene. The appellant is not the Chief of Krobo Buoho, or an accredited representative of the said stool. He does not hold a power of attorney from the stool. His claim as Oheneyere head of family was undercut by the Otumfuo’s statement .

He did not tender any document from the Local Authority to indicate that the area has been zoned or rezoned for development of homes.

Secondly, whereas the respondent as a duly incorporated business is in the position to pay damages to the appellant, there is no likelihood that the appellant can do same if he loses the cause.

Thirdly, the balance of inconvenience was inordinately stacked against the appellant. An order of interlocutory injunction is not ordinarily imposed on a business concern unless it was engaged in apparent illegality. The above factors in addition to the heavy investment made by the respondent which has to be recouped and the expected revenues and taxes to the State from the respondent and its employees, made the imposition on it of the order of injunction manifestly unjust and oppressive.

# RULING OF 6 JUNE 2022

This ruling was tendered by the trial court, as differently constituted on 6 June 2022. It set aside the order of interlocutory injunction placed on the respondent on 23 August 2021.It was anchored on the following:

1. That respondent has a legal right in the subject matter whiles the appellant who has no such interest was making allocations to people.
2. The heavy investment made by the respondent in acquiring machinery and the employment of personnel, which will result in irreparable damage if the order was not reversed.

It was the first anchor of appellant’s submission that the earlier order was justified on account of respondent’s failure to seek ratification of its mineral licence under article 268 (1) of the constitution. That contention has no basis. The issue of whether the respondent has received parliamentary ratification or not is a question of fact. It is a material fact that appellant should have pleaded if he wanted to rely on it. Appellant did not also depose to that fact in the affidavit in opposition to the application. It was rather the trial judge who in his ruling of 23 August 2021, raised that issue. Aside not having legal basis to do that, the comment was prejudicial. A party on appeal is not entitled to canvas a case not presented at the court below. I reject that submission.

The appellant contended further that the second trial judge could not set aside the first order because the circumstances had not changed. Indeed, changed circumstances is a common ground for setting aside an order of interlocutory injunction, but it is not the only ground for so doing.

In **Vanderpuye v Nartey [1977] 1 GLR 428, CA**, it was held (holding 1):

*“If there was a new matter which changed the positions of the parties, a court should look at it to determine whether the prayer in a motion for interlocutory relief ought to be granted despite the fact that a similar motion had already been disposed of in relation to the same question’’*.

Further grounds for varying or setting aside an order of interlocutory injunction was identified in **The Republic v High Court(Comm. Div. A) Tamale Exparte, Dakpema Zobogunaa Henry Kaleem(substituted by Alhaji Alhassan I Dakpema) (Applicant) Dakpema Naa Alhassan Mohammed Dawuni (Interested Party)** (J5/6/2015)[2015] GHASC 10 (4 June 2015), where the Supreme Court held, inter alia:

*“Interim orders made by the court are temporary and can thus be revisited by the court as the circumstances and justice of the moment dictate. Sometimes the court can act on its own motion, if need be, especially in cases involving infants or wholly or partially illegal and void decision or order.*

*In the English case of* ***Mullins v. Howell (1879) 11 Ch. D. 763****, the court made an interlocutory order by the consent of the two parties. Subsequently one of them applied to the court to vary its terms because he had discovered that one of the terms was included by mistake. The court decided that even*

*in a case like this where the order was made by consent it was possible to vary it whilst the substantive case was still pending before the court. Per Jessel M.R. at page 766:*

*“I have no doubt that the Court has jurisdiction to discharge an order made on motion by consent…the court having a sort of general control over orders made on interlocutory applications…the court has jurisdiction over its own orders, and there is a larger discretion as to orders made on interlocutory applications than as to those which are final judgments.”*

*In the case of* ***In Re Blenheim Leisure (Restaurants) Ltd. (No. 3), The Times, 9 November 1999****, the court gave several examples of cases where it might be just to revisit the earlier decision, including mistake, failure to advert to certain facts and so on and so forth. The Supreme Court of England took an extreme position in the case of* ***In Re L and Another (Children) (Preliminary Finding: Power to Reverse)(2013) TLR 22*** *that a judge could even reverse his decision for good reason where no party’s position has been altered since the delivery, especially when the order has not been drawn up. All these cases go to confirm the control a court has over its decision which is not on appeal and particularly when it is not the final decision of the court’’.*

### In Handbook on Civil Procedure & Practice in Ghana (2023, page 403),

Francisca Serwaa Boateng provides the following grounds:

