

**IN THE HIGH COURT OF JUSTICE**  
**IN THE FEDERAL CAPITAL TERRITORY, ABUJA**  
**HOLDEN AT ZONE 2, ABUJA**  
**ON MONDAY, 30<sup>th</sup> DAY OF MAY, 2022**  
**BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**SUIT NO.FCT/HC/PET/537/2021**

**BETWEEN**

**ABIOLA YEMISI STELLA**

**CLAIMANT**

**AND**

**COSCHARIS MOTORS LTD**

**DEFENDANT**

**RULING**

This suit was commenced before this court via a writ of summons on 25/2/2022. The court on the 10<sup>th</sup> day of May 2022 posed a question to both parties as to whether this suit is not an abuse of court process in view of the matter filed by the Defendant on the 14/2/2022 for Recovery of Premises.

Parties filed their respective written addresses

Defendant formulated a sole issue for determination thus;

**“having regard to the issues argued by me, the def/resp has proved that this case of the claimant is an abuse of court process.”**

The suit in the High court is a multiplicity of action on the same subject matter against the same opponent on the same issues. Relying on the case of N.J.C V AGUMAGU 2015 10 NWLR.

The Defendant Counsel relied on the definition of abuse of court process from the case of DINGYADI V INEC (NO. 2) (2010) 18NWLR (PT 1224) 154 AT 194.

It was argued that this court has a duty to truncate any matter that is tainted with an abuse of judicial process. The penalty for an action enmeshed in abuse of court process is dismissal.

Claimant on the other hand formulated a sole issue for determination as follows;

**“Whether given the provisions of section 257 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, this honourable court has the requisite jurisdiction to entertain this matter.”**

Learned counsel to the Claimant argued that this court has jurisdiction to entertain this matter on 3 dimensions;

1. The subject matter falls within the unlimited jurisdiction of the court by virtue of section 257(1) of CFRN as amended
2. The parties before this court are proper parties
3. The court has territorial jurisdiction

The Claimant counsel argued that the action cannot constitute abuse of court process due to the reliefs sought in the Magistrate court. The reliefs sought in the Magistrate court are distinct and separate from the reliefs sought in this matter. The subject matter of the case in the Magistrate court is also separate and distinct from the subject matter of this action pending before this court and the value of the claim is beyond the jurisdiction of the magistrate court.

This Court was urged to entertain this claim as the process before this court is not an abuse of court process.

Both the jurisdiction of this court and the claimants right of action inure by virtue of the provisions of the constitution of the Federal republic of Nigeria and this court has requisite jurisdiction to entertain this matter. FASAKIN FOOD V SHOSANYA (2003) 17NWLR (PT 849) 236 and section 6(6) a and b of the CFRN.

I have considered the arguments on both sides and I will decide the question on the sole issue as follows;

***“Whether this matter before this Honourable Court is not an abuse of court process in light of the matter in the magistrate court”***

The matter before the Magistrate court is for recovery of premises as captured below;

1. An order of this honourable court directing the defendant to deliver immediate vacant possession of the property situate at House 3 Block 4 at Plot 2797, Aguiyi Ironsi Street, Coscharis Estate, Maitama, Abuja
2. Arrears of rent totaling N3,000,000 and 8 months
3. Mesne profit at rate of N250,000 until possession is given up
4. Interest rate of 10% of the judgment sum until final payment of same

The matter before this court is as follows;

- a) A DECLARATION that the Claimant is entitled to a refund of the sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand Five Hundred Naira) only from the Defendant, being money expended in improving a semi-detached 3-Bedroom Bungalow and Boys quarters, House 3, Block 4, situate at plot 2797, Aguiyi Ironsi Street, Maitama, Abuja by the plaintiff with the consent of the Defendant.
- b) AN ORDER of this Honourable court, directing the Defendant to refund forthwith, to the Claimant, the sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand, Five Hundred Naira) only, being money expended in improving a semi-detached 3-bedroom bungalow and Boys quarters, House 3, Block 4, situate at plot 2797, Aguiyi Ironsi Street, Maitama, Abuja by the plaintiff with the consent of the Defendant

