

IN THE CIRCUIT COURT '4' HELD IN KUMASI ON THURSDAY  
18<sup>TH</sup> MAY, 2023 BEFORE HER HONOUR JACQUELINE EWUSI-  
SEKYI AVOTRI (MRS.) (CIRCUIT COURT JUDGE)

---

SUIT NO. A1/20/2023

ABUSUAPANIN KYEI BAFFOUR SUING  
FOR AND ON BEHALF OF THE ADUANA FAMILY  
OF ESSUMAJA BEKWAI - PLAINTIFFS/RESPONDENTS

VRS

THE ESSUMAJA STOOL  
PER ITS OCCUPANT  
NANA OKYERE KUSI ADUAKO II  
ESSUMAJA BEKWAI - DEFENDANT/ APPLICANT

**RULING ON APPLICATION FOR INTERLOCUTORY INJUNCTION**

Plaintiff instituted this action against the Defendant on 22<sup>nd</sup> February, 2022 for the reliefs endorsed on the writ of summons which are as follows:

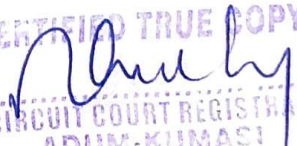
- a. Declaration of title of plot no. E 40 Essumaja Bekwai, Ashanti.
- b. Recovery of possession
- c. Damages for trespass.
- d. An order of perpetual injunction against the Defendant, his agents, servants and any persons claiming title through the defendant from interfering with the interest of the Aduana family of Essumaja Bekwai, Ashanti in the subject matter of the suit.

CERTIFIED TRUE COPY  
*[Signature]*  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI

1

the suit to the exclusion of all others including the Defendants. That sometime in December, 2022 the Defendant embarked on a construction project at the Essumaja Palace which is situated behind the subject matter of the suit. That the Defendant has not only laid pavement blocks on the land belonging to the Plaintiff's family but has dug a trench and is about to put up a fence wall which will seal off the main entrance to the subject matter of the suit. It is the case of the Plaintiff that the Defendant has encroached onto about a 100 feet of Plot No. E40 Essumaja Bekwai belonging to them. Photographs of the Defendant's illegal activity on the subject matter was attached as Exhibit 'KB 1' series. That the Defendant will change the nature of the subject matter of the suit if not compelled by this court to stay away from the land. if the Defendant is not restrained by an order of this court his actions will cause irreparable damages to the Aduana Family of Essumaja Bekwai.

Counsel for the Plaintiff cites the cases of **GLR 111 Owusu vrs Owusu Ansah & Anor [2007-2008] SCGLR 870, American Cynamid vrs. Eticon (1975) at 396, Bank of West Africa vrs. Holdbrook (1966) GLR 166, Donkor vrs. Martei (1987/88) 1 GLR 578** among others to support the grant of the interlocutory application. It is the case of the Plaintiff that on the balance of convenience this application ought to be granted since the risk of causing grave injustice to the Plaintiff/Applicant is real. The Plaintiff/Applicant prays the court to exercise its discretion by granting the application to restrain the Defendant from interfering with the Plaintiff/Applicant's property.

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI



In response, it is the case of the Defendant/Respondent that the land in dispute from time immemorial is vested in the Essumaja Stool. That in June 1999 during the reign of his immediate predecessor Odeneho Oduro Numapau II the Essumaja Redevelopment Scheme was approved and the area in dispute is marked as palace on the approved Essumaja Redevelopment Scheme. A copy of the approved Redevelopment Scheme was attached as Exhibit 'NOKA 1'. That the construction of the Essumaja Palace is within the dimensions of the land earmarked for Palace development on the Essumaja Redevelopment Scheme and there has not been any encroachment on any land. That the development of the Essumaja Palace has not sealed off the main entrance to any land. It is the case of the Defendant/ Respondent that greater hardship and inconvenience would be caused to the Essumaja Stool and the traditional area as well as the Defendant/Respondent. The Defendant/Respondent has purchased building materials and engaged workmen at a substantial cost to carry out the construction of the Essumaja Palace. The Defendant/Respondent is willing to give an undertaking to indemnify the Plaintiff/Applicant in the very unlikely event the he is successful after the trial.