“*Courts grant applications for interlocutory orders as part of their duty to hold the scales evenly between the parties. But there are instances where a court may discharge the order it had earlier made. Several reasons may account for this line of action. First of all, where the applicant fails to make vital or material disclosures in her ex parte application…Secondly, where the applicant fails to comply with an order made by the court…Again, where third party rights have been affected by the grant of the order, the court may discharge the order. Another ground on which a court may discharge its orders is where there has been a material change in circumstances. Also, where the applicant fails to prosecute the case after he has secured an interlocutory order…A party can also apply for a variation of an order made by the court where the party is able to show that the order is oppressive…’’*

The foregoing demonstrates the wide discretion of the court in varying or discharging interim orders such as interim or interlocutory orders made by it. Some of these grounds may be summed up as follows:

1. Where the circumstances under which the interim order was made has changed in a material way or a new matter has changed the positions of the parties.
2. Where there was a mistake in a fact relied on, e.g., a wrong figure of an amount of money, or a failure to advert to certain relevant material facts, or a mistake in the statement of the law relied on in making the order.
3. Where the facts relied on by the applicant were deceptive or misrepresented, or the applicant failed to make vital or material disclosures.
4. Where the order is working injustice on a party or is otherwise oppressive.
5. Where the applicant (beneficiary) has failed to comply with terms of the order.
6. Where third party rights have been affected by the order.
7. Where the applicant fails to prosecute the case, either at all, or with the necessary diligence and speed, after securing the order.
8. Where there is need to clarify the language or terms of the order.

**CONCLUSION**

So long as the substantive matter was pending before it, the trial court had a wide discretion to make interim orders and to discharge them if the need arose. Based on the affidavit evidence presented before it, the trial court had no justification in injuncting the respondent in the ruling of 23 August 2021. The order injuncting the respondent amounted to a wrong exercise of discretion. The order was unjust and oppressive, for failing to take into account the investment made by the respondent and for indirectly tying the hands of the state from utilizing a resource it was constitutionally entitled to.

The court was accordingly justified in setting aside the earlier order, in the second ruling dated 6 June 2022. That decision is affirmed, as the appeal stands dismissed for lack of merit.

The respondent is to file an undertaking as to damages with the Registry within three (3) days, in compliance with Order 25 rule 9, C.I 47.

**(SGD.)**

**ERIC BAAH**

**JUSTICE OF APPEAL**

**I agree. (SGD.)**

**ALEX OWUSU-OFORI**

**(JUSTICE OF APPEAL)**

**JUDGMENT OF ANGELINA MENSAH-HOMIAH (J.A) CONCURRING TO THE JUDGMENT**

**INTRODUCTION:**

This is an Interlocutory Appeal against the Ruling of the High Court, Kumasi, dated 6th June 2022, which went in favour of the plaintiff/applicant/respondent. The defendant/respondent/appellant has invoked our jurisdiction by a notice of appeal filed on 14th June 2022 and seeks an order setting aside the said ruling. I have had the privilege of reading the lead Judgment of my brother, Baah JA, in draft, and I agree with the conclusion reached. This supporting opinion captures my reasoning for coming to the same conclusion as my brother did.

The designations of the parties at the court below would be maintained in this judgment.

# BACKGROUND FACTS

The substantive case commenced on 17th February 2021, when the plaintiff issued a writ of summons accompanied by a statement of claim against the defendant for the following reliefs:

1. *A declaration that the plaintiff is the due and lawful holder of all those mineral rights and/or license over and respecting all that parcel of land lying and situate at Krobo Buoho in the Afigya Kwabre District of the Ashanti Region, known and described as the Obosomadum Rock measuring an approximate area of 89.78 acres.*
2. *A declaration that the defendant, his agents, assigns, privies or any person whatsoever claiming through him has no right whatsoever to interfere with the lawful operations of plaintiff on that parcel of land in accordance with the license and/or mineral right granted it for the period as is stipulated in the license.*
3. *General and exemplary damages for the loss suffered by the plaintiff resulting from the unlawful and reprehensive conduct of the defendant and his agents in preventing the plaintiff from lawfully carrying on its operations from the parcel of land in accordance with the license granted it.*
4. *General and exemplary damages for the assault on the plaintiff ’s officer by and at the instance of the Defendant and his agents.*
5. *General damages for trespass*
6. *An order for perpetual injunction restraining the Defendant, his agents, privies, assigns etc. from in any way whatsoever having anything to do with and/or interfering with the plaintiff ’s operations and enjoyment of the parcel of land in accordance with the license granted it.”*

The defendant denied liability to plaintiff’s claims and counterclaimed as follows:

1. *“A declaration of title to all that piece and parcel of land situated, lying and being at Krobo Buoho (Asikuma Lands) and bounded by the properties on Nkuakua Buoho, Nkyir Buoho, Bodom Buoho (Hemang), Bontatia, Boasie, and Afrancho stool lands.*
2. *A declaration that the land aforementioned is vested in the Adomakoaa Atoo Kuafo stool of Krobo Buoho*
3. *Damages.*
4. *Any other reliefs deemed fit by the court.”*

By way of Reply, the plaintiff denied the substance of the allegations contained in the statement of defence and counterclaim.

