Misc. 1203/2002

IN THE HIGH COURT OF JUSTICE, GHANA,
HELD IN ACCRA ON WEDNESDAY, 24TH JULY 2002
BEFORE HIS LORDSHIP, YAW APPAU, J.

ISSAH IDDI ABASS & 10 Others.

Versus

ACCRA METRO. ASSEMBLY & Anor

RULING:
This is an application by the plaintiffs who said they sued for an on behalf of the people of Sodom and Gomorrah, praying this court to restrain the 1st defendant, i.e Accra Metropolitan Assembly from evicting or ejecting them from this place called Sodom and Gomorrah, until their substantive claim is determined.

Though the application which was filed on notice on 31/5/02 was served on the 1st defendant together with the writ and statement of claim without first seeking leave of the court contrary to Order 50 rule 8 of the High Court Rules, L.N. 140 A, defendants decided to waive the irregularity in order not to delay further hearing of the application.

Plaintiffs later applied to have the Attorney General joined in the suit as the 2nd defendant. The 2nd defendant did not file another affidavit in opposition to plaintiffs' application but joined forces with the 1st defendant who had already filed an affidavit to that effect, to oppose it.

The reasons for plaintiffs' application were initially captured under paragraphs 3-12 of the affidavit in support filed on 31/5/02 and sworn to by the 2nd plaintiff, Mahama Liro Maligu Naa. It is very necessary that I quote all the paragraphs of this affidavit mentioned above. They read as follows:

"(3). That the applicants herein are traders and residents of Sodom and Gomorrah.

(4). That we caused a writ of summons to be issued against the Defendant claiming among others an injunction restraining the Defendant from ejecting the people of Sodom and Gomorrah and same together with the statement of claim was served on the Defendant.

(5). That as a result of the Korle Lagoon Ecological Restoration Project, an Environmental and Social Impact Statement of the project was prepared by the project implementers as required by law (Attached hereto and marked Exhibit "A" is the social impact statement.

(6). That the social impact statement proposed certain mitigating and enhancing measures to be undertaken by the Defendant. Among the measures is to relocate or resettle the people of Sodom and Gomorrah.

(7). That we are advised and believing same to be true that the social impact statement is a legal requirement under the Environmental Agency Act 1994 (Act 490) and the Environmental Assessment Regulations L 11652 and a pre-requisite for the grant of a permit for the commencement of any project such as the Korle Lagoon Ecological Restoration Project.

(8). That the measures contained in the social impact statement of the Korle Lagoon Ecological Restoration Project to relocate, or settle Sodom and Gomorrah have not been complied with by the project implementers including the Defendant.

(9). That the Defendant through a Press Conference on the 28th May 2002 gave the people of Sodom and Gomorrah a two-week ultimatum to vacate the area or be ejected after the said period.

(10) That I am advised and believing same to be true also that the intended action of the Defendants will be in violation of article 23 of the 1992 Constitution of the Republic of Ghana.

(11) That great hardship would be caused the Plaintiff if the Respondent were allowed to carry out the intended ejection without resettling or relocating the plaintiffs.

(12). That we are advised and believing same to be true also that considering the circumstances the respondent if not restrained will go ahead and eject us, and thereby prejudicing or defeat our substantive case before this Honourable court."

In effect, the gravamen of plaintiffs' application before their supplementary affidavit was filed was that; (a), Exhibit A was a legal document in which certain legally binding proposals were made. (b), That some of the proposals included the resettlement or relocation of the people of Sodom and Gomorrah before the project could commence. (c) That the ultimatum to plaintiffs to vacate the Korle Lagoon area without complying with Exhibit A. (d), That in order not to defeat the purpose of their action, the defendants should be stopped from ejecting them until their claim for resettlement is finally determine.

The reliefs plaintiffs are claiming against the defendants are as follows;

(a) A declaration that the intended action of the defendants will violate the fundamental human rights of the plaintiffs under the Constitution.

(b) An injunction restraining the defendants from carrying out the ejection

(c) An order that the defendants resettle or relocate the people of Sodom and Gomorrah.