Counsel for the Defendant/Respondent referred the court to the case of *Quarcoo v Attorney General & another* [2012] 1 SCGLR 259, *Ghana Independent Broadcasters Association (GIBA) v the Attorney General & The National Media Commission*, Writ No J1/4/2016 dated 21<sup>st</sup> April, 2016 at page 3-4, *Benjamin Nii Ayi v Minerals Commission & anor* [2018] 118 GMJ 243 among others to support the refusal of the grant of the application. That the Defendant/Respondent will suffer greater hardship should the application be



granted considering amounts of building material whose prices are at a galloping rate as well as stand the risk of losing money which has been paid to procure the services of workmen to carry out the construction of the Essumaja palace. That the grant of the instant application will retard development of the Essumaja Traditional area.

### **THE LAW AND THIS CASE**

Before I consider whether or not this honorable court should grant or refuse the application for interlocutory injunction before it. Counsel for the Defendant/Respondent raised the issue of the capacity of the Plaintiff/Applicant to initiate the action. At paragraphs 1 and 2 of the statement of defence, counsel for Defendant states that the Plaintiff is not the Abusuapanin of the Aduana family of Essumaja and therefore has no capacity to instate and maintain the instant action. Again at paragraphs 7 of the affidavit in opposition to the application, Defendant/Respondent states that the Plaintiff/Applicant is not the Abusuapanin of the Aduana Family of Essumaja and has no capacity to institute and maintain the instant action and by necessary extension the instant application.

Counsel for the Plaintiff/Applicant filed a supplementary affidavit on 17<sup>th</sup> April, 2023 to address the issue of capacity. The Plaintiff submits that he is the Abusuapanin of the Aduana Royal Family of Essumaja properly appointed by the principal elders of the said family according to Akan custom. That he has held the position of Abuapanin for the said Royal Family for the past thirteen (13) years and this fact is a well-known and accepted by the entire town of Essumaja. A copy of a letter dated 23<sup>rd</sup> May, 2013 from the Essumaja

CERTIFIED TRUE COPY  
*Abuly*  
CIRCUIT COURT REGISTERED  
ADUM-KUMASI

Traditional Council acknowledging that he is a Royal and the Abusuapanin of Essumaja Senfi marked as "KB4". Photocopies of funeral invitation cards indicating that he is the Abusuapanin of Senfi marked as Exhibit "KB5" series as well as publication on the Ghana Web marked as Exhibit "KB6".

On 25<sup>th</sup> April, 2023 when the matter came up for hearing counsel for the Plaintiff/Respondent argued that the Plaintiff/Applicant has the capacity to institute the action as the Abusupanin of the Aduauan family of Essumaja and that indeed the Defendant/Respondent have encroached on their land as depicted on the composite plan filed in respect of the case. That the area marked red is the disputed area.

In response counsel for the Defendant/Respondent submitted that the Plaintiff/Applicant has different capacities as depicted in Exhibit "KB4" and "KB5". The Plaintiff/Applicant is not certain as to the area of encroachment and that if the injunction is granted the Plaintiff/Applicant will prevent them from developing the palace. In granting or refusing an injunction application, the court had to take into consideration the balance of convenience as between the parties. It is the case of the Defendant/Respondent that it will be unjust if the application is granted since they have started the redevelopment of the palace. Counsel for the Defendant/Respondent prays the court to refuse the injunction application

It is trite learning that the issue of capacity is a fundamental and crucial matter that affects the very root of a suit, and for that matter, it can be raised at any time; even on appeal, after judgment had been delivered. Indeed, the issue of capacity is a very fundamental issue that when raised

