IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: BENIN, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION
No. J8/61/2014

19TH JUNE,2014

1. DUMEGAH AHADJI DODO
2. HLORTATOR KPEGLA — **PLAINTIFFS/RESPONDENTS**
3. TOGBE AHIL II — **/APPELLANTS/APPLICANTS**
4. TOGBE KPORTI AMENGOR

VRS.

1. BRITISH TOBACCO CO. LTD
2. DR. ABLOR — **DEFENDANTS/APPELLANTS**
3. SOLOMON HODANU — **/RESPONDENTS/RESPONDENTS**

RULING

BENIN JSC:

This is an application by the plaintiffs/defendants for a stay of execution of the judgment or decision of the Court of Appeal dated 23rd January, 2014 pending appeal to this court against the said decision. The Court of Appeal allowed the appeal by the defendants/respondents herein and entered judgment in their favour on their counterclaim.

The subject-matter of the dispute is a piece and parcel of land situate at Sogakope. Issues of title and recovery of possession, inter alia, were raised. Following the Court of Appeal's decision the plaintiffs/applicants herein appealed to this Court, which is not yet seised with the appeal. So under the rules of Court, C. I. 16, the plaintiffs/applicants first made an application to the Court of Appeal to stay execution of the judgment, but the Court of Appeal dismissed it on 14th April, 2014. Thus this is a repeat application to this Court under C. I. 16.

The facts culminating in this application may be stated briefly as follows. In or around 1958 the plaintiffs granted a fifty year lease of the land in dispute to the British Tobacco Co. (1st defendant). The plaintiffs acted in their capacity as the representatives of the Fieve State, owners of the land. According to the plaintiffs they did not intend to renew the lease since they had decided to use the land for other purposes to serve the community interest. However, to cut a long story short, upon the expiry of the lease, the lessees did not restore the land to the plaintiffs. Apparently the 1st defendant had re-negotiated a fresh lease with persons who had not been authorised by the land owners. It turned up that prior to the 1958 lease

agreement between the plaintiffs and the 1st defendant, the Government of the then Gold Coast had compulsorily acquired the land in dispute. So in February 2008, the Government of Ghana granted a fresh fifty year lease to the 1st defendant who in turn sub leased the unexpired term to the 2nd defendant. As a result the defendants denied the title of the plaintiffs to the land. For the purposes of this decision the brief facts recounted herein will suffice.

The High Court gave judgment for the plaintiffs, but this judgment was reversed by the Court of Appeal which accepted the validity of the Government's acquisition of the land that had effectively extinguished any other interests in the land, as held by the Court of Appeal.

Grounds for the application are set out in paragraph 14 through 17 of the affidavit in support. The key elements contained therein are:

(i) that the appeal raises serious questions of law;

(ii) that the appeal stands a reasonable chance of success;

(iii) that if a stay is not granted the defendants/respondents will alter the nature or character of the land as to affect the purpose for which they (plaintiffs) have earmarked it;

(iv) that there is likelihood of a breach of the peace if the 2nd defendant enters the land now because citizens of Fieve will likely resist him;

(v) it is necessary to maintain the status quo in order not to render any judgment to be given by this court nugatory;

(vi) that greater hardship will be caused to the plaintiffs/applicants if the 2nd defendant is allowed to develop the land and the plaintiffs have to restore the land to its present state, as against the 2nd defendant who loses nothing since he is yet to develop the land.

Respondents' answer

The defendants/respondents posited that the appeal has been brought in bad faith and is intended to deprive the defendants of the fruits of their victory. The reason being that with the compulsory acquisition of the land by the Government of Ghana whatever interest the plaintiffs had in the land was extinguished. The law was settled on this according to the defendants/respondents so the appeal raises no serious legal points to be argued, and it stands no chance of success. The defendants denied they intend to alter the nature and character of the land. In respect of the allegation by the plaintiffs/applicants that there was a likelihood of a breach of the peace should the 2nd defendant be allowed to enter the land, the defendants/respondents deposed in paragraph 43 of their affidavit that this "*cannot be said to be a special or an exceptional circumstance to warrant the grant of a stay of execution and same undermines the judicial process".* They also said that there is not the likelihood that the appeal will succeed so there is no judgment that will be rendered nugatory for which the status quo ought to be maintained. On the contrary it is rather the 2nd defendant/appellant who will suffer great hardship and expense to refurbish

the property which is going into ruins as a result of the litigation, thus concluded the affidavit in opposition.

Arguments by counsel

In his argument counsel for the plaintiffs/applicants said the appeal raises serious questions of law in the sense that the Court of Appeal failed to take into account the provisions of the 1992 Constitution, article 20(5)(6) thereof. On this point counsel for the defendants/respondents argued that the provisions in the Constitution cited by the plaintiffs/respondents' counsel do not have retrospective effect.

Besides this Constitutional point, both Counsels dwelt on the affidavit depositions in making their submissions.

Consideration by the court

I begin with the claim by the plaintiffs/applicants that should the 2nd defendant/respondent enter the land there is a likelihood of a breach of the peace since he may be attacked by the citizens of Fieve, and for that reason the application to stay execution should be granted. This claim is outrageous, to say the least. The plaintiffs/applicants are telling the court that it should restrain the owner of the land (2nd defendant herein) not to enter same because he would be attacked by a defeated party if he did. This blackmails the court and throws the entire judicial system into disrepute. The plaintiffs, by the judgment of the Court of Appeal, have no right to enter the land, let alone to cause assault on any person there. The intent of the plaintiffs either by themselves or agents to attack the 2nd defendant is sufficient reason to restrain them (plaintiffs) from entering the

land pending appeal. This is because the 2nd defendant/respondent has a better and legitimate claim to the land having been so declared by the Court of Appeal as the owner thereof.

The other ground that the appeal raises serious questions of law and stands a reasonable chance of success are worth considering. However, on the facts of this case and given the basis of the Court of Appeal decision founded on the Government's superior title by the compulsory acquisition, it is difficult at this stage to see a clear legal justification for the appeal. The reliance on article 20(5)(6) of the 1992 Constitution is not clear cut in view of the available authorities. In effect I do not see myself to be in agreement with the plaintiffs/applicants that they have serious issues on appeal, which stand a reasonable chance have of success.

On the question of greater hardship, the undisputed evidence is that the 1st defendant erected some structure on the land. This was passed on to the 2nd defendant when the 1st defendant transferred title to him. By granting this application the 2nd defendant will be deprived of the benefit and use of the structure on the land. And the longer he stays out of the property the more probable than not that it will go to ruins. And if he succeeds on appeal the 2nd defendant will suffer greater hardship than the plaintiffs who have invested nothing there. The fact that the plaintiffs intend to use the land for a different purpose is not weighty or reasonable enough when compared to the 2nd defendant who stands to lose the benefit of his investment should the property on the land be allowed to go to ruins.

For the foregoing reasons I do not see any merit in the application. I hereby dismiss same accordingly.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

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ANTHONY DESAWU ESQ. FOR THE DEFENDANTS/APPELLANTS/ RESPONDENTS/ RESPONDENTS.