(d) costs

On 7/6/02, the 1st defendant filed an affidavit in opposition to plaintiffs' application. 1st defendant again filed a statement of defense against plaintiffs claim on the same date contending that there was no legal basis for plaintiffs' action.

1st defendant's vehement opposition to plaintiffs' application was based on the main ground that it laced any legal foundation.

1st defendant described plaintiffs as squatters and trespassers who have no legal rights over the area in dispute to call on the court to restrain them from performing their legitimate duties.

1st defendant denied that Exhibit A constituted a contract between them and plaintiffs and contended that they are not bound to resettle or relocate plaintiffs who invaded the area not earmarked for human habitation without authority.

Apart from the fact that plaintiffs have no title whatsoever to the land in question but are mere squatters and trespassers, their illegal stay on the land is causing nuisance to other residents of Accra and also greater financial loss to the State to the tune of $74,000 per each day of their illegal occupation.

Whilst agreeing that some of the squatters in the area concerned were permitted by the 1st Defendant to occupy their places temporarily for trading purposes pending their relocation to other markets, which has been discussed with their leadership to their satisfaction, defendants contend that plaintiffs are trespassers who do not qualify to be resettled or relocated and whose continuous stay constitutes a hindrance to the completion of the Korle Lagoon Ecological Restoration Project popularly known as KLERP, a project that is intended to restore the Korle Lagoon to it former state and to check flooding in parts of Accra.

It was therefore the prayer of the 1st defendant that the application be dismissed since the main action has no basis or foundation.

Just three days after 1st defendant had filed an affidavit in opposition to the application challenging the legality of the application and the action itself, plaintiffs, through their solicitors, filed a supplementary affidavit to their application in which they raised the question of fundamental human rights.

In this affidavit, plaintiffs raised issues concerning security operations in the area organized by police and military personnel to smoke out armed robbers and other criminals who use the area as a hiding place for all sorts of criminal activities and concluded under paragraph 19 as follows:

"19. That I am advised and verily believe same to be true that the intended action of defendants if not restrained would violate plaintiffs/applicants rights to human dignity, rights to housing or shelter, right to work and right to due process of law in respect of governmental conduct that impact directly on their lives".

In his bold submissions supporting the application, which were both oral and written, counsel for plaintiffs based the application on three main grounds.

The first was that they were relying on the statutory language of Order 50 rule 7(1) Articles 12(1) and 33 of the 1992 Constitution which is the supreme law of the land.

Secondly, in the event of Order 50 rule 7(1) not being favourable to their cause, which to them was likely, they were seeking redress under Article 12(1) and 33 of the 1992 Constitution which is the supreme law of the land.

Thirdly, they were again relying on Article 23 of the Constitution, which imposes a mandatory duty on administrative bodies and officials like the 1st defendant, to act fairly and reasonably and to comply with requirements or submissions of counsel for plaintiffs/applicants below; arguments whose main thrust, in the considered opinion of this court, philosophers would appropriately call or describe as "argumentum ad misericordiam", i.e.; one appealing to pity or mercy or for forgiveness, instead of pure legality.

In the first place, counsel for applicants referred the court to Order 50 rule 79 (1), which gives the court the discretion to grant an injunction in all cases where the court deems it just or convenient to do so. Counsel then went on to say that it was patently unjust and inconvenient to permit the violation of fundamental human rights as enshrined in the constitution of the Republic and also as enshrined in International Human Rights Instruments.

According to counsel, it would constitute a violation of Article 12(1) of the Constitution of the Republic if the intended eviction of the applicants from the land they are occupying by the 1st defendant is allowed to proceed.

Counsel contended that Article 12(1) imposes a duty on government and its agencies to uphold and respect the fundamental rights of the citizens of Ghana no matter who they are and where they are and Article 33 of the same Constitution empowers the court to enforce this provision of the Constitution.

Counsel said granted that their reliance on Order 50 rule 7(1) could not succeed since their position as squatters and trespassers with not interest whatsoever in the land in

question is not in doubt, they are calling on that court to find shelter under Articles 12 (1) and 33 of the Constitution to find for them in their application.