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI



at an early stage which can be raised at an early stage of the proceedings, a court mindful of doing justice ought to decide that issue before further proceedings are taken to determine the merits of the case. Therefore, a Plaintiff whose capacity is challenged needs to adduce credible evidence at the earliest opportunity to satisfy the court that it has the requisite capacity to invoke the jurisdiction of the court, if not done, the entire proceedings founded on an action by a Plaintiff without capacity would be nullified should the fact of non-capacity be proved. The lack of capacity deprives the court of the jurisdictional competence to entertain an action at any stage of the judicial proceedings. All the authorities are emphatic that capacity remains a live issue throughout the life of a case and that once a party does not meet the threshold requirement of capacity, there is no need to go beyond that point to deal with the substantive issues. The Supreme Court speaking through Sophia Akuffo, JSC (as she then was) on the issue of capacity, in the case of **NAOS HOLDINGS INC V. GHANA COMMERCIAL BANK (2005-2009) SCGLR 407**, delivered at page 412 as follows:

“Once its legal status was challenged and its corporate capacity was placed in issue, it was incumbent upon the appellant to produce more cogent evidence of its existence (such as its registered office address or a copy of its certificate of incorporation,) to satisfy the trial court that it has the requisite legal capacity to sue. Since it failed to do so, the trial was justified in arriving at the conclusion that the appellant did not exist. Furthermore, having dismally failed to satisfy the trial court in regard to such a fundamental issue as capacity to sue, it would have been pointless for the trial court to order the matter to proceed to trial”.

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI

There is surely no gainsaying the fact that the capacity to bring and maintain an action remains a cardinal hurdle that must be jumped if either party is to remain in the case. In the case of **NII KPOBI TETTEH TSURU III & 2 OTHERS A AGRIC CATTLE & 4 OTHERS (2002) 158 G.M.J. 1 SC**, where the court added that

“... a plaintiff whose capacity is challenged needs to adduce credible evidence at the earliest opportunity to satisfy the court that it had the requisite capacity to invoke the jurisdiction of the court. If this is not done the entire proceedings founded on an action by the plaintiff without capacity would be nullified should the fact of non...capacity be proved...”.

Capacity goes to the very root of a case. In the case of **SARKODIE I V BOATENG II [1982-1983] GLR 715**, it was held that:

“it was elementary that a plaintiff or petitioner whose capacity was put in issue must establish it by cogent evidence and it was no answer for a party whose capacity to initiate proceedings had been challenged by his adversary to plead that he should be given a hearing on the merits because he had a cast iron case against his opponent.

Again in the case of **FOSUA & ADU POKU V. DUFIE (DECEASED) & ADU-POKU MENSAH [2009] SCGLR 310**, it was held that:

“Any challenge to capacity thereof put the validity of a writ in issue. It is a proposition familiar to all lawyers that the question of capacity, like a plea of limitation is not concerned with the merits, so that if the axe falls, then a defendant who is lucky enough to have the advantage of the impeachable defence of lack of capacity in his opponent is entitled to insist upon his right”.



The capacity in which a party sues or is sued is crucial because the reliefs claimed in the Writ of Summons must be derive from the capacity in which the party sues or is sued. In the case of the **REPUBLIC V HIGH COURT, ACCRA EX PARTE ARYEETAY [2003-2004] SCGLR 398 at 405**, Kpegah JSC had this to say

“the requirement that a party endorse on the writ the capacity in which he sues, is to ensure that a person suing in a representative is actually vested with that capacity and therefore has the legal right to sue. This includes the submission that the requirement also enables a defendant, if he is so minded to challenge the capacity the plaintiff claims he has and as such a challenge may be taken as a preliminary issue. This is because if a party brings an action in a capacity he does not have, the writ is a nullity and so are the proceedings and judgment founded on it. Any challenge to capacity therefore puts the validity of the writ in issue”.

Order 2 r. 4 of the High Court (Civil Procedure ) Rules, 2004 C. I 47

4 (1) before a writ is filed it shall be indorsed

(a)where the plaintiff sues in a representative capacity, with a statement of the capacity in which the plaintiff sues: or

(b)where a defendant is sued in a representative capacity, with a statement of the capacity in which the defendant is sued.