**OR IN THE ALTERNATIVE**

- A. AN ORDER of this Honourable Court directing the Defendant to convert the sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand, Five Hundred Naira) only to rent, payable by the claimant, at the current agreed tenancy rate of N3,000,000 which shall amount to rent of three years, commencing from the expiration of the term, granted to the Claimant in 2021.
- B. AN ORDER of this Honourable Court directing the Defendant, to refund the Claimant the sum of N605,500 (six hundred and five thousand naira) upon

deducting the sum of N9,000,000.00 as rent from the total sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand Five Hundred Naira)

- C. AN ORDER of this Honourable Court, restraining the Defendant from taking any action to eject the Claimant from a semi-detached 3-Bedroom Bungalow and Boys quarters, House 3, Block 4, situate at plot 2797, Aguiyi Ironsi Street, Maitama, Abuja until either the repayment of the said sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand Five Hundred Naira) only being money expended in improving a semi-detached 3-Bedroom Bungalow and Boys quarters, House 3, Block 4, situate at plot 2797, Aguiyi Ironsi Street, Maitama, Abuja by the Plaintiff with the consent of the Defendant, or at the expiration of a 3 year period, in the event that this honourable court converts the said sum of rent, for three years.
- D. AN ORDER directing the Defendant to pay Claimant the sum of N1,000,000 as general damages
- E. AN ORDER directing the Defendant to pay Claimant the sum of N500,000 as cost of this action
- F. 10% interest of the entire judgment from the date of the delivery of judgment till the entire judgment sum is fully liquidated.

The Defendant counsel relied on the case of DINGYADI V INEC supra to stress that the suit is an abuse of process of court.

## **DECISION OF THE COURT**

In *NATIONAL ASSOCIATION OF PHARMACEUTICAL TECHNOLOGISTS & PHARMACY TECHNICIANS OF NIGERIA & ORS V. PCN & ORS (2017) LPELR-43485(CA)* Per NWOSU-IHEME ,JCA (Pp. 3-5, paras. F-A) the appellate court held;

**"Now what constitutes an abuse of Court process? Abuse of Court process has been described in SARAKI V. KOTOYE (1992) 9 NWLR (pt. 264) pg. 156 as follows: "The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety**

**and conditions. Its one common feature is improper use of the judicial process by a party in litigation to interfere with the due administration of justice. The employment of judicial process is only regarded generally as an abuse when the party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice." Also in NTUKS v. NPA (2007) 13 NWLR (pt. 1051) pg. 392 at 419, Tobi JSC, described abuse of Court process thus: "Abuse of Court process generally means that a party in litigation takes a most irregular, unusual and precipitate action in the judicial process for the sake of action qua litigation, merely to waste valuable litigation time, it is an action which is one (or more) too many, an action which could be avoided by the party without doing any harm to the matter in dispute. The process of Court is used malafide to overreach the adversary to the direct annoyance of the Court."**

**In the case of DANA AIRLINES LTD V. AMIAKA & ORS (2017) LPELR-43050(CA) (Pp. 28-31 paras. D), the court held;**

**Essential elements that would constitute abuse of Court process "I have also averted my mind sufficiently to the essential elements that would constitute abuse of Court process, namely:**

- a. There must be, at least, two matter filed in two different Courts.**
- b. The said different suits are instituted with the goal of pursuing the same rights (even though on different grounds).**
- c. The subject matter and or the questions for determination in the two suits must be substantially the same.**
- d. Frivolous and scandalous use of a lawful Court process to the irritation and embarrassment of another party.**

**See Oguejiofor V. Oguejiofor (2006) 3 NWLR (pt. 966) 205 SC.**

**My lords, what better words can be used to describe the action of the Applicant to ignore, without any legal justification as none had been shown in this application, its earlier application pending but not yet**