Article 12(1) of our 1992 Constitution under reference reads; "The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the courts as provided for in this Constitution.

Article 33(1) also reads; "Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress".

Counsel said though the general public has an interest in the proposed project for which plaintiffs are being evicted, quoting Article 295(1) on what public interest is, he contended that that interest does not override the fundamental rights of the plaintiffs to life, shelter or housing or to work, which would be infringed if the application is refused. According to counsel the unplanned eviction of plaintiffs would create more hardships to the society than the pecuniary loss to defendants and would defeat the governments avowed aim to reduce poverty as proclaimed in its poverty reduction or alleviation program. Counsel said it is therefore proper that plaintiffs are either relocated or resettled elsewhere by defendants or in the alternative, compensated before being evicted for the project to begin.

Counsel again referred to Article 23 of the Constitution and contended that under that Article, state agencies are required to act fairly and reasonably in all their dealings with the public, but in this instance the 1st defendant is not acting either reasonably or fairly, neither are they complying with law in their intended eviction against plaintiffs. This is because the unplanned eviction of plaintiffs is unconstitutional and contrary to the guidelines set out in Exhibit A attached to their application.

Counsel for applicants conceded that the applicants are squatters and trespassers who are occupying the land from which they are being evicted, unlawfully. He admitted that the applicants have no interest whatsoever in the land but contended that the applicants' case rests on their fundamental human rights, which exist independently from their status as squatters.

According to him the eviction of the plaintiffs/applicants from the land would be an infringement on their rights to life and their livelihood in general. He argued that the right to life should not be limited to the taking of one's life only but must be extended to the right to livelihood and quoted the Indian case of OLGA TELLIS versus BOMBAY MUNICIPAL CORPORATION, decided on 7/10/85 and which authority counsel said he managed to capture on the internet in support of his submissions. He said the applicants who are mostly kayayees or kayayoos, hairdressers, truck or handcart pushers, etc were compelled to find places or accommodation unlawfully at where they are at the moment

to enable them eke out a living because they are unable to pay high rents to secure better accommodation in other part of Accra, so if they are thrown out just like that into the streets without their proper resettlement or the payment of compensation to them to find proper places to live, they would be completely thrown out of their business.

Counsel stressed that applicants are entitled under the Constitution to adequate housing and minimum shelter so the state must of necessity provide applicants these facilities instead of throwing them out just like that to create a state of homelessness in the society. The right to housing, contends counsel has International dimensions which defendants cannot ignore and referred the court to the South African case of GROOTBOOM versus OOSTENBERG MUNICIPALITY & Others (2000) 3 Butterworths Law Reports 277, where a similar issue was addressed by the South African High Court.

Counsel said as at now the defendants have no rational programme to resettle the applicants so if their eviction is carried out, it would be an infringement on their right to life and human dignity. Again, the rights of their children to education and health would also be affected.

Counsel concluded his submissions by saying that, if the state cannot provide applicants with the means of life as stipulated under the Constitution then it should not take any steps like the intended eviction of applicants that would compound the already precarious conditions under which they live.

He then ended on a Biblical note by referring to Genesis Chaper 18, versus 25 and 26 on the people of Sodom and Gomorrah in the Old Testament and prayed on the court to grant the application as a saving grace to the people of Ghana's Sodom and Gomorrah.

Relying, counsel for the 1st defendant/respondent described the application as unmeritorious, misconceived and an utter abuse of the courts' process. Counsel referred the court to the reliefs being claimed by the plaintiffs on their writ of summons and contended that throughout their pleadings, applicants have not indicated in anyway the sort of rights they have under the Constitution, which would be infringed by their eviction from the land they are unlawfully occupying.

Counsel said the applicants have admitted two basic facts, which should compel the court to throw out their application completely.

Firstly, they have admitted that it is the responsibility of the 1st defendant to see to the physical development of Accra and its environs.

Secondly, they have again admitted that they are trespassers and squatters who are occupying the land in question illegally and which land is not earmarked for residential purposes.

