

**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/1969/2021

BETWEEN:

SADO ISIMEME SARAH.....CLAIMANT/APPLICANT

VS

1. AVASTONE GLOBAL SERVICES LTD

2. PETER OKAFOR TOBECHUKWU

3. UNKNOWN PERSONS.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 12/8/21 and filed same day with Motion No: M/570/2021, brought pursuant to Order 42 Rules 4(1), 8, Order 43 Rules 1(1) 3(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court Claimant/Applicant seeks the following reliefs;

- (1) An Order of Interlocutory injunction restraining the Defendants/Respondents from further construction and maintaining status quo ante on the property known as House Number 06 STR, Lying within Plot 837, Porsche Terrances Estate Karmo District, Abuja, the subject matter of this suit, pending the final determination of the substantive suit.
- (2) And the omnibus relief.

The grounds for the reliefs as stated in the face of the motion paper are;

- (1) Claimant has filed a suit against all the Respondents herein on the same subject matter and the said suit is currently pending before this Honourable Court.
- (2) It is obligatory for parties to respect the sanctity of the Honourable Court by restraining from any action that would derogate or usurp the adjudicatory powers of court.
- (3) Continuous tempering/defacing of the subject matter of a suit erodes the absolute adjudicatory powers of court