Upon filing its writ of summons, the plaintiff also filed a Motion on Notice for Interlocutory Injunction against the defendant on the same date, with a return date of 4th March 2021.

Eventually, the trial High Court delivered its ruling on the Motion for Interlocutory Injunction on 19th August 2021, which is at page 179 of the record of appeal (ROA). The court, having considered the affidavit evidence together with the exhibits attached and statement of case filed on behalf of the parties, restrained both parties. On the one hand, the defendant, his agents, assigns, etc., were restrained from alienating or developing any portion of the disputed land pending the final determination of the case. On the other hand, the plaintiff, its agents, assigns etc., were also restrained from undertaking any mining activity on the disputed land until the final determination of the case.

Displeased with the restraining order placed on its operations, the plaintiff invoked the inherent jurisdiction of the trial court (differently constituted) by an application filed on 4th February 2022, for an order setting it aside. I take notice of the fact that the trial judge who granted the earlier injunction had been transferred from the court, and out of the Ashanti Region at the time of the application.

By a ruling delivered on 6th June 2022, the trial court (differently constituted), granted the plaintiff’s application and set aside the order of Interlocutory Injunction granted against the plaintiff on 19th August 2021.

Predictably, the defendant was aggrieved by the ruling of 6th June 2022 and filed a notice of appeal.

# GROUNDS OF APPEAL

Per the defendant’s Notice of Appeal filed on 14th June 2022, the grounds of appeal are as follows:

1. The court wrongly applied the principles governing the grant of Interlocutory Injunction.
2. The court wrongly exercised its discretion in favour of Plaintiff in the setting aside of the interlocutory injunction granted by the court earlier when there was no change in the conditions warranting the setting aside of the interlocutory injunction.

The relief sought is the setting aside of the ruling given on 6th June 2022 and the restoration of the interlocutory injunction granted earlier against the Plaintiff.

# PRELIMINARY LEGAL OBJECTION BY COUNSEL FOR PLAINTIFF

It is provided under **Rule 16 of the Court of Appeal Rules, CI 19**, as follows:

*“Notice of preliminary objection*

1. *A respondent who intends to rely on a preliminary objection to the hearing of the appeal shall give the appellant three clear days notice before the hearing of the preliminary objection, setting out the grounds of the objection, and shall file the notice in the Form 8 set out in Part One of the Schedule 8(8).*
2. *Where the respondent fails to comply with subrule (1), the court may refuse to entertain the objection or may adjourn the hearing at the cost of the respondent or may make any other appropriate order.”*

On the face of the ROA, I observe that, Counsel for the plaintiff merely incorporated the preliminary objection in the Written Submissions filed on behalf of the plaintiff on 10th August 2023, instead of complying with Rule 16. At the time of hearing the appeal, Counsel also kept mute on his preliminary objection, and only relied on his written submissions, as filed.

I would, in the circumstance, strike out the “Notice of Preliminary Legal Objection”, and proceed to deal with the appeal itself.

# SUBSMISSIONS BY COUNSEL FOR DEFENDANT

After a brief discussion of the principles of interlocutory injunction, supported by the case of **Welford Quarcoo v. the Attorney General & Another (2012) 1 SCGLR 259 at 260**, Counsel for the defendant submitted that the High Court (differently constituted), having taken into account the existence of a serious question to be tried and irreparable damage to be suffered by the defendant, rightly injuncted both parties.

It was Counsel’s further submission that, in setting aside the earlier injunction, the court below only relied on what it claimed to be the amount of money the plaintiff had spent on acquisition of machinery and employing personnel without looking at other factors like whether there is a serious question of law to be tried, or whether it would suffer irreparable damage which cannot be remedied by an award of compensation, unless the interlocutory injunction is granted.

Counsel also submitted that, the plaintiff commenced its activities on the disputed land in 2003, but stopped operations for fifteen (15) years, when one blasting of the rocks destroyed properties of the inhabitants. In his view, the plaintiff who has not obtained parliamentary ratification for his operations pursuant to article

268 of the 1992 constitution, and the requisite permits/approvals from the Forestry Commission and Environmental Protection Agency, will not suffer any irreparable damage during the pendency of the substantive suit.

On the basis of the foregoing, Counsel for the defendant argued that, the court below erred in the exercise of its discretion to set aside the interlocutory injunction granted on 19th August 2021 because the exercise of that discretionary power was not done in accordance with due process of law.

