IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)
DORDZIE (MRS.), JSC
AMADU, JSC
PROF. MENSA-BONSU (MRS.), JSC
KULENDI, JSC

CIVIL MOTION
NO. J8/47/2021

17TH FEBRUARY, 2021

1. NII TETTEY OPREMEREH II
2. NII ADAM SORSEY ..... PLAINTIFFS/RESPONDENTS/RESPONDENTS/ RESPONDENTS

VRS

1. KOMEXA LIMITED ..... 1ST DEFENDANT
2. LANDS COMMISSION ..... 2ND DEFENDANT/APPELLANT/APPELLANT/ APPLICANT
3. OMARI COMPUTER SYSTEMS ..... 3RD DEFENDANT
4. NII TETTEY KPOBI TSURU II ..... 4TH DEFENDANT/RESPONDENT/ RESPONDENT/RESPONDENT
5. EBENEZER M. AKOGYERAM (DECEASED)
   SUBSTITUTED BY:
   NII SOWAH AKO ODOI &
   NII MENSAH NYEKPEA-ENEHU ..... 4TH DEFENDANT/RESPONDENT/ RESPONDENT/RESPONDENT

RULING

DORDZIE (MRS.) JSC:-

BACKGROUND

The Plaintiffs/Respondents in this application instituted an action in the High Court, Lands Division Accra against the named Defendants in the title of this case in respect of some parcels of land situate at East Legon. The subject parcels of land form part of a track of land the State compulsorily acquired in 1944. The 4th & 5th Defendants/Respondents had maintained that by a judgment of the Supreme Court of the Gold Coast dated 28th February 1947, they were to receive eight thousand five hundred and forty Pounds (8,540) as compensation for the compulsory acquisition, however, the state failed to pay them. They therefore put up a counter claim seeking the following reliefs:

a) A declaration that the La Stool is the original allodial owner of the land in dispute and the 5th Defendant family is the original usufructuary owner of the land in dispute.

b) An order that the government pays the 4th and 5th Defendants/Respondents compensation on the land in dispute with interest from the day of acquisition to the date of final payment.

c) Perpetual injunction restraining the Plaintiffs/Respondents their families, assigns, agents, servants, or any person or bodies claiming through them from further development or interference with the land in dispute.

The trial High Court in its judgment dated 22nd February 2017 dismissed the Plaintiffs' claims but granted the 4th and 5th Respondents' counter-claim ordering the Applicant herein to pay the 4th and 5th Respondents the compensation adjudged by the Supreme

Court of the Gold Coast plus interest at the prevailing bank rate at simple interest from the day of the acquisition to the date of final payment.

The applicant dissatisfied with this decision appealed to the Court of Appeal. The Court of Appeal in its majority decision dismissed the appeal; it however found the High Court's order for payment of compensation to the 4th and 5th Respondents, (in its words) 'unreasonable and unjustifiable'. It therefore substituted the High Court's orders with the following consequential orders: "*consequently since the leases granted by the appellant are for both residential and commercial purposes, we hold that all remaining undeveloped parcels of land and those being occupied or developed by the 3rd and 4th Respondents, (that is the 4th and 5th Respondents in this application) their subjects, agents, privies or grantees for similar purposes, which fall within the area of the 3rd and 4th respondents' interest (as properly delineated in the site plan Exhibit 4D5 at page 188 of volume 3 of the record of appeal) be insulated from any control or interference(s) whatsoever by the appellant. To give effect to this direction and in the exercise of our power pursuant to Rule 32 of the Court of Appeal Rules C.I. 19 (as amended) we hereby order a perpetual injunction against the appellant restraining it from any interference with those parcels of land falling within the area verified by exhibit 4D5 aforementioned."*

The Applicant herein has appealed against the above decision of the Court of Appeal to this court. In this application the applicant, the Lands Commission is praying for an order staying the execution of the orders of the Court of Appeal pending the hearing of the appeal before this Court.