If that is the case, contended counsel, then how can the court, which is supposed to do justice according to law condone to illegality by granting an injunction against the 1st

defendant who is the owner of the land and in favour of the trespassers to enable the trespassers continue with their illegality or lawfulness?

Counsel went on further to state that by their own supplementary affidavit filed on 10/6/02, applicants have shown clearly that where they are squatting is not a place where their freedom and dignity could be guaranteed. They cannot therefore claim that their eviction from that place would amount to an infringement on their freedom and human dignity.

Counsel contended that the fundamental human rights as enshrined in our constitution do not exist in a vacuum but they are subject to law and the overall freedom of the citizens of the country. No one can therefore use an illegality to achieve a right.

According to counsel, people are resettled when their property rights have been interfered with but in the case of plaintiffs, they have no property rights over the Sodom and Gomorrah area so they cannot put up a claim for resettlement or the payment of compensation as they are doing in this case.

Counsel referred to Exh. A attached to plaintiffs' application, which they are using as their trump card and said, from Exh. A, the Sodom and Gomorrah area has not been zoned for residential purposes but rather has been invaded unlawfully by the plaintiffs. This invasion according to counsel is causing great financial loss to the 1st defendant and the nation as a whole, not to mention the health hazards it poses to other residents of Accra.

Counsel referred to the last paragraph of page 9 of Exh. A and said plaintiffs have been given ample time to move out from the place but they have blatantly refuse to do so. He called plaintiffs lawless people who want to use legality to continue with their lawless acts.

Counsel said Exh. A is not a contract between the 1st defendant and plaintiffs but rather a study report or guidelines for the development of the area in question by the 1st defendant. It is therefore not binding on anybody but rather the continuous presence of plaintiffs in the area is very negative and inimical to the interest of the people of Accra and Ghana as a whole.

Counsel submitted that since the reliefs being sought by plaintiffs in their substantive action are not grounded in law, they cannot pray for an injunction for those reliefs to be determined.

Counsel said equity follows the law, so before equity the law must be there. Counsel referred the court to the Court of Appeal case of VANDERPYE versus NARTEY (1977) 1 GLR, 429 on the principles governing the grant of injunctions and submitted that plaintiffs have not satisfied those principles for them to succeed in their application.

Other cases cited by counsel were; (1) MUSIGA versus ABRAHAM and Another (1982-83). GLR, 337 and then BAIDEN versus TANDO (1991) 1 GLR, 98.

Counsel said all the provisions of the constitution referred to by applicant's counsel do not arise in this case as the applicants have no rights that have to be protected to warrant the grant of the application for injunction. Again all the cases referred to by counsel for applicants, which are cases from India and South Africa, have different historical backgrounds and cannot be applied in the present case as applicants cannot be properly described as 'homeless' people.

Counsel accordingly prayed for the dismissal of plaintiffs' application.

The 2nd defendant who is the Attorney General added his voice to that of the 1st defendant and contended that the planned eviction of palintiffs from the land in question is in consonance with Article 18 (2) of the 1992 Constitution, which is part of the Bill of Rights plaintiffs have made a lot of noise about.

The whole of Article 18 of the Constitution reads; "18 (1). Every person has a right to own property either alone or in association with others.

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication, except in accordance with law as may be necessary in a free and democratic society for public safety or the economic well being of the country, for the protection of the rights or freedoms of others".

Counsel was of the view that the articles under chapter 5 of our Constitution cannot help applicants in any way since their action is based more on emotions and sentiments rather than law. Counsel described the action of the plaintiffs as frivolous and vexatious for which the present application for injunction must not be countenanced at all.

The authorities are legion on the relevant factors or principles that the courts are required to consider when called upon to exercise their discretion in applications of this nature. These principles are:

1. The courts must as much as possible try to maintain the status quo.
2. The courts must seriously consider the relative hardship and inconvenience that would be caused to any of the parties by the grant or refusal of the application and
3. The courts must make sure that a winning party is not given an empty or hallow victory.