# SUBMISSIONS BY COUNSEL FOR PLAINTIFF

In substance, Counsel for the plaintiff submitted that, the defendant failed to demonstrate how the court below wrongly applied the principles governing the grant of Interlocutory Injunction, or how the trial court wrongly exercised its discretion in favour of the plaintiff.

Counsel argued that, the court which injuncted the plaintiff in the earlier ruling, rather failed to apply the principles of Interlocutory Injunction correctly. It was Counsel’s further submission that, the injunction order made against the plaintiff is void and ought to be set aside, on the basis of the decision in **Mosi v. Bagyina (1961) 1 GLR 337**.

After a reproduction of the provisions of **Order 25 rules 1(1) and 9 of CI 47**, Counsel for the plaintiff submitted that, when a court is seised with jurisdiction to determine an injunction application, the options available to the judge are: (a) refuse to grant the application; (b) grant the application unconditionally; (c) grant the application subjected to stated terms; or (d) where the application is opposed (as in the instant case), grant the application consequent upon the applicant giving an undertaking.

Counsel emphasized that, even though the plaintiff met all the pre-requisites for the grant of an Interlocutory Injunction in his favour, the Court rather injuncted him.

It was the further submission of Counsel that, even though the plaintiff demonstrated that it holds a valid mining license for the purpose of carrying out its Quarry activities in the area known as the “Obosomadum Rock”, the court below in the earlier ruling injuncting the plaintiff, failed to determine whether the plaintiff has a right to protect, either in law or in equity.

Counsel then empasized that, the plaintiff’s claims, as per the writ of summons and statement of claim, are neither frivolous nor vexatious and that it has a legal right to protect. And, having met all the prerequisites for the grant of an Interlocutory Injunction, the court below was right in discharging the Injunction Order when its inherent jurisdiction was invoked.

Counsel urged on us that, if the court below had adverted its mind to the maxim “he who has committed Iniquity shall not have Equity”, the court would have injuncted the defendant alone for his iniquities.

Another submission made by plaintiff’s Counsel was that, even if, the defendant is entitled to the surface right, he was precluded from alienating any portion of the disputed land, which is a mining area, for the purposes of putting up structures, without the plaintiff’s consent, as provided by section 72(4) of Act 30.

And the defendant having violated section 72(4) of Act 703, Counsel submitted that the court below was justified in injuncting the defendant alone.

Counsel went on to argue that, considering the defendant’s counterclaim, even if the court ends up declaring title in his favour (as against the title of the plaintiff) with regards to the land and not the mineral, the defendant will only be entitled to compensation for the surface right as the land is a subject of a mining right. Counsel holds the view that, damages will be sufficient to compensate the defendant in the event that his counterclaim is granted.

Counsel crowned his submissions on this point by heavily relying on the unreported case of **Peabo Quarry Ltd. & Another v. Mr. Frimpong & 4 Others, Suit No. C1/111/2015, dated 23rd July 2015**, which according to Counsel is on all fours with the instant case. He pointed out that, the court in a similar application before it, held that the applicant had a valid mining license and accordingly have a right to be protected. The court then maintained the status quo, which meant that, the plaintiff therein could carry out its mining activities, and the 1st defendant could continue residing in his supposed house in the mining area, at his own peril.

In drawing down the curtain on this point, it was the submission of Counsel that, the decision of the court below in setting aside the injunction against the plaintiff herein was based on a proper appraisal of the principles of law governing injunctions within the context of the facts leading to this case. Counsel urged this court to affirm the ruling of 6th June 2022 and dismiss the defendant’s appeal.

In reply to Counsel for defendant’s submissions that, the order setting aside the interlocutory injunction against the plaintiff was made when there was no change in the conditions warranting it, i.e., no proof that plaintiff had obtained Parliamentary Ratification, it was the submission of Counsel for plaintiff that the court did not err in exercising its discretion in favour of the plaintiff, in the sense that, the defendant never raised the question of ‘ratification’ in his affidavit in opposition but it was the court below which imported it into its ruling.

Continuing, Counsel maintained that non-ratification by Parliament does not invalidate a contract but the transaction shall only have effect after the ratification.

Finally, Counsel for the plaintiff submitted that a claim that plaintiff had contravened provisions of Article 268 of the 1992 constitution, which is a “non- human” right, was not a matter to be decided by a High Court because it was the preserve of the Supreme Court under articles 2 and 130 of the Constitution.

Counsel prayed this court to dismiss the appeal which in his view, lacks merit.