**determined when it filed this present application on 29/11/2016 before this Court on the same subject matter and issues and between the same parties. In law, an application premised on such faulty foundation is one which is nothing but a process in want of bona fide and has constituted an abuse of the process of Court, which to all intents and purpose was not meant to serve any useful purpose. I therefore, hold that this present application was commenced in abuse of the process of this Court. See Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156 @ p. 188, where the Supreme Court had opined inter alia thus:**

**"The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions...It is recognized that the abuse of the process may be in both a proper or improper use of the judicial process in litigation but the employment of judicial process is only regarded generally as an abuse when a party improperly uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice."**

**In the eyes of the law, therefore, a process initiated in abuse of the process of Court is devoid of any competence or life and this ought to be terminated by the Court, even in limine if so called upon by the party being put through the unenviable task of defending or opposing a process steeped in the abuse of the process of Court. See Ntuks v. NPA (2007) 130 NWLR (pt. 1051) 392 @ pp. 419 - 420, where it was firmly stated that:**

**"Abuse of Court process generally means that a party in litigation takes a most irregular, unusual and precipitate action in the judicial process for the sake of action qua litigation merely to waste valuable litigation time...The Court process could also be said to be abused where there is no 'iota' of law supporting it. In other words, the Court process is premised or founded on frivolity or recklessness."**

In view of the authorities cited above, coming down to the suit at hand, the parties in both suits are the same that is, Claimants and Defendants in both suits are the same.

The reliefs differ however. One is for recovery of premises and one for money purportedly owed for renovations. It is clear that the reliefs are different albeit connected as they both boil down to the same property thus, the subject matter is the same being block 3 A, at Coscharis Estate, 38 Aguiyi Ironsi Street Maitama, Abuja.

Another distinction between this suit and the magistrate court suit is that the monetary claim before this court is for N9,605,500. This amount is beyond the civil jurisdiction of the Magistrate Court.

The District Courts (Increase in Jurisdiction of District Court Judges) Order, 2021 sets the maximum figure for monetary claims at N7,000,000.00 this is below the amount the Claimant is seeking. Thus, this court is well within its jurisdiction to entertain this matter.

I therefore find that this suit albeit seemingly similar to the suit at the magistrate court is different and is not an abuse of court process as this court has jurisdiction to entertain this matter and I so hold.

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**HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**[JUDGE]**

**Appearance of Counsel:**

1. Applicant absent and unrepresented
2. Hon. T.O.S Nwokolo for the Respondent

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CLAIMANT

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DEFENDANT

**RULING**

The Claimant filed an interlocutory application seeking the following reliefs;

- 1. AN INTERLOCUTORY ORDER of this Honorable Court, restraining the Defendant, by itself, agents, and by whatever name so called, from evicting or ejecting the Plaintiff, from a semi-detached 3-Bedroom Bungalow and Boys' Quarters, House 3, Block 4, situate at plot 2797, Aguiyi Ironsi Street, Maitama, Abuja, pending the hearing and final determination of the Writ of Summons in this matter.**
- 2. For such further or other orders as this Honourable Court may deem fit to make in the circumstances of this matter.**

In support of the Motion for Interlocutory Order, the Applicant herself filed a 37 paragraph affidavit in support deposing amongst others as follows;

1. That by virtue of a tenancy agreement executed between herself and the Defendant, she became a yearly tenant commencing from the 1st November,

2019 to 31<sup>st</sup>October, each year and moved into the premises in 2019. A copy of the said Tenancy Agreement was attached as Exhibit 1.

