

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1816/2019

MOTION NO: M/8809/21

BETWEEN:

MYK-J GLOBAL SERVICES LTD.....CLAIMANT/APPLICANT

VS

1. CHARLES ANYAOKEI

2. KELVIN EMEKA.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 6/12/21 and filed same day with Motion No: M/8809/2021, brought pursuant to Order 43 of the High Court of the Federal Capital Territory (Civil Procedure Rules) 2018, Section 6 (6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and under the inherent jurisdiction of the Honourable Court. The Claimant/Applicant prays the court the following reliefs:

- (1) An Order of Interlocutory Injunction restraining the 1st and 2nd Defendants, therein agents, privies assigns, representatives, successors-in-title or howsoever described from further developing the property previously as Plot 1876 but now known as Plot 105 Cadastral Zone E09, upon recertification with the Geographic Information System (AGIS) and measuring 1.3

Hectares located at Sabon Lugbe East Extension Layout, pending the hearing and determination of the substantive suit.

- (2) An Order of the Honourable Court directing the 1st and 2nd Defendants or any other person, their Agents, Privies, Assigns, Representatives, Successors-in-title or howsoever described to vacate and remove their construction materials and equipments from the property known previously as Plot 1876, but now known as Plot 105 Cadastral Zone E09 upon recertification with the Abuja Geographic Information System (AGIS) and measuring 1.3 Hectares located at Sabon Lugbe East Extension Layout. Pending the hearing and determination of the substantive suit.
- (3) An Order of Interlocutory Injunction directing all parties in this suit to maintain status quo as it stands on the day of service of the Writ of Summons on the Defendants pending the hearing and determination of the substantive suit.
- (4) And the Omnibus relief.

The Motion is supported by a 29 Paragraph affidavit with 15 Exhibits attached and marked Uk¹⁻¹⁵ deposed to by one Ugwumba Kelechi staff of the Claimant/Applicant. Also filed a Written Address and adopts same in urging the court to grant the application.

Responding, 1st and 2nd Defendants filed a 16 Paragraph counter-affidavit, with Exhibit R¹⁻³ attached, deposed to by Kelvin Chukwu Emeka the 2nd Defendant. Also filed a Written Address in urging the court to dismiss the application.

In support of the facts contained in the 29 Paragraph affidavit of the Applicant, Applicant's counsel distilled a sole issue for determination that is;

“Whether considering the facts of this case and the Exhibits accompanying this application, this application ought to be granted”

Submits that, the Answer to the sole issue is in the affirmative relying further on the cases of Ezeibilo Vs Chinwuba (1997) 7 NWLR 511; Obeya Memorial Hospital Vs A.G Federation & Anor (1987) 3 NWLR (PT. 60) 18, Kotoye Vs Central Bank of Nigeria (2001) FWLR (PT. 49) 1596 – 1597 and Gbadamosi Vs Alete (1998) 12 NWLR (PT. 578) 402 @ 417 Paras A – B, listed the principles which guides the grant of Interlocutory Injunction and submits that the court is called at the stage to determine whether the issues raised are serious questions to be answered by this court. Refer to the case of Sabrue (Nig) Ltd Vs Jezco (Nig) (2001)2 NWLR (PT.304) @ 367; that the Writ of Summons filed by the Claimant/Applicant contains substantial issues triable by this court. Submits also that Paragraph 29 of Applicant's affidavit in support of the Motion discloses the legal right of the Applicant deserving protection. It is also the submission of Applicant's Counsel that no amount of money can compensate for wasted years. Refer to ACB Vs Awoboro (1991) 2 NWLR (PT. 179) @ 711, Sun Insurance (Nig) Plc Vs LMBS Ltd (2005) 12 NWLR (PT. 608) @ 635, Effiom Vs Ironbar (2000) 3 NWLR (PT. 650) 562 Para E and Adewale Vs Gov. Ekiti State (2007) 12 NWLR (PT. 1019) 634 @ 652.

Submits that there is imminent danger that the Defendants and their unknown cohorts will destroy the res completely sold out if this application

is not granted at this stage and also that the balance of convenience rest in favour of the Applicant, hence it is reasonable for all parties to maintain status quo than for the Defendants be allowed to continue to perpetrate trespass on another person's property with the hope that they would have achieved their aims before final Judgment is given in the matter. Refer to Akapo Vs Hakeem (1992) NWLR (PT. 247) 291 Para D-E and Obeya Memorial Hospital Vs A-G Federation & Anor (Supra). Applicant undertakes to compensate the Defendants/Respondents should the application turns out to be frivolous.