# CONSIDERATION OF THE GROUNDS OF APPEAL

I will consider the two grounds of appeal together. Upon a perusal of the Written Submissions filed, my view is that, the alleged non-compliance with Article 268(1) of the 1992 Constitution which Counsel for defendant seeks to capitalize on, did not have a decisive effect in the determination of the interlocutory injunction application at the court below. After a quick reference to this provision, all what the trial Judge said was that: *“it is not clear whether the applicant has obtained this ratification from parliament”* (See page 153 of the ROA). To the extent that the trial court did not base the exercise of its discretion on the so-called non-compliance with a constitutional provision, I do not intend to belabour this point.

From the grounds of appeal and submissions made by both Counsel, two pertinent issues arise for consideration, which are: (i) whether the court below acted contrary to law, and misapplied the principles for grant of Interlocutory Injunction when it restrained both parties; and (ii) whether the court below, acting under its inherent jurisdiction, failed to exercise its discretion Judiciously when it set aside the Injunction Order earlier granted against the plaintiff?

I hold the view that, a careful consideration of these core issues would be sufficient to dispose of this appeal, without venturing into constitutional matters. As the issues overlap, I intend to consider them simultaneously.

**Order 25 rule 1(1) of CI 47** sets out the procedure for the grant of interlocutory injunction; it reads:

*“The court may grant an injunction by an interlocutory order in all cases in which it appears to the court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the court considers just.”*

Injunction is an equitable remedy. Unlike a legal remedy which is available as of right to a successful party, Injunction is awarded according to the discretion of a court and it is underpinned by the fundamental principles of fairness and justice. As it is often said, equity will not suffer a wrong to be without a remedy. Therefore, where fairness requires, equity will provide a remedy even if one does not exist by right at law. It is for these reasons that one of the cardinal principles for the grant of injunction by an interlocutory order is, whether a party has a right at law or in equity. And these principles, together with other principles such as whether there is a serious/arguable case to be tried, the balance of convenience or hardship, adequacy of compensation by way of damages and whether the status quo should be maintained by holding the balance even, have been applied in a legion of cases, some of which are:

## General Development Co. Ltd v. Rad Forest Products Ltd & Ors (1999-2000) GLR 178 Owusu v. Owusu-Ansah (2007-2008) SCGLR 870; Welford Quarcoo v. The Attorney- General (Supra) and American Cyanamid Co. v. Ethicon (1975) 1 All ER 504 at 510.

In all these situations, the right path for a judge to take, is to study all the processes filed before him or her. So, in the case of **Centracor Resources Ltd v. Boohene & Ors (1992-93) GBR 1512, CA,** reference was made to a statement by Lord Denning in **Hubbard v. Vosper [1972] 2 WLR 389 at 396** that:

*“In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence, and then decide what is best to be done.”*

While assessing the respective cases of the parties, I will refrain from making any pronouncement which may prejudice or prejudge the outcome of the substantive case. See: **Hansen Kwadwo Koduah v. General Legal Counsel & Anor, Civil Appeal No. H3/117/2017 dated 8th February 2017; Crystal City Ltd v. Paul Amoo Gottfred & Anor (2011) GMJ 94; Wakefield v Duke of Buccleugh (1865) 12 LT 628.**

It would be almost impossible to determine the issues raised in this appeal without commenting on the Ruling of 19th August 2021. I have accordingly evaluated that Ruling which forms part of the ROA before this court, and I observe that, the learned trial Judge meticulously analyzed the procedure for the grant of interlocutory injunction as spelt out under Order 25 rule 1, supra. Also, the well- established principles for the grant of Injunction by an interlocutory order, were not lost on the trial Judge; he sufficiently discussed them. We refer to page 8 of his ruling (page 180 ROA), where the trial Judge said:

*“My duty at this stage is to examine the writ of summons, the statement of claim, the pleadings, the affidavits as well as the exhibits attached. I will then consider whether the Applicant has a right at law or in equity and that its claim is neither frivolous or vexatious, and should be protected until such a time that the injunction order may be dissolved by the court”*

The trial Judge continued at page 9 of his ruling (page 181 of the ROA) thus:

*“I have considered the pleadings, the affidavits, the Statement of Case as well as the annexures by both parties. I am satisfied that there are triable issues in this case. I am also satisfied that the Applicant’s application is neither frivolous nor vexatious”*

Next, the trial Judge considered the balance of convenience, which in his view meant “*weighing up the advantages of granting the relief against the disadvantages of not granting the relief.”* Having done so, His lordship observed and concluded at page 11 of his ruling (page 183 of the ROA) as follows:

*“The court may also juxtapose the applicant’s mining rights vis-à-vis the interest of the people in the area, who are among the beneficiaries of this trust property being the minerals.*