But before considering the above factors, the authorities state clearly that the courts must first of all satisfy itself that the claim being made by the plaintiff/applicant against the defendant/respondent in the substantive action is neither frivolous nor vexatious.
Where it is found that the substantive claim is either frivolous nor vexatious, there would be no need to consider the factors or principles enumerated above at all since the applicant would, under those circumstances, have no legal basis for the application itself.

See the cases of, VANDERPUYE v. NARTEY, cited supra and POUNTNEY v DOEGAH (1987-88) GLRD, paragraph 13, p. 26 @ p. 27 all decided by the Court of Appeal.

In the case of BAIDEN v. TANDO & Others (1991) 1 GLR, 98 Kpegah, J. (as he then was), went further to state that in his view, before an applicant in an application for injunction could succeed, he must, as of necessity establish a prima face case against respondent failing which the application must be refused outright. He supported his position with authorities and criticized the frivolous and vexatious test set by the Court of Appeal some few years before.

Despite the fact that there seem to be some difference in the two positions held by the Court of Appeal and then Kpegah, J, or it was the court in Baiden v. Tandoh that tried to create the impression that there was such a difference between Kpegah, J's (now Kpegah, JSC) position and that of the Court of Appeal in the Vanderpuye and Pountney cases because by saying that a prima facie case has been established means nothing more than that in the absence of any reasonable explanation to the contrary, a good case has been made by the plaintiff in the first instance. So if a good case has been made what it simply means is that plaintiff's case is neither frivolous nor vexatious. It is a good case until rebutted.
I think the driving thread in both seemingly different positions is that the court must be satisfied that the plaintiff has made a good case against the defendant from his writ and could be given with regard to applications for injunctions of this nature.

This is the summary of Lord Diplock's authoritative explanation of the principles to be applied in such applications in the notorious case of AMERICAN CYANAMID COMPANY versus ETHICON LTD. (1975) AC, 396 and also reported in, (1975) 1 All ER, 504- H.L which is the bedrock of our case law authorities on injunctions.

1. The plaintiff must establish that he has a good arguable claim to the right he seeks to protect.

2. The court must not attempt to decide this claim on the affidavit; it is enough if the plaintiff shows that there is a serious question to be tried, and

3. If the plaintiff satisfies these tests, the grant or refusal of an injunction is a matter for the exercise of the court's discretion on the balance of convenience.

What therefore this court has to find out first in this application is; whether or not plaintiffs' action is neither frivolous nor vexatious.
By this, what I mean simply is; whether or not plaintiffs have made a good case against defendants from their own claim as endorsed on the writ of summons and the statement of claim, for which the court requires an answer from the defendants.
It is after deciding this basic issue that the court is required to consider the other factors like status quo ante, relative hardships and inconveniences etc before deciding either to grant or refuse the application for injunction.

What is the claim of the plaintiffs against the defendants in the instant suit?
It reads: "

a. Declaration that the intended action of the defendants will violate the fundamental human rights of the plaintiffs under the Constitution.
b. An injunction restraining the defendants from carrying out the ejection.
c. An order that the defendants resettle or relocate the people of Sodom and Gomorrah."

The thrust of plaintiffs' claim is that though they are unlawfully occupying 1st defendant's land which has been earmarked for an ecological restoration project, land they themselves admit they have not interest whatsoever in, the document or project report that was prepared by the defendants as guidelines for the commencement of the project provided that plaintiffs who are residents of Sodom and Gomorrah must be resettled or relocated before the project could begin. However, despite the non-compliance with this provision the 1st defendant has given them a two-week ultimatum to vacate the area or be forcibly evicted.

Plaintiffs contended that the failure to settle or relocate them, which, apart from being contrary to exhibit A, is an infringement on their fundamental human rights as enshrined in our Constitution.