2. That before she moved into the property subject matter of this suit she noticed the property was not in a habitable state, as the property was in a dilapidated state, she entered into a discussion with the Defendant, through its agent appointed by the Defendant in respect of the house, the Estate Firm of Chinedu Nwosu & Co. and it was agreed that she should use her funds to put the property to a tenantable condition and that she would later be refunded by the Defendant. Copies of the receipts evidencing her expenses are attached as Exhibit 2.
3. That between 2019 when she moved into the property and 2020, she expended a total sum of N9,605,500.00 (Nine Million, Six Hundred and Five Thousand, Five Naira) only, to put the house in the habitable condition in which it is currently.
4. That she did the entire renovation of the house with the consent of the Defendant and demanded for a refund of the sum of N9,605,500 (Nine Million, Six Hundred and Five Thousand, Five Hundred Naira) only, expended in the property but the Defendant, via its Agent told her not to worry as she would be reimbursed for the improvement on the property as earlier agreed.
5. That the Defendant has failed to reimburse her for the funds expended on the renovations and rather decided to serve her with quit notice, asking her to vacate the property. A copy of the quit notice dated 11<sup>th</sup> January, 2021 was attached.
6. That she approached the Defendant's agent about this and the agent told her to ignore the quit notice and renew the rent when it is due which she did for November, 2021 to 1<sup>st</sup> October, 2022.

7. That she again received another quit notice from the Defendant's agent, asking her to vacate the property. A copy of the quit notice was attached as Exhibit 3.
8. That the Defendant yearly harasses her with quit notices, and also court summons, instituted at the Chief District Court of the Federal Capital Territory, sitting at Wuse, Zone 2, Abuja, just to forcefully eject her from the property, without reimbursing the monies she spent, with its consent, in renovating the house.
9. That the act of the Defendant is calculated to eject her to avoid reimbursing her for the improvement carried out on the property with its consent.
10. That she knows as a matter of fact, that the Defendant will not respect the fact of the pendency of this matter before this Honorable Court, and would likely deal with the issues, already pending before this court, except this court intervenes by granting this application as prayed.
11. That she has legal rights to be protected by this Honorable Court.
12. That the balance of convenience is on her side as greater harm will be occasioned on her, should this Honorable Court refuse this application.
13. That she undertakes to be liable in damages should this application turn out to be frivolous
14. That damages will be inadequate to compensate her, in the unlikely event that this Honourable Court refuses this application, as her goodwill and reputation cannot be accessed or compensated monetarily.
15. That there are serious and triable issues to be determined in this matter, and there is a high likelihood of success by her.
16. That her conducts are not reprehensible in respect of the facts and circumstances of this case.

17. That there is urgency in this matter, as the Defendant, may likely eject her from the House she has spent Millions of Naira, in renovating with the consent of the Defendant, without reimbursing her, for her expenses.

18. That the grant of the reliefs sought herein, will in no way prejudice the interest of the Defendant.

In opposition to the Claimants Application, the Defendant filed a 37 paragraph affidavit deposed to by Jacob Akawo Sampson a staff of Messrs Chinedu Nwosu & co estate valuers and surveyors to the Defendant deposing amongst others as follows;

1. All paragraphs of the Claimants affidavit were denied.
2. That the property was in a habitable state, and it was the state of the apartment that attracted the applicant to pay and move into the house.
3. That the claimant applied to carry out some stated renovation works in respect of block 3 A, at Coscharis Estate, 38 Aguiyi Ironsi Street Maitama, Abuja. The application goes on to confirm that the claimant found the accommodation pleasing for occupation. The photocopy of the application is attached as Exhibit B.
4. That from the offer letter addressed to the claimant on 15<sup>th</sup> October, 2019 with reference to paragraph 3 which expressly stated that the 'renovation works will be at the claimant's expenses and that all renovated items shall form permanent part of the demised premises No liability whatsoever shall accrue to the landlord'. Another important paragraph 5 of the applicant's letter of application stated, 'should the above terms be acceptable to you, kindly forward your Cheque/Draft in favour of Chinedu Nwosu & Co to enable conclusion of the transaction'.