*I am therefore of the view that it would be fair, just and also in consonance with equity and good conscience to restrain both parties in this case. The defendant, his agents, assigns etc., are not to alienate or develop any portion of the disputed land pending the determination of the case. The Applicant is also not to undertake any mining activity until the final determination of the case. This caveat also applies to applicant’s agents, servants, assigns, etc. The case is to take its normal course…”*

The main complaint of the plaintiff in the instant appeal is that, **Order 25 rule 1 of CI 47** did not permit the trial Judge to injunct the applicant whose legal interest deserved to be protected, in the manner he did. My response to this argument is simply this; the rules cannot cover every conceivable situation. And, a court of law and equity, is not precluded from injuncting both parties to a suit by an interlocutory order, provided it is just and convenient to do so. This would also depend on the peculiar circumstances of each case, especially where there is an urgent need to hold the balance even.

On this point, I am guided by the case of **Odonkor Others v. Amartei (1987-88) 1 GLR 578,** where the Supreme Court speaking through Adade JSC, injuncted both parties disputing over land so as to hold the balance even.

The argument by Counsel for the plaintiff that, the trial Judge acted contrary to law which rendered the injunction order against the plaintiff void, cannot be right. Therefore, Counsel’s invitation to this court to set aside the injunction order made against the plaintiff on the basis of the decision in **Mosi v. Bagyina (1961) 1 GLR 337,** cannot be sustained.

The **Mosi v. Bagyina (Supra)** principle apply to proceedings or an order irregularly obtained, which entitles the affected party to have it set aside as of right. Indeed, the operative words used by the court in that case are: *“where a judgment or an order is void either because it is given or made without jurisdiction or it is not warranted by any law or rule of procedure”*

I cannot by any stretch of imagination fit the argument of plaintiff’s Counsel in any of the above categories. The corollary is that, the order injuncting the plaintiff based on the trial court’s exercise of discretion and application of the principles for the grant of interlocutory injunction, cannot be said to be irregular or void.

Indeed, the challenge to the validity of the interlocutory injunction order made against the plaintiff on 19th August 2021 on the basis that it was unwarranted by any law or procedure, was the gravamen of the subsequent application brought under the “inherent jurisdiction of the court” for the same to be set aside. The plaintiff succeeded in getting the trial court (differently constituted) to set aside the interlocutory injunction order made against it, under the court’s inherent jurisdiction, in the Ruling of 6th June 2022.

Was the trial court’s inherent jurisdiction properly invoked?

I discuss what is meant by “inherent Jurisdiction”. Inherent Jurisdiction refers to the power of a court to control its own processes and the procedure before it, which does not stem from any particular statute or legislation. In reliance on its inherent jurisdiction, a court may vary its interim order if the circumstances warrant it. For example, where the order was irregularly obtained and therefore void, or not warranted by any rule of procedure or law. The categories are not closed, in my view.

I quote, with approval, the statement by Hayfron Benjamin J (as he then was) in the case of **Attoh-Quarshie v. Okpote (1973)1 GLR 59 (holding 1)**, where his lordship affirmed the inherent jurisdiction of a court to set aside its own void orders, as follows:

*“If a court, in making a decision, overlooks certain mandatory provisions of the law, it has the inherent power to vacate its own invalid orders. Inherent power is an authority not derived from any external source, possessed by a court. Whereas jurisdiction is conferred on courts by constitutions and statutes, inherent powers are those which are necessary for the ordinary and efficient exercise of the jurisdiction already conferred. They are essentially protective powers necessary for the existence of the court and its due functioning. They spring not from legislation but from the constitution of the court itself. They are inherent in the court by virtue of its duty to do justice between the parties before it.”*

On the inherent jurisdiction of the court, another case worth touching on is, **Republic v. High Court (Commercial Div. A), Tamale; Ex parte Dakpem Zobogunaa Henry Kaleem (substituted by Alhaji Alhassan I, Dakpema); Dakpema Naa Alhasan Mohammed Dawuni (Interested Party), Civil Motion No. J5/6/2015, 4th June 2015**. The the Supreme Court commented had this to say:

*“The inherent jurisdiction to vary its interim or interlocutory orders is vested in every court during the pendency of the substantive case. It can do so in order to make the meaning and intention clear; it may also do so if the circumstances that led to the order being made have since changed and is having a negative effect;* ***or if it is working unexpected or unintended hardship or injustice****. The only limitation is that the order must not be the subject of a pending appeal.”*

The Supreme Court speaking through Benin JSC in the above cited case, further explained that, there is a very thin line between the power to vary an order which the court exercises under its inherent jurisdiction, and the power of review which is conferred by an enactment.