Submits finally that more worrisome and manifestly condemnable is that the Defendants have continued in their act of contempt of court in flagrant disregard of the pendency of this Suit and a Motion on Notice for Interlocutory Injunction filed on the 6/5/2019 and duly served on them, have continued to carry out various acts of trespass on the land, subject matter of the Suit. Refer to Sulu Gambari Vs Bukola (2004) 1 NWLR (PT. 853) 122, urge court to grant this application to preserve the res pending the determination of the substantive suit.

In the same vein, Defendants/Respondentsrelying on their 16 Paragraph counter-affidavit formulated a sole issue for determination that is;

“Whether in the circumstance of this application, the Honourable Court should exercise its discretionary power in favour of the Plaintiff/Applicant by the grant of the Interlocutory Injunction so as to preserve the res pending the determination of this Suit.

Submits that the motive of the grant of injunction is to preserve the res. Refer to Palm Company Vs Tajudeen (2015) ALL WLR (PT.806) 358. However the proper parties must be in court so as to be bound by the order of injunction that Respondents are not the proper parties to whom an order made will stay. Refer to Paragraph 3, 4 and 5 of their counter-affidavit.

Submits that this application falls short of the condition for the grant of an Interlocutory injunction stated in the case of Obeya Memorial Hospital Vs A-G Federation and Anor (1987) 3 NWLR (PT. 60) 18.

Submits that the fact of the application weighs more in favour of a refusal than the grant of the prayers as the applicants have not shown why damages will not be adequate compensation if the matter is determined in their favour. Submits that the balance of conveniences weighs more on the side of the Respondents as an Injunction will not lie against completed acts.

Finally, relying on Order 42 Rule (2) of the Rules of Court urge court to grant an Order for accelerated trial instead of a grant of an Injunction moreso as the affidavit of both parties as well as their Witness Statement on Oath indicate that both sides have one witness each therefore the entire case for both parties can be concluded in two days and thereafter addresses filed and exchanged.

I have carefully considered the affidavit evidence of the parties, their written submission and judicial authorities cited, and I find that there is only one (1) issue for determination that is;

“Whether or not the Applicant has placed before the court sufficient facts for the grant or otherwise of the reliefs 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 object 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 a position to either grant or refuse the application. In doing so, the court is invited to exercise its discretion and which must be done judicially and judiciously. This discretion is exercised in relation to the facts and circumstances of the case before the court; hence to be entitled to the relief sought, the Applicant must disclose all material facts. See *Anachebe Vs Ijeoma* (2015) ALL PT 784, 183.

On the nature of the grant of an Injunction relief, the court in the case of *Mohammed Vs Umar* (2009) ALL FWLR (PT. 207) 1510 @ 1523 – 1524 Para H – D stated thus;

“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 hard law and facts”.

In exercise of that discretion, the court is guided by the principles stated in plethora of judicial authorities, see *Akinpelu Vs Adegboire* (2008) ALL FWLR (PT. 429) 4131 @ 433 – 434; *Kotoye Vs CBN* (1989) 1 NWLR (PT. 98) 149.

It has also been held that an application for injunctive reliefs will be granted to support a legal right. See *Gambari Vs Bukola* (2003) ALL FWLR (PT. 158) 1198 @ 1208 Para G.

In the instance case, from the affidavit of the parties, it clearly shows that while the Claimant/Applicant lays claim to ownership of the subject matter of this Suit, the Defendants/Respondents on the other hand denied owing any building on the land and carrying out any development on the land therefore the order of Injunction will not be binding on them that the company in which the 2nd Respondent have interest, acquired the disputed land and had since balkanized the land into plots and sold to third parties who have completed houses on the land. The Claimant/Applicant never rebutted this fact and this the court will act on it.

From all of these,, it would seem to me that the Order of Injunction would not be appropriate in the circumstance, this is more so as the unchallenged of the Respondent is to the effect that their interest of the 2nd Defendant in the subject matter of the Suit is said to have been transferred to third parties and therefore cannot be bound by an Injunction relief.

In the light of all of these, it is the holding of this court that this is an occasion where the court rather than grant the relief sought, order that the parties maintained status quo ante bellum and press for accelerated hearing.

In conclusion, this application is hereby refused. Parties are hereby ordered to maintain status quo ante bellum pending the determination and

hearing of the substantive Suit and press for accelerated hearing of the case.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

28/2/2022

A.C.J. AZUBIKE ESQ FOR THE CLAIMANT/APPLICANT

L.I. OKO ESQ FOR THE 1ST/2ND DEFENDANTS/RESPONDENTS