5. That it was the claimant that wrote an application seeking favour to be allowed to carry out renovation and to abide with stated condition with reference to Exhibit B and Exhibit C.
6. That the defendant via its agent Chinedu Nwosu & Co, acted correctly by discharging his duties of writing and requesting the claimant to renew her rent running from 1<sup>st</sup> November, 2020 to 31<sup>st</sup> October 2021. The receipt of the payment is attached as Exhibit D.
7. That they did not tell her to ignore the quit notice but advised her to renew her rent.
8. That the notice of owner's intention was served on the claimant because she did not pay her rent and the case was assigned to the District court in Wuse. They attached the court processes and Tenancy Renewal Notice of 25<sup>th</sup> August, 2021 which shows that the claimant was in arrears of rent.
9. The Exhibit B and Exhibit C are there to resolve all issues. That Exhibit B and Exhibit C spelt out what the claimant will do and what the defendant will do, there was no ambiguity in the agreement. That Exhibit B and Exhibit C were agreed on before the project started
10. That paragraph 28 of the motion on notice was admitted and the defendant has a legal right to be protected by the court.
11. That the application was frivolous and should be dismissed with heavy cost for wasting the time of the court.

12. That there are no serious and triable issues to be determined in this matter and there is no high likelihood of success by the claimant

13. That there is no urgency in this matter because the facts are stated there clearly

14. That Exhibit B and Exhibit C spelt out what the parties should do, but the claimant does not want to fulfill her own part of the contract.

From the affidavit evidence of the parties and the submissions of the learned counsel, the Court will determine this suit on the following issue, which is:

***Whether the application for injunction is meritorious as to entitle him to the reliefs sought.***

**SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT:**

In the applicant's written address, Okoro Nkemakolam Esq. submitted one issue for determination, to wit:

***“Whether, the entire circumstances of this case taken into consideration, the Plaintiff/ Applicant, is entitled to the grant of the reliefs sought in this application by this Honorable Court.”***

Counsel submitted that this Honourable Court has the requisite jurisdiction to grant this application as prayed.

Counsel enumerated the principles governing the grant of an interlocutory injunction which are:

- a) The Applicant must show that there is a serious question to be tried, i.e. that the applicant has a real possibility, not a probability of success at the trial, notwithstanding the defendant's technical defence.
- b) He must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it.
- c) He must show that damages cannot be adequate compensation for his damage or injury if he succeeds at the end of the day.
- d) He must show that his conduct is not reprehensible for example that he is not guilty of any delay.
- e) No order for an interlocutory injunction should be made on notice unless the Applicant gives a satisfactory undertaking as to damages save in recognized exceptions. Relying on the cases of *Akinpelu V. Adegbo*(2008) 10 NWLR (Pt. 1096) 531 SC; *Obeya Memorial Specialist Hospital V. A-G., Fed. & Anor.* (1987) 3 NWLR (Pt. 60) 325 SC at 238, *Ita V. Nyong* (1994) 1 NWLR (Pt. 318) 56.

Learned Counsel to the Applicants argued that from the affidavit in support of the motion ex parte, damages will be inadequate, and that the balance of convenience is in their favour.

Relying on the case of *UTB Ltd & Ors v. Dolmetsch Pharmacy (Nig) Ltd*(2007) LPELR-3413(SC), to buttress that the purpose or object of granting the order of interim injunction is to make sure that the subject matter of the litigation is kept in status quo pending or until the litigation. It is to maintain the status quo between the parties.

Counsel argued that the claimant has shown by their affidavit that they have legal rights to be protected, that there are real situations of urgency, that the balance of convenience is on their side as more and irreparable damages will be done to them, if the application is not granted. The Plaintiffs have also made an undertaking as to damages. The Plaintiff has also shown that there are substantial issues to be tried at the hearing of this action and that they have a strong prima facie case for the reliefs sought.

That the Plaintiff herein has also shown that she has legal rights to be protected by this Honourable Court. Relying on Exhibits 1-3, counsel submitted that in an

application for interim injunction, the applicant's legal right over the subject matter is a pre-condition for the consideration of special circumstances for the grant of the application. It was further submitted, that interim or interlocutory injunction is an equitable remedy granted by the court before the substantive question raised in the case is finally determined. Relying on the case of 7Up Bottling Co Ltd V Abiola(1995)4 NWLR(Pt389)287.

