



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CV/1521/2015
MOTION NO: FCT/HC/M/133/2021

BETWEEN:

MALLAM ABBAS BALARABE LAWAL.....PLAINTIFF/RESPONDENT

AND

1. ALHAJI IDRIS ZAGO.....DEFENDANT/APPLICANT
(Sued through his Authorized Attorney: Dr. T.E. MALUMI)

2. THE HONOURABLE MINISTER, FCT)...DEFENDANTS/
3. FEDERAL CAPITAL DEVELOPMENT AUTHORITY) RESPONDENTS

RULING

Sometimes on the 14/11/2017 and pursuant to an *Interlocutory Appeal* which was lodged at the Court of Appeal by the 1st Defendant in this suit against the Ruling of this Court which appeal was then entered at the Court of Appeal, an application was made for a stay of proceedings to await the outcome of the appeal by the 1st Defendant. The application was not opposed by the learned Counsel to the Claimant and it was granted. The Order made by this Court on that day was to the effect that further proceedings in this case be stayed

to await the outcome of the Interlocutory Appeal then, pending at the Court of Appeal.

However, sometimes in December, 2020, the Claimant filed an application for an Order of Interim Injunction restraining the 1st Defendant from doing anything with or on the disputed property pending hearing and determination of the Motion on Notice for Interlocutory Injunction. This Court took the application on the 14/12/2020 and granted same and slated the 14/01/2021 for hearing of the Motion on Notice.

Meanwhile, the 1st Defendant upon becoming aware of the *Order of Interim Injunction* granted in favour of the Claimant filed a Motion on Notice on 11/01/2021 to press for an Order to vacate and set aside the said Order. The application is also praying for stay of execution of the *Order of Interim Injunction* pending hearing and determination of this application. Seven grounds were relied upon for bringing the application. There was also a supporting affidavit of 10-paragraphs. Two exhibits were annexed to the affidavit and marked as Exhibits A and B. Exhibit A is a certified true copy of the Judgment of the Court of Appeal which was delivered on the 25/06/2014 while Exhibit B is a brief of argument filed in support of the pending Appeal at the Court of Appeal by the learned Counsel to

the 1st Defendant. Learned Counsel for the Applicant also filed a written address in support.

In opposing this application, the Claimant filed a counter affidavit of 6-paragraphs deposed to by one Daniel Igbang, a Litigation Secretary in the Chambers of learned Counsel to the Claimant/Respondent. One exhibit (i.e. Ruling of the Court of Appeal striking out the Appeal filed by the 1st Defendant/Applicant) was also annexed. These documents were deemed filed by the Order of this Court made on the 18/03/2021. At the hearing of this application, parties adopted their processes.

I have considered the averments in the affidavit in support of this application and I find paragraphs 4 to 9 very relevant and pertinent. They are reproduced below to facilitate ease of understanding:

(4). That the Plaintiff equally suppressed from this Court that following the entering of Appeal No. CA/A/656/2017 over the instant Suit, same was adjourned sine die on 15/11/2017 to await the outcome of the appeal. The Applicant has since served Appellant's brief of argument on the parties. Copy of proof of service of Appellant's brief of argument is herewith attached as Exhibit "B'.

(5). That similarly, the Plaintiff suppressed the Judgments of both Courts on the matter (FCT High Court and the Court

of Appeal, Abuja Division) had long been executed since 2014 and the 1st Defendant/Applicant restored to possession.

(6). That no Order of the High Court or Court of Appeal was exhibited by the Plaintiff restoring the Judgment Debtor or Plaintiff/Respondent to possession of the res.

(7). That an Order of Interim Injunction cannot be made over a completed act, comprised in the concluded judicial execution.

(8). That the Honourable Court became functus officio after making the Order adjourning the instant Suit sine die on 15/11/2017 to await the outcome of the appeal.

(9). That the 1st Defendant/Applicant is presently in possession of the res.

The facts which have emerged from the above averments are that both this Court and the Court of Appeal have vested title to the disputed property on the 1st Defendant/Applicant and the Judgments were executed by putting the Applicant into possession sometime in 2014. That the Respondent did not appeal the decision of the Court of Appeal to the Supreme Court and that the appeal for

which reason this Court adjourned sine die proceedings in this case have not been disposed.

I have carefully read the counter affidavit filed by the Claimant/Respondent and I regret to say that there is no specific denial of the above weighty facts. In fact, the contention of the Claimant/Respondent is merely that despite the existence of those facts, the Court could go ahead and grant the Order of Injunction. It was also argued on behalf of the Claimant that the facts so suppressed as alleged by the Applicant are not material to the grant of an ex parte Order of Injunction. This is not correct. My view is that having adjourned this suit sine die with the consensus of both parties to await the outcome of the appeal at the Court of Appeal, I no longer retains the power to resume proceedings in this matter in the absence of either of the parties and without first of all setting aside my Order of adjournment. Doing so in my view is a breach of the Applicant's right to fair hearing. Secondly, the fact that the Court executed its Judgment by putting the Applicant in possession of the disputed property as disclosed in the Applicant's affidavit is very critical. This averment as I earlier stated was not denied. That being the case, making an Order of restraint against the Applicant would amount to setting aside the Order of the Court of Appeal vide an

exparte application. Of course, this Court does not have such power as it would amount to an act of judicial rascality of some sort.

I agree with Anachebe SAN, that these facts which I have highlighted were suppressed before this Court leading to the grant of the exparte Order of Injunction which I granted on the 14/12/2020. A material fact is a fact which goes to the root of the matter which if disclosed would influence the decision of the Court one way or the other. In this case, if this Court was aware that the appeal at the Court of Appeal for which this matter was adjourned sine die had not been disposed I couldn't have gone ahead to make the Order. Similarly, if the Court was aware while hearing the motion for exparte Injunction that the Applicant had been put in possession of the disputed property vide the decision of the Court of Appeal, the Court would have resisted the invitation to make the disputed Order. The authorities cited in his written address are so clear that when an exparte Injunction is obtained as a result of misrepresentation and/or suppression of material facts, the injunction so obtained could be set aside or discharged, *ex debito justitiae* by the Court.

On the account of this and other reasons highlighted in this Ruling, it is my view that this application has merit and ought to be granted.

Accordingly, the Order of ex parte injunction granted in favour of the Respondent on the 14/12/2020 is hereby vacated and set aside.

As a result of my conclusion in this application, the pending Motion on Notice for *Order of Interlocutory Injunction* has become an academic exercise having been overtaken by event. A Court of law is not a play ground and would not indulge in an academic exercise. The motion is therefore struck out of the records.

SIGNED
HON. JUSTICE H. B. YUSUF
(PRESIDING JUDGE)
31/03/2021