I have considered the documentary evidence adduced by the Plaintiff on the issue of his capacity. Indeed, Exhibit “KB4” and “KB5” captures the name of Abusuapanin Kyei Baffour of Essumaja Sefwi and Aduana Abusuapanin Nana Kyei Baffour (Senfi) respectively. Exhibit “KB6” also states the name of

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI



Abusuapanin Kyei Baffour - Essumaja. Even though different towns are attached to the name of Abusuapanin Kyei Baffour the name Aduana and Essumaja appears on the Exhibits. In the case of **Fosua & Another v Dufie & another [ 2009] SCGLR 310 @ 311** holding (1) where the Lordships held that:

“the law was settled that documentary evidence should prevail over oral evidence. Thus, where documents supported one party’s case against the other, the court should consider whether the latter party was truthful but with faulty recollection”

From the documentary evidence on record I am satisfied that the Plaintiff/Applicant is Abusuapanin of Aduana family of Essumaja Bekwai and therefore has the requisite capacity to initiate this action.

I will now proceed to consider whether or not this honorable court should grant or refuse the application for interlocutory injunction before it.

Order 25 Rule 1 of C.I 47 stated that *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 either unconditionally or upon such terms and conditions as the court considers just.*

- (1) *A party to a cause or matter may apply for the grant of an injunction before, or after the trial of the cause or matter whether or not a claim for the injunction was included in the party’s writ, counterclaim or third party notice.*

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUNA-KUMASI

- (2) *The applicant shall attach to the Motion Paper and supporting affidavit, a Statement of Case setting out fully arguments, including relevant legal authorities, in support of the application.*
- (3) *A respondent who desires to oppose the application shall file an affidavit, a Statement of Case setting out fully arguments, including relevant legal authorities, in support of the application.*

It is worth of note that the courts have laid down conditions that must guide the court in granting an application for interlocutory injunction.

In the case of **18<sup>th</sup> JULY LTD. VRS YEHANS INTERNATIONAL LTD (2012) 1SCGLR 167 at 168**, the Supreme Court provided further and detailed guidelines in determining an application of this nature as follows:

Even though granting an interim injunction was discretionary, a trial court in determining an application for an interlocutory injunction must be guided by the following principles:

1. Consider whether the case of an applicant was not frivolous and had demonstrated that he had legal or equitable right which a court should protect;
2. Ensure that the status quo was maintained so as to avoid any irreparable damage to the applicant pending the hearing of the matter; and
3. Consider the balance of convenience and should refuse the application if its grant would cause serious hardship to the other party.

Again in the case of **WELFORD QUARCOO VRS. ATTORNEY GENERAL [2012] 1 SCGLR 259**, his Lordship Dr. Date - Bah JSC summed up the



fundamental principles to consider in an application for interlocutory injunction thus:

"... the requirement for the grant of an interlocutory injunction are: first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief".

In the case of **OWUSU V OWUSU-ANSAH AND ANOTHER (2007-2008) SCGLR 870** the Appeal Court held that in addition to factors like whether plaintiff has made prima facie case against the defendant, whether plaintiff cannot be compensated at the end of the trial, balance of hardship that is likely to occasion a party if the motion is granted. The applicant must show that his legal and equitable interest in the property in dispute are under threats and that the court must protect these rights.

According to S.A. Brobbey, in his **Book Practice & Procedure in the Trial Court & Tribunals of Ghana at pg. 444,**

*"the primary object of such interlocutory injunction is to obviate, before a case is finally determine, any waste, damage or alienation of the property which is in dispute"*.