The authorities are clear that, where specific rules of law exist to cater for a specific situation, a court should be slow to invoke its so-called inherent jurisdiction. See: **Azorblie & Others v. Ankrah IV (1984-86) 1 GLR 561 at 564, CA; Perry v. St Helens Land & Construction Co Ltd (1939) 3 ALL ER 113 at 118, CA; Mbeah v. Ababio (2000) SCGLR 259 (obiter, per Atuguba JSC)**

At this point, I must be quick to point out that, the High Court’s review power which was provided for under **Order 42 of CI 47** has been taken away by the **High Court (Civil Procedure) (Amendment) Rules, 2020 (CI 133).** With the repeal of **Order 42 of CI 47**, a High Court can only vary its interim orders under its inherent jurisdiction, if the circumstances warrant it. For example, where the circumstances have changed, or where the previous interim order was obtained by fraud or mistake. I stress that, the inherent power vested in a court to control its own processes must not be abused. This inherent power should not be used to set aside an order which was regularly obtained in accordance with the court’s own rules to the detriment of the other party since that would result in injustice. See **Omaboe v. Kwame (1978) GLR 122.**

However, where an interim order tends to have a negative effect or unintended consequence or unexpected hardship, the inherent jurisdiction of the court could be invoked for the appropriate orders to be made, as the justice of the case demands. See: **Ex parte Dakpem Zobogunaa**, supra.

From the foregoing, “changed circumstances” cannot be the only basis for an earlier interim order to be varied, as urged on this court by plaintiff’s Counsel. The question which arises at this point is, whether the earlier order injuncting the plaintiff company was having any negative effect or unintended or unexpected hardship on the company to warrant the setting aside of the said order under the inherent jurisdiction of the Court?

The defendant’s affidavit evidence reflects that, the plaintiff commenced its mining activities on or about 2003. However, I observe from pages 53 to 60 of the ROA that, the plaintiff was initially issued with a mining license valid from 6th February 2004, for a period of five (5) years. The plaintiff’s current restrictive mining lease which is at pages 118 to 124 of the ROA, is dated 21st May2020, for a period of five (5) years.

Upon a scrutiny of the schedules attached to the expired mining lease and the current mining lease of the plaintiff, I observe that the area of land demarcated for plaintiff to carry on its activities is approximately the same.

Now, both the expired lease and the current lease contain obligations of the Licensee. One key obligation is that:

*“the Licensee shall take all practical steps to avoid damage to trees, crops, buildings, structures and other property in the licensed area. Where such damage cannot be avoided, the Licensee shall pay fair and reasonable compensation to the affected persons.”* See clause 2.6 of exhibit “E” at page 119 ROA.

Another important obligation of the Licensee, which is contained in clause 2.2 of exhibit “E” is that:

*“The Licensee shall not do, or cause to be done in the licensed area any act or thing which shall cause or become a nuisance, annoyance or inconvenience to the Government or occupier of any adjoining land”*

In addition to the above, the Licensee (Plaintiff) is required to carry out its operations in accordance with good mining practices and pay particular attention to environmental protection.

Casting my mind back to the affidavit in opposition filed by the defendant on 28th April 2020, which is at page 83 of the ROA, the defendant deposed in paragraphs 14 and 15 as follows:

*“14. That in 2003 when the Plaintiff/Applicant attempted to start the quarry/mining operations, one blasting of the rocks sent several big particles of rocks to the homes of people living around the area where the rock is situated and thereby destroying their properties.*

*15. That due to this incident the Plaintiff/Applicant stopped the quarry /mining operations on the rock and (sic) resulted to sand winning in the area until its mining license expired”*

The plaintiff denied these facts in the supplementary affidavit in support which is at pages 113 to 115 of the ROA, and put the defendant to strict proof. From these depositions as well as the pleadings filed by both parties, there are serious questions to be tried.

It appears to me on the basis of the exhibits defendant’s affidavit in opposition that, some grantees of the Adomakoa Ataa-Kuafoo Stool Land of Adomkoa- Buoho were in possession of portions of this area as far back as 1997 and 2003 (see exhibits KD 1 and KD 2 at page 94 of ROA). The plaintiff company even exhibited a Land Allocation Note from the said Stool to the Company, dated 24th January 2003, as exhibit “A”, at page 7 of the ROA.

I concede that a buffer zone is always created around a mining area which cannot be allocated by stools. But then as far back as 2003 when the Adomakoaa Buoho Stool allocated land to persons, including the plaintiff, and before the Government of Ghana granted a Mining License to the plaintiff on 6th February 2004, for a period of five (5) years, had any “Buffer Zone” been created? The affidavit evidence does not reflect these facts. So, persons who were on the land prior to the creation of the “Buffer Zone” also have equitable rights which need protection.