In fact, summed above is the foundation on which the present application rests.
Throughout his arguments, counsel for applicants did not deny the fact that plaintiffs are living in an area popularly known and regarded as a habitat for criminals like armed robbers, prostitutes and other miscreants in the city of Accra. The name Sodom and Gomorrah in fact symbolizes life in the area. This does not however mean that there are no upright or humble men and women among the populace of Sodom and Gomorrah. I admit there are, for even in the real Biblical Sodom and Gomorrah from which the name of Ghana's Sodom and Gomorrah was derived, there were a few honourable men and women who God made to flee before the city's destruction began. The City was not spared anyway because of these honourable men and women.

But the question is; is it because of the criminal activities of some of the residents of Ghana's Sodom and Gomorrah that is why plaintiffs are being evicted? The answer is no, plaintiffs are not being evicted because of any criminal behaviour. The fact is that, plaintiffs were not, in the first place, supposed to be at where they are now. That area, which is a water zone sprawling the banks of the Korle lagoon has not been earmarked for residential purposes. The traders there were only permitted by the 1st defendant to settle there temporarily for trading purposes. These traders, according to 1st defendant, have been relocated to other markets and whiles some of them have moved others have refused to do so. Applicants have not denied this. Most of the plaintiffs on the other hand invaded the area without any authority and settled anywhere they liked. This they themselves have admitted and as was positively stated by their own counsel, they have no interest whatsoever in the land as they are squatters and trespassers who cannot challenge the title of the 1st defendant to the land they are occupying unlawfully.

From these arguments, it came out clearly that plaintiffs are not against their eviction per se but their concern is that it should be done in a humane and dignified manner and not contrary to law and/ or the fundamental rights of plaintiffs as enshrined in our Constitution and other International Conventions.

I in fact share this concern of plaintiffs that as citizens of Ghana, they are supposed to be treated as equals to all other citizens of the land with dignity and due process. But the hard questions we are bound to ask ourselves and provide answers to are;

1. Is 1st defendant's planned eviction of plaintiffs contrary to law?
2. Are defendants enjoined to resettle or relocate plaintiffs or in the alternative compensate them before evicting them? And,
3. Would the eviction of plaintiffs under the circumstances, infringe their fundamental rights as enshrined under Chapter 5 of the 1992 Constitution?

If all or any of the answers to the three questions above turn out to be in the affirmative, then it means that plaintiffs' case is neither frivolous nor vexatious for which their application should be given a serious consideration. However, if the contrary is established, then the application needs no consideration at all.

With regard to the first contention by applicants that their planned eviction by the 1st defendant is contrary to law, referring to Exhibit A as the basis for that contention, I agree with counsel for the 1st defendant/respondent that Exhibit A is not a legal document binding any party or parties which could be a subject mater for enforcement in our courts. It is nothing but a report giving the scope and guidelines for the implementation of the project. It is therefore not a legal document, which can give rise to contractual relations between the defendants and anybody including plaintiffs as counsel for the 1st defendant rightly contended in this submissions against the application.

Again plaintiffs' reference to Article 23 of the CONSTITUTION is neither here not there as there is nothing to show that plaintiffs are either being treated unfairly or unreasonably. Plaintiffs themselves have admitted that they are occupying the land unlawfully as they have no interest whatsoever in it. This means they are nothing but trespassers. What law therefore does the owner infringe by asking the trespassers to leave within a specified period? None I would say.

This was what the Court of Appeal of England per Denning, M. R Orr and Lawton, L.JJ in the consolidated cases of MCPHAIL versus Persons Names Unknown and BRISTOL CORPORATION versus ROSS and Another (1973) All E. R, 393, said when the appellants, a homeless people who had broken into plaintiffs' unoccupied premises without authority went on appeal against a High Court order granting the owners' application to recover possession for them: "When an owner came to court asking for an order of possession against squatters, the court was bound to give him the order asked for and had no discretion to suspend the order. The courts of Common Law never suspended an order for possession seeing that as against trespassers; the owner could take possession at once without the help of the courts. The owner could not therefore be in any worse

position when he came to the courts. Furthermore, there was no equitable jurisdiction to suspend an order for the possession for a court of equity never intervened in aid of a wrongdoer……It was for the owner to give them such time as he thought right."