The governing principle applicable to applications for interlocutory relief is whether on the face of the affidavit there is the need to preserve the status

CERTIFIED TRUE COPY  
*Nhuly*  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI

12

quo in order to avoid irreparable damage to the applicant, provided his claim is not frivolous or vexatious. The question for consideration in that regard resolves itself into whether on the balance of convenience greater harm would be done by the refusal to grant the application than not. It is not whether a prima facie case however qualified and with whatever epithet, has been made. (see these cases; **OWUSU V. OWUSU - ANSAH AND ANOTHER [2007-08] SCGLR 870, VANDERPUYE V NARTEY (1977) 1 GLR 428, POUNTNEY V. DOEGAH [1987-88] 1 GLR 111, CA AND AMERICAN CYANAMID CO V. ETHICON LTD [1975] 1 ALLRE 504**).

In the grant of an order for injunction it was held in the case of **AMERICAN CYANAMID COMPANY V. ETHICON LTD (1975) 1 ALL ER. 504** that,

- a. There must be a serious question to be tried.
- b. If the plaintiff were to succeed at trial, would he be adequately compensated by an award of damages? If not, then
- c. If the defendant were to succeed at the trial would he be adequately compensated in damages for injury he suffered by the award of the injunction? If not, then
- d. Where does the balance of convenience lies? And
- e. The interest of the court must be to preserve the status quo. In the instant application the court would have to be guided by the principle whether an applicant has, by his pleadings and affidavit established a legal or equitable right, which has to be protected by maintaining the status quo until the final determination of the action on its merits: see the case of **THORNE V BRITISH BROADCASTING CORPORATION (1957) 1 WLR 1104**. Again in **AMERICAN CYANAMID CO.**

CERTIFIED TRUE COPY  
*[Signature]*  
CIRCUIT COURT  
ADUN-KUMASI



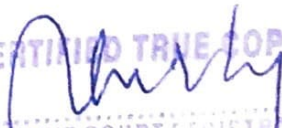
**ETHICON LTD (1975) 1 ALL ER 504** HL Lord Diplock stated at page 510 thus: "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried".

I have considered the pleadings and the affidavit in evidence before the court filed by both parties and satisfied that the pleadings, statement of defence, affidavit in support of the application by the plaintiff together with the statement of case discloses serious questions to be tried, one of which is whether or not the Defendant/ Respondent by constructing a wall around the Essumaja palace has encroached unto the land of the Plaintiff/Applicant.

The Plaintiff/Applicant by this application is not seeking to injunct the development of the Essumaja palace save the construction of a part or side of the wall of the palace that the plaintiff/Application says has encroached unto his family land.

When the matter came up for hearing and looking at the nature of the case this court pursuant to Order 26 r 1 of C. I 47 appointed a court expert to draw a composite plan in accordance with section 114 of the Evidence Act, 1975 NRCO 323 and directed parties to file their survey instructions. Both Plaintiff and Defendant have complied with the order of the court by filing their respective survey instructions. This is an indication that both counsel for Plaintiff and Defendant are eager for expeditious trial of this case.

Upon consideration of the totality of the evidence on record, the application for injunction is granted restraining the Defendant/Respondent from

CERTIFIED TRUE COPY  
  
CIRCUIT COURT REGISTRAR  
ADUM-KUMASI

continuing with the construction of the wall which the Plaintiff/Applicant says has encroached onto his family land. However, the Defendant/Respondent is not restrained from carrying out development of the Essjumaja Palace save the construction of the wall which Plaintiff/Applicant says has encroached onto his family land.

Pursuant to Order 25 r 9 of C.I.47 the Plaintiff/Applicant is to give an undertaking to the Defendant/Respondent to pay any damages that the Defendant/Respondent 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.

The said undertaken is to be filed before the application for interlocutory injunction will be drawn

No order as to cost.

**(SGD)**

**H/H JACQUELINE EWUSI - SEKYI AVOTRI (MRS.)  
(CIRCUIT JUDGE)**

**COUNSEL:**

**ANTHONY K. MMIEH ESQ. FOR PLAINTIFF/APPLICANT**

**YAW ACHEAMPONG BOAFO ESQ. FOR DEFENDANT/RESPONDENT**

CLAIMED TRUE COPY  
*Anthony K. Mmieh*  
CIRCUIT COURT REG. STRAP  
ADUM-KUMASI

15