The grounds for the application mainly are that:

a) The appeal has a good chance of success because some findings made by the Court of Appeal are at variance with evidence on record. Furthermore the consequential orders made by the first appellate court are contrary to statute, particularly provisions of the Public Lands Ordinance, 1876 (Cap134)
b) The applicant has discovered additional evidence of compensation payment to the La Stool, the 4th respondent in respect of the 1944 acquisition; the applicant had obtained leave from this court on the 15th of December 2020 to adduce the said evidence in support of the appeal
c) There are special circumstances the court must consider in determining the application, some of which are that i) The 4th and 5th defendants respondents are executing the orders of the first appellate court, breaking down fence walls and forcibly taking possession of parcels of land belonging to the applicant's prior registered grantees. Pictures of the destruction have been exhibited with the application as exhibit LC 10. ii) These activities of the 4th and 5th Defendants respondents are aimed at selling off the parcels of land they are forcefully taking possession of. The success of the appeal would therefore be rendered nugatory if this court fails to grant the application.

From the affidavit of the Respondents opposing the application, their relevant response to the above grounds are that the application has been brought in bad faith and that the applicant failed to demonstrate any exceptional grounds to warrant a stay of execution of the subject judgment.

The refusal or granting of an application for stay of execution is at the discretion of the court. However there are settled principles that guide the court in exercising its discretion. These principles have been emphasized in many decisions of this court. It has also been the position of this court that the settled principles need not to be followed in a straightjacket manner but the circumstances of each case ought to determine how the principles are applied.

In the case of ***Ofosu-Addo v Graphic Communications Group Ltd. [2011] 1 SCGLR 355*** this court per Gbadegbe JSC sums it up this way ***"although an application for stay of execution pending appeal may be granted in the discretion of a Court when the judgment on which it is based is shown by the applicant at the hearing to suffer from an erroneous statement of law or that a refusal would occasion irreparable harm or inconvenience to the applicant these are not the only reasons for which a court may make a grant. The Court in granting or refusing an application for stay of execution pending the determination of an appeal acts according to well settled principles that enables it to bridge the gap in the intervening period between the delivery of the judgment in the court below and the time that the appeal is finally determined in order to deal with the rights of the parties in the pending appeal by the grant of interim or provisional remedies, which among others ensure that a successful appeal is not rendered nugatory by the making of orders such as that in respect of which the instant proceedings was launched by the Plaintiff."***

That the court in such applications tries to hold even the rights of the parties in the waiting period of the appeal cast the duty on the court to consider each case in its peculiar circumstances.

This court's decision in the case of ***NDK Financial Services v Yiadom Construction & Electrical Works [2007 – 2008] SCGLR 93*** spelt out some of the principles and held as follows: ***"The principles for considering an application for stay of execution pending appeal were well settled: the main principle adopted by the courts was what the position of the appellant would be if the judgment were to be enforced and the appeal was successful. In effect, the essential point in considering such applications was whether the applicant would be returned to the status quo ante should the appeal succeed. Another determining principle was which of the parties would suffer greater hardship should the application be granted or refused."***

From the affidavit evidence before us the applicant has demonstrated that:

a) There are arguable points of law to be considered in the appeal.

b) The 4th and 5th Defendants/Respondents are forcibly destroying fence walls of State grantees and taking over duly registered plots of land. That the applicant would not be returned to the status quo ante if the appeal succeeds is very obvious. Not only that but the activities of the respondents, breaking into undeveloped plots of land and dispossessing registered owners of the land are likely to brew unwarranted litigation which would create hardship for the appellant and its grantees.

c) The Applicant has further demonstrated that this court has given it leave to adduce fresh evidence on payments made by the State to the 4th Defendant/Respondent. The basis of the 4th and 5th Defendants/Respondents' counter claim which has resulted in the judgment on appeal is that the State had not paid them compensation for the 1944 compulsory acquisition of their land. The applicant armed with leave to adduce fresh evidence to prove otherwise justifies the grant of the application.

The Applicant in our opinion has successfully demonstrated exceptional circumstances that warrant the grant of the application. The application is hereby granted accordingly. The execution of the judgment of the Court of Appeal, dated 28th of November 2019 is hereby stayed pending the determination of the appeal before this court.

In the interest of fairness, we further order that the processing of any transaction or documents in respect of the area in dispute be suspended by the applicant pending the final determination of the appeal

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

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

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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COUNSEL

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OFORI ADUENI FOR THE PLAINTIFFS/REPONDENTS/RESPONDENTS/RESPONDENTS.

KWAME FOSU GYEABOUR FOR THE 4TH & 5TH DEFENDANTS/RESPONDENTS/RESPONDENTS/RESPONDENTS.