That the object of an interim injunction, is to keep matters in status quo while the case is still pending. The essence of the grant of such injunction is to protect the existing legal rights or a recognizable right of a person from unlawful invasion by another. Thus, the claim for an injunction is won and lost on the basis of the existence of competing rights. We submit most humbly, that the Plaintiff has established a recognizable legal right capable of being protected by an order of interim injunction. Relying on the cases of Union Beverages Ltd. v. Pepsi Cola Ltd. (1994) 3 NWLR (Pt. 330); [Commissioner for Works, Benue State & Or. Y Devon Development Consultants Ltd. (1988) 3 NIVLR (Pt.83)407 at 422; Obeya Memorial Hospital v. A.G of the Federation(1987) 3 NWLR (Pt.60). 225; Ojukwu v. Governor of Lagos State(1986) 3 R 1R (Pt 35) 45.

### **SUBMISSIONS OF THE DEFENDANT COUNSEL**

For his part, Hon. Nwokolo T.O.S Esq. posed one issue for determination in Defendants written address, which is:

***Whether from the circumstances of this case, this is a proper case where interlocutory injunction can be granted?***

The Counsel argued that an application for interlocutory injunction calls for the court to exercise its discretion judicially and judiciously. Relying on the case of STALLION (NIG) LTD V E.F.C.C (2008) 7NWLR(pt.1087) 461 and NITEL PLC V I.C.I.C (Director Publisher Ltd. (2009) 16NWLR (pt.1167) 356 at384, paras. C-D

Counsel enlisted via the case of NWANNEWUIHE V NWANNEWUIHE (2007) 16 NWLR (Pt 1059) 1 at 13-14 that the court has a duty to take into account certain

issues before deciding whether or not to grant an order of interlocutory injunction. They include;

- a. The existence of a claim, which is not vexatious or frivolous;
- b. Balance of convenience;
- C. Relative strength of the case of the parties;
- d. Conduct of the parties; and
- e. Inadequacy of payment of damages.

The applicant has to establish a recognizable legal right. In the instant case, it is clear from the affidavit in support of the application and attached exhibits that the applicant has moribund legal right which the court will not protect by way of interlocutory injunction. The applicant in this case is just a tenant who has not even renewed her current rent, she is still in arrears of rent and the case is in District court at Wuse. Besides, the applicant applied to and identified part of the Bungalow. Conditions for the renovations were clearly spelt out but the claimant refused to abide by it.

In the application for interlocutory injunction the applicant has nothing to protect by grant of interlocutory injunction. Relying on case of *AG. ABIA STATE v. AG. FEDERATION (2005) 12 NWLR (pt. 940) 454 at 514.*

There is no serious question(s) to be tried in the substantive suit in this case and the applicant's case has not disclosed any chances of success as required by law. Relying on the case of *LEASING CO (NIG) LTD V TIGER INDUSTRIES LTD (2007) 14 NWLR (Pt. 1054) 346 at 374, paras. C-H*

Counsel further argued that in order to determine where the balance of convenience rests in an application for interlocutory injunction, the court will consider who will stand to lose more if the status quo ante is maintained until the final determination of the suit. See *OKURUKE & 3 ORS V ABIEBUNICODEMUS & 4 ORS (2000) 4 NWLR (Pt 654) 662 at 663, ratio 2.* From the 3rd paragraph of the affidavit in support of the motion on notice it is very clear that the situation here does not warrant grant of interlocutory injunction because it is self induced action of the applicant who insisted on a renovation. The court in the circumstance was urged to grant to the applicant accelerated hearing.

Relying on case of *ADEYEMI WORKS CONSTRUCTION (NIG) LTD V ISAACOMOLEHIN (2004) 6 NWLR (PT870) 650 AT 654*.

Counsel submitted that the cumulative effect of the foregoing is that the applicant has not made a case for grant of interlocutory injunction as there is no basis for the application. The applicant has not shown special circumstances which will compel the court to exercise its discretion in her favour.

