

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 11**

**SUIT NO: FCT/HC/CV/1286/19  
MOTION:M/4021/19**

**BETWEEN:**

**BARR. MOSES ANYAOHA.....CLAIMANT/APPLICANT**

**VS**

**ZEBERCED LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

By a Motion on Notice with Motion No: M/4021/19 and filed on 11/3/19, brought pursuant to Order 42 Rule 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court the Claimant/Applicant prays for the following reliefs;

- (1) An Order of Interlocutory Injunction, restraining the Defendant, whether by itself, its agents, servants, privies representatives or by any other person or body in any manner whatsoever and otherwise however, from further constituting nuisance against the Claimant's property by way of extracting, blasting, drilling, cutting, mining of rocks by the Defendant, within the Claimant's

property, lying and situate at No. 70 Moses Anyaoha Street behind Total Filling Station, Kubwa Extension II Kubwa Abuja within the jurisdiction of this Honourable court pending the hearing and determination of the substantive suit.

(2) And the omnibus relief.

In support of the application is a 42 Paragraph affidavit deposed to by the Applicant, Moses Anyaoha with 14 Exhibits marked as "A" "B" "C" "D<sup>1-9</sup>" "E" and "F". Also filed a Written Address dated 5/3/19, adopts same and relies on all the averments contained therein.

Claimant/Applicant also filed a further and better affidavit on 7/6/19.

The Defendant/Respondent, in response to the process of the Applicant served on her, filed a 31 paragraph counter-affidavit deposed to by one Idris Sadiq, a staff of the Defendant on 6/5/19. Also filed a Written Address which Counsel adopts in urging the court to refuse this application. And filed a further counter-affidavit in opposition to Claimant's further and better affidavit on 19/6/19.

In the Written Address of Applicant, Counsel for Applicant formulated a sole issue for determination that is;

"Whether the Claimant/Applicant have placed before this court sufficient materials and relevant facts that could enable His Lordship to grant this application for Interlocutory Injunction against the Respondent in this suit"

And submits that Applicant has satisfied the conditions for the grant of injunction enunciated in the cases of Obeya Memorial Specialist Hospital Vs. A–G. Federation (1987) 3 NWLR (PT. 60), Ojukwu Vs Governor of Lagos State (1986) 3 NWLR (PT. 18) Kotoye Vs CBN (1989) 1 NWLR (PT. 98) 419, Saraki Vs Kotoye (1990) 4 NWLR (PT. 144) 177, A.C.B Vs Awogboro (1991) 2 NWLR (PT. 176) 711 @ 719.

Urge court to grant the Order of Interlocutory Injunction pending the hearing and determination of the substantive suit.

In her Written Address Defendant/Respondent Counsel formulate a sole issue for determination namely;

“Whether from the facts and circumstances of this case, the Plaintiff/Applicant is entitled to an Order of Interlocutory Injunction against the Respondent”

And relying on the case of Alamiyeseigha Vs Federal Republic of Nigeria (2006) 16 NWLR (PT. 1004) 1 submits that it is indeed right and fair for court to dismiss this application.

Submits further that Applicant must place before the court all those facts listed in the case of Buhari & Ors Vs Obasanjo & Ors (2003) 17 NWLR (PT. 850), and invite the court to note that Applicant failed to fulfill any of the conditions stated in that case. Refer further to Section 131 (1) of the Evidence Act and the cases of Leasing Co. (Nig) Ltd Vs Tiger Ind. Ltd (2007) 14 NWLR (PT. 1054) 346 @ 375 Paras D – G. Construction Co. Ltd & 1 Or Vs Musibay & 2 Ors (2010) 15 NWLR (PT. 1217) 590 @ 595, Obeya Memorial Specialist Hospital Vs A – G Federation (1987) 3 NWLR (PT. 60)

Ojukwu Vs Governor of Lagos State (1986) 3 NWLR (PT. 18) 621, Saraki Vs Kotoye (PT. 144) 177, Kotoye Vs CBN (1989)1 NWLR (PT. 98) 419.

Submits that if the court grants this application, it would have determined the substantive suit at the Interlocutory stage. Refer to UBA Vs Tsokira Motors (2000) 3 NWLR (PT. 643) 36 @ 43 – 44, Ogbonnaya Vs Adapalm (1993) 5 NWLR (PT. 292) 147 @ 152 D – F and Ebebi & Ors Vs Denigwe & Ors (2011) LPELR 4909. Urge court to dismiss or in the least strike out the application with substantial cost.

In the Written Address filed in support of her further counter-affidavit in opposition to Claimant's further and better affidavit, submits relying on Order 43 Rule 1 (2) (3) and (4) of the High Court (Civil Procedure) Rules 2018 that though Defendant is entitled to respond appropriately via a further counter – affidavit as demanded by fair hearing.

Having carefully considered the affidavit evidence, the attached Exhibits of the parties, the submission of both Counsel and the judicial authorities cited, the court find that there is only one 1 issue that calls for determination which is;

“Whether or not the Applicant has placed before the court sufficient facts for the grant of the relief sought”

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. Its objective is to keep the matter in status quo where the case is pending for the purpose of preventing injury to the Applicant prior to the time the court will be in position to either grant or refuse the

application. In doing so, the court is invited to exercise its discretion which must be done judicially and judiciously. This discretion must be exercised in relation to the facts and circumstances of the case, hence to be entitled to the relief sought, the Applicant must disclose all the material facts.