In fact the position of our law with regard to the above is not different. Even where a person has been permitted or given license to occupy any premises, that permission or license is at the mercy of the owner or licensor who is at liberty to recover the premises as and when needed. No law is therefore infringed when a licensor or owner of land gives a licensee or a trespasser an ultimatum to quit the land so occupied within a specified period.

So if the law even allows a licensor to evict a licensee as and when necessary, then how can the same assist a trespasser who is an unlawful or unauthorized occupier by preventing his eviction by the lawful owner?

Since Exhibit A does not create any contractual relationship between plaintiffs and 1st defendant or both defendants, it has no binding force against anybody. Again, the ultimatum given to plaintiffs to quit within a specified period does not in anyway contravene Article 23 or our Constitution. The intended eviction of plaintiffs by the 1st defendant is therefore not contrary to any known law of the land.

On the second question as to whether or not defendant are enjoined to resettle or relocate plaintiffs or in the alternative compensate them before evicting them, I must say with all frankness that there is nothing in exhibit A that enjoins either the 1st defendant or the 2nd defendant or both to either resettle or relocate, (whichever is appropriate) or in the alternative compensate plaintiffs before they could be evicted for the intended project to commence.

All the decisions referred to by the applicants are cases involving situations arising from different historical perspectives.

The constitutions of these countries, particularly that of South Africa, which the applicants in the GROOTBOOM case cited by counsel for applicants in this application, made capital of is quite different.

In the South African constitution, unlike ours, there is a provision for adequate housing because that constitution was purposely meant to correct a situation or an imbalance created by the forcible appropriation of the black peoples' land by the white settlers during the white domination or apartheid era. There are therefore real homeless people in South Africa unlike Ghana, where nothing of that sort was ever experienced.

Even in the GROOTBOOM case, as counsel for applicants admitted, the court did not reverse the eviction of the plaintiffs, which had already taken place. The court stated clearly that it would not interfere in how the executive arm of the government would execute its program on housing. Even Yacoom, J who presided in the Grootboom case frowned upon land invasions and stated as follows at page 64 of his judgment:

"This judgment must not be understood as approving any practice of land invasion for the purpose of coercing a state structure into providing housing on a preferential basis to those who participate in any exercise of this kind. Land invasion is inimical to the systematic provision of adequate housing on a planned basis. It may well be that the decision of a state structure, faced with the difficulty of repeated land invasions, not to provide housing in response to those invasions, would be reasonable. Reasonableness must be determined on the facts of each case."

So even in the heart of real homelessness (i.e South Africa), where people's lands were forcibly taken away from them by white settlers and later legitimized, which led to the birth of their present constitution where a provision for adequate housing was inserted to assist such homeless people, the courts do not approve of land invasions or illegal. Occupations for the purpose of compelling state authorities to provide shelter or housing for such illegal occupiers.

The effects of such an order by the court on a state authority in favour of a wrongdoer or trespassers have been succinctly state by Lord Denning M.R in the consolidated case of LONDON BOROUGH OF SOUTHWARK versus WILLIAMS and Another, and LONDON BOROUGH OF SOUTHWARK versus ANDERSON and Another. (1971) 2 All E.R, 175 at pp. 179-180.

In that case, some homeless people in London in the month of September 1970 sought the assistance of a squatters association and made an orderly into some empty houses in the Borough of Southwark owned by the council and squatted there. The council sought their eviction and recovery of possession and their major plea was one of necessity as they were homeless and had no option. This was what the court per Lord Denning M.R said when it ordered the eviction of the defendants; "If homeless were once admitted as a defence to trespass, on one's house could be safe. Necessity would open a door, which no man could shut. It would not only be those in extreme need who would enter. There would be others who would imagine that they were in need, or would invent a need, so as to gain entry. Each man would say his need was greater than the next man's. The plea would be an excuse for all sorts of wrongdoing. So the courts must, for the sake of law and order, take a firm stand."