### **DECISION OF THE COURT**

In the Appellate court decision of *DISCOVERY (NIG) LTD V. CARDINAL OHAMS LTD & ANOR (2021) LPELR-52460(CA) (Pp. 37-40 paras. E-E)* Guiding principles for grant of interlocutory injunction are;

**“The power to grant an interlocutory injunction is discretionary and like all discretionary power, it must be exercised judicially and judiciously. There are certain conditions that the Applicant for an injunction should meet before a Court grants same. These conditions are stated in a cloud of cases. I will make mention of Adeleke & Ors vs. Lawal & Ors (2013) 2 S.C. (Pt. 11) 38. The apex Court held thus:**

**"Since injunction is an equitable remedy, it is usually granted at the discretion of the Court which must be exercised judicially and judiciously. For the Court to exercise its discretion in favour of an applicant, certain conditions must exist and this must be evidenced in the affidavit accompanying the motion on notice. The conditions for grant of interim and interlocutory injunctions are basically the same except for the element of urgency in interim injunction which is not pronounced in interlocutory injunctions. See: Modern Civil Procedure Law by A.F Afolayan and P.C Okorie published by Dee Sage Nigeria Limited 2007 at page 198. The conditions include:**

- (a) Existence of a legal right**
- (b) Substantial issue to be tried**
- (c) Balance of convenience**

**(d) Irreparable damage or injury**

**(e) Conduct of the parties**

**(f) Undertaking as to damages.**

**In Buhari vs Obasanjo (2003) 17 NWLR (Pt 850) 587, this Court, per Tobi JSC, spelt out the principles guiding the application of interlocutory injunction at page 648 - 649 as follows:**

**"Some of the principles or factors to be considered in an application for interlocutory injunctions are:**

**1. There must be a subsisting action. See: The Praying Band of C and S vs. Udokwu (1991) 3 NWLR (part 182) 716**

**2. The subsisting action must clearly donate a legal right which the applicant must protect See: Kotoye v. CBN (1989) 1 NWLR (Part 98) 419; Woluchem v. Wokoma (1974) 3 SC 153; Obeya Memorial Hospital v. Attorney-General of the Federation (1987) 3 NWLR (part 60) 325**

**3. The applicant must show that there is a serious question or substantial issue to be tried. See: Kotoye vs CBN (supra); Nigerian Civil Service Union vs Essien (1985) 3 NWLR (Part 12) 306; Nwose v. Mbaekwe (1973) 3 ECSLR 136**

**4. And because of 3 above, the 'status quo' should be maintained pending the determination of the substantive action. See: Kotoye v CBN (supra); Fellowes v. Fisher (1975) 2 ALL ER 829; American Cyanamid Co. v. Ethicon Ltd (1975) AC 396.**

**5. The applicant must show that the balance of convenience is in favour of granting the application. See: Kotoye v. CBN (supra); Obeya Memorial Hospital v. Attorney-General of the Federation (supra); Akinlose v. A.I.T. Ltd (1961) WNLR 116.**

**6. The applicant must show there was no delay on his part in bringing the application. See Kotoye vs CBN supra.**

**7. The applicant must show that damages cannot be adequate compensation for the injury he wants the Court to protect. See: Kotoye**

**vs CBN (supra); Obeya Memorial Hospital v. Attorney-General of the Federation (supra)**

**8. The applicant must make an undertaking to pay damages in the event of any wrongful exercise of the Court's discretion in granting the injunction. See Kotoye vs CBN (supra); Itama vs Osaro - Lai (2000) 6 NWLR (Part 661) 515."**

**See Aboseldehyde Laboratories Plc vs. Union Merchant Bank Ltd & Anor (2013) 2-3 S.C. (Pt. V) 155." Per TOBI,J.C.A in DISCOVERY (NIG) LTD V. CARDINAL OHAMS LTD & ANOR (2021) LPELR-52460(CA) (Pp. 37-40 paras. E-E)**