It may also appear that, if the plaintiff company could conveniently halt its operations from 2009 until 2020 before taking steps to renew its license, then the company cannot complain about adverse effects of the injunction order on its operations. By the Ruling setting aside the earlier injunction order made against the plaintiff, the trial court (differently constituted) was satisfied that, the injunction order was indeed having a negative effect on the operations of the company. This is what the court said:

*“In my view weighing the two interests, the applicant has equitable right to be protected by the court than the respondent. Equally, applicant has spent huge sum of money to acquire machinery, employed personnel and pays them now and then so the extent of irreparable damage that may (sic) cost to the applicant cannot be quantified unlike the respondent and the occupiers if anything at all their damages can be quantified in terms of compensation/resettlements by losing their rights to occupy the land. Based on the reasons assigned, this court is minded to grant the application and I accordingly grant same by setting aside an Order of interlocutory injunction granted against the plaintiff, its privies, assigns, etc., not to undertake any mining activities on the (sic) dispute land till final determination of the suit.”*

Upon a perusal of the affidavit evidence on record and the submissions by both Counsel, I must say that, although the plaintiff has a legal right to protect and some categories of persons on the disputed land also have equitable rights which deserve protection, the balance of hardship weighs in favour of the plaintiff company, as observed by the trial court (differently constituted). Said differently, the plaintiff company stands to suffer greater hardship if its operations are halted by way of interlocutory injunction.

On the other hand, the defendant or persons likely to be affected by this interlocutory injunction could be compensated by way of damages for any injury likely to be caused by the grant of the interlocutory injunction order. Indeed, the defendant in paragraph 17 of its Statement of Defence and Counterclaim, which is at page 78 of the ROA, pleaded that in the past *“The plaintiff promised to compensate the family with an amount of GHC100,000.00 as part of the company’s social responsibility”*.

All said, I hold the view that, that the trial court (differently constituted), exercised its discretion judiciously by setting aside the earlier interlocutory injunction order obtained against the plaintiff.

# UNDERTAKING PURSUANT TO ORDER 25 RULE 9 OF CI 47

Upon a perusal of the Rulings on 19th August 2021 and 6th June 2022, I notice that the trial court did not make any order for the giving of an “Undertaking” pursuant to **Order 25 rule 9 of CI 47**.

**Order 25 rule 9 (1) and (2) of CI 47** state as follows:

*“1) Where an application is made under rules 1 and 2 of this Order the Court shall, if the application is opposed, require, before making an order, that the applicant shall give an undertaking to the person opposing the application to pay any damages that person may suffer as a result of the grant of the application if it turns out in the end that the applicant was not entitled to the order.*

*(2) The giving of an undertaking required under subrule (1) shall be a precondition to the making of any order under rules 1 and 2 of this order.”*

To the extent that the defendant filed an affidavit in opposition to the plaintiff’s application for interlocutory injunction, it is my considered view that, per the provisions of Order 25 rule 9, supra, the interlocutory injunction order against the defendant ought to have been made subject to the giving of an Undertaking by the plaintiff.

Now, Rule 32 of CI 19 empowers this Court to make any order which ought to have been made by the Court below. It reads:

*“32. Power of Court to give judgment and make an order*

1. *The Court shall have power to give any judgment and make any order that ought to have been made, and to take such further or other order as the case may require including any order as to costs.”*

According, the plaintiff shall, forthwith, file an Undertaking at the Court below to pay any damages that the defendant may suffer as a result of the grant of the application for Interlocutory Injunction if it turns out in the end that the plaintiff was not entitled to the order.

# CONCLUSION

I am satisfied that on the totality of the pleadings and affidavits on record, the plaintiff demonstrated a right in law which was negatively affected by the earlier injunction order made against the company in the 19th August 2021 Ruling of the High Court, Kumasi. Consequently, the High Court (differently constituted) did not wrongly apply the principles of interlocutory injunction but rather exercised its discretion judiciously under its inherent jurisdiction to set aside the said injunction order.

I find no merit in this appeal. The ruling of the High Court, Kumasi, dated 6th June 2022 is hereby affirmed, subject to an Undertaking to be given by the plaintiff pursuant to **Order 25 rule 9 of CI 47**, forthwith.

No order as to cost.

Before I sign off, I wish to draw the attention of the parties that the ends of justice will be better served if they seek an early trial instead of pressing on interlocutory matters. The record reflects that as far back as June 2021, pleadings had closed. Since an appeal does not operate as stay of proceedings, the trial ought to have continued and for the case to be determined on the merits.

(SGD.)

ANGELINA MENSAH-HOMIAH (JUSTICE OF APPEAL)