The great Lord Denning added this consolatory note to express a sympathy, which I do share with him, but the solution of which is beyond our scope. He said, "We can sympathise with the plight in which they find themselves. But we can go no further. They must make their appeal for help to others, not to us. They must appeal to the council, who will, I am sure, do all it can. They can go to the minister, if need be. But, so far as these courts are concerned, we must, in the interest of law and order itself, uphold the title to these properties. We cannot allow any individuals, however great their despair, to take the law into their own hands and enter these premises. The court must exercise its summary jurisdiction and order the defendants to go out."

As counsel for the 1st defendant/respondent rightly stated in his submissions, the court can only make an order for resettlement or relocation of a people whose property rights have been interfered with by others or by any natural catastrophe but such an order cannot be made in favour of a wrongdoer.

Again what I know is that, compensation is paid to make amends for any loss or injury to persons or property or as a recompense for some deprivation for example; compensation to land owners whose properties have been acquired by the state compulsorily. But I have never known of a situation where a landowner has been ordered to compensate a trespasser before ejecting him from his land.

From the facts before me therefore, the defendants are under no obligation to resettle or relocate or compensate plaintiffs in anyway before evicting them from their illegal occupations.

I now move on to the last question as to whether or not the planned eviction of plaintiffs infringes their fundamental human rights as enshrined under Chapter 5 of the 1992 Constitution.

In his arguments, some of the rights counsel for the plaintiffs mentioned as the rights to be infringed by the planned eviction of plaintiffs are: the right to life which includes the right to a livelihood, the right to housing and shelter which though counsel said is not enshrined in our constitution, could be implied from Article 33 (5) of the Constitution and the right to human dignity.

Counsel also made mention of the rights of plaintiffs' children to education and adequate shelter, which would be interfered with when plaintiffs are thrown out into the streets without the provision of adequate shelter.

Whilst I admit that all citizens of Ghana are entitled to those rights as mentioned by counsel for plaintiffs, and that plaintiffs are no exception, I don't think counsel is suggestion that these rights must be achieved through lawlessness. All these rights must be expressed through due process. The Constitution itself is a legal document and in fact the supreme law of the land, so every reference to it must be based on law and not wrongdoing.

The mere eviction of plaintiffs who are trespassers, from the land they have trespassed onto, does not in anyway amount to an infringement on their rights as human beings.

In the instant case however, plaintiffs have not been able to convince the court that the mere ultimatum to them to quit in two weeks time to make way for the intended project for the restoration of the Korle lagoon constitute an infringement on any of their fundamental rights under the constitution.

The plaintiffs have not disputed the fact that it was about a year ago that the 1st defendant requested them to vacate their unlawfully acquired premises to enable the intended project for the area to begin but to no avail.

The fact that plaintiffs cannot pay high rents for better housing is not a license for unlawful occupations. The ultimatum to plaintiffs to vacate the Sodom and Gomorrah area or be evicted does not therefore constitute an infringement on any of their fundamental human rights as enshrined in the constitution or any other international convention of which Ghana is a signatory.

With these questions answered, could it be said then that plaintiffs' action is neither frivolous nor vexation for which their application must be given a consideration? I don't think so.

In all fairness to plaintiffs/applicants, they have not convinced this court that they have a good case against the defendants for which this court has to exercise its discretion in their favour with regard to the application before me, for an order against the defendants that the 1st defendant cannot evict the plaintiffs and commence the Korle Lagoon project until the final determination of plaintiffs' action before the court would be nothing but opening a dangerous page for all kinds of lawlessness which no court of law and conscience would do.

I will therefore, with all humility and with my sincerest sympathies to plaintiffs, dismiss their application.

I however entreat the 1st defendant to allow plaintiffs another grace period of two weeks from this date to organize themselves and vacate the land peacefully before the axe of forcible eviction falls, which I hope would be carried out in a human manner.

No costs awarded in this application.

Signed

YAW APPAU
(Justice of the High Court)
ACCRA

1. Dominic Ayine, Esquire with him, Messrs Ekow Baiden and Augustine Niber, for plaintiffs/applicants
2. Ben Annan, Esquire with him Addae Kyeremeh, Esquire, for 1st defendant/ respondent
3. Kuwornu, Esquire for 2nd defendant/respondent.