***MISSINI & ORS V. BALOGUN & ANOR* (1968) LPELR-25422(SC) (Pp. 8-9 paras. E)**

**Guiding principles for grant of interlocutory injunction "In John Holt Nigeria Ltd. v. Holts African Workers Union of Nigeria and Cameroons [1963] 1 All NLR 379 this Court set out the principles upon which the Court acts in granting interlocutory injunctions when it said at page 383 -"The principles upon which the Court acts in granting interlocutory injunctions to our mind must be strictly observed, and of course it is impossible to lay down any general rule by which the discretion of the Court ought, in all cases, to be regulated; but it must be borne in mind that interlocutory injunctions are not granted as of course. It appears to us that what the plaintiffs have asked for in this matter is for the Court to prevent the defendants from carrying on their business in the manner they think it beneficial to themselves, and this before the trial of the action." Per LEWIS, J.S.C in missini & ors v. balogun & anor (1968) LPELR-25422(SC) (Pp. 8-9 paras. E)**

**In that appeal we referred to Hilton v. The Earl of Granville (1841) Cr. and Ph. 283 and in our view there is in that case a most helpful statement by Lord Cottenham L.C. when he said at page 297-**

**"I have to determine, whether, balancing the question between these two parties, and the extent of inconvenience likely to be incurred on the one side and on the other, it is the most proper exercise of the**

**jurisdiction of the Court to grant the injunction or to withhold it. Now, by withholding it, I certainly may expose the plaintiff not only to damage, but to an injury and a wrong; by granting it, on the other hand, I am exposing the defendant to what, in the event of my turning out to be mistaken in the view I take of the rights of the parties, will be an irreparable injury. The plaintiff's injury, if he sustains it, and ought not to have sustained it, will be, to a great extent at least, capable of reparation; it is a mere question of the value of the property, which may be compensated; whereas, by no possibility can the injury done to the lord be compensated, if he is prevented for a considerable length of time from exercising a right which, in a certain event, may turn out to be his to the full extent to which he claims it".**

In this present case, grant of the injunction is not as a matter of course but this court is called to exercise its discretion judicially and judiciously.

I will treat each condition for grant of injunction one by one

1. Existence of a legal right- I agree that a legal right exists to be protected in this suit.
2. I agree that there is a substantial issue to be tried being the monetary sum purportedly owed the claimant.
3. The Balance of Convenience is in favour of the claimant as the defendant will be unable to exercise his right as enshrined by law to recover premises from the Magistrate Court.
4. Grant of the injunction will not occasion irreparable damage or injury to the Claimant as the question before this court is for money owed and same will not dissipated if I do not grant this application.

Having considered the interlocutory application brought before me, the claimant has applied for injunction against the right of the Defendant to recover her premises from the claimant. The implication of a grant of this suit will be tantamount to this court staying the proceedings before the magistrate court which is earlier in time. The Defendant has a legal right to apply to court to enforce

his legal right, the court has been empowered by law to enforce that right. Now coming before this court for a grant of an interlocutory application will affect the exercise of that right. The outcome of the matter in the magistrate court does not mean the subject matter before me will be irreparably damaged as the question before me is that of money owed and not recovery of premises. If the court grants the defendants application for recovery of premises, it does not change the status quo as the legal question before me which involves an existence or non-existence of an agreement to renovate the premises by the Claimant. The outcome of this claim does not affect the outcome of the claim before the magistrate court. If I were to determine the suit in favour of the claimant, it will be a question of the Defendant repaying the Claimant.

It is a wonder whether this application is not belated considering the Defendant is already seeking vacant possession of premises at the magistrate court. The injunction being sought to be granted is clearly belated and if this court grants same it will be tantamount to staying the proceedings in the magistrate court and I so hold.

I hereby refuse the application of the Claimant Counsel but rather, order accelerated hearing of the substantive matter.

From all that I have said, I resolve the sole issue in the negative and in favour of the Respondents as against the Applicant. The applicant's motion lacks merit and is dismissed. I make no order as to cost.

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**HON. JUSTICE NJIDEKA K. NWOSU-IHEME**

**[JUDGE]**

**Appearance of Counsel:**

1. Applicant absent and unrepresented
2. Hon. T.O.S Nwokolo for the Respondent