On the nature of the grant of an injunction the court in the case of Mohammed Vs Umar (2009) All FWLR (PT. 267) 1510 @ 1523 – 1524 Paras H – D stated;

“Interlocutory Injunction is not granted as a matter of grace, routine or course, on the contrary, the Order of Injunction is granted only in deserving cases based on the hard law and facts”

In the exercise of the discretion, the court is guided by the principles stated in a Plethora of judicial authorities. In Akinpelu Vs Adebore (2008) All FWLR (PT. 429) 413 @ 420 Ratio 7, Kotoye Vs CBN (1989) 1 NWLR (PT. 98) 149 stated as follows;

- (1) Whether there are triable issues at the trial of the substantive suit.
- (2) Whether the balance of convenience is on the side of the Applicant.
- (3) Whether the Applicant have a right to be protected.
- (4) Whether the Applicant shall suffer irreparable damages if the Order of Interlocutory Injunction is not granted pending the determination of the main suit.

See also Municipal Council Vs Onuoha (2010) All FWLR (PT. 538) @ 898.

The question that would necessarily come to mind at this stage for determination is whether the Applicant has satisfied these conditions mentioned above for consideration of the grant of this application.

A cursory reading of the affidavit in support of this application particularly Paras 34, 35, 36, 37, 38, and 39 of the said affidavit and juxtaposed with the averments of the Defendant/Respondent shows that there is indeed a serious issue to be tried at the substantive suit as the claim is not frivolous. Applicant has stated that the balance of convenience enures in their favour. On the other hand, Respondent contends that it is the Defendant/Respondent that would suffer monumental economic losses and decline in business fortune. The Act of the Defendant/Respondent complained of bothers on the health albeit life of the Claimant as established by Exhibit "D<sup>1-9</sup>" and stated in Paragraph 9,10,11,12,13,17,19,20,21 of the affidavit in support and have taken steps to complain to relevant authorities, before filing this suit as expressed in, the said Exhibits. I find these facts weighty and grave enough to hold that the balance of convenience tilts in favour of the Applicant as no economic loss can equate to the loss of life as Section 35 of the 1999 Constitution of the Federal Republic of Nigeria protects the life of citizens and this right the court must preserve.

On whether the Applicant has a legal right worthy of being protected by this court; the Applicant claims to be a property owner and resident within the area where the act complained of occurs, however Defendant/Respondent contends that the Applicant having failed to show title or how the title was derived in respect of his claim to property he cannot have a legal right he

seek to protect. Indeed, Applicant failed to establish title to the property but a look at Exhibit "A" and "D<sup>1-9</sup>" shows that the Applicant is a resident within the area, where Respondent operates and he along with other residents have taken concerted steps to bring their issue not only before the Respondent but other relevant Governmental Agencies in their favour, furthermore, the subject matter of this application touches on nuisance and it is law that, a party in an action for nuisance may succeed with or without title, exclusive possession or tenancy is sufficient right worthy of court's protection. See the case of Hosiah Ogbere & Ors Vs Mylof Omokaya & Ors (1989) 7 CA (PT.1) cited in an Almanac of contemporary judicial restatements Vol. 11 Lai Oshitokunbo Oshisanya 2008 Spectrum Books Ibadan, 940. The court, therefore, holds that the Applicant being a resident has right worthy of being protected by the court. I am more inclined to hold this view bearing in mind that Respondent by their Exhibit "RGAI" holds a mere temporary quarry site, whose activities have expired as revealed by Exhibit "KGA2".

The Respondent alleges that the Applicant is guilty of delay in filing this suit a considered look at the Exhibit attached to this application particularly Exhibits "C" "D<sup>1-9</sup>" shows that Applicant has attempted to address this issue now brought before the court from July 27 2017 when the residents wrote to the Respondent vide Exhibit "C". Exhibit "D<sup>1-9</sup>" were made in 2018 and this suit was filed on 11/3/2019 taking this period into consideration, it is my opinion that the Applicant cannot be said to be guilty of delay.

From all of these and having carefully considered all the issues canvassed in line with the guiding principles set to courts in the consideration of an

application of this nature, this court finds that this application has merit and should be allowed. More so as the grant of it does not in any way touch on the main issue to be tried at the substantive suit. Accordingly this application succeeds and is hereby granted as follows;

- (1) An Order of Interlocutory Injunction, restraining the Defendant, whether by itself, its agents servants privies representatives or by any other person or body in any manner whatsoever and otherwise howsoever, from further constituting nuisance against the Claimant's property by way of extracting, blasting, drilling, cutting, mining of rocks by the Defendant, within the Claimants property, lying and situate at No. 70 Moses Anyaoha Street behind Total Filling Station, Kubwa Extension II Kubwa Abuja within the jurisdiction of this Honourable Court pending the hearing and the determination of the substantive suit.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

19/11/2019

**APPEARANCE:**

GODWIN ATTAI FOR THE CLAIMANT/APPLICANT

IKENNA OKEKE WITH HIM I.N. EGWUONWU, ROBERT IRIK, OLAMIDE OYETAYO FOR THE DEFENDANT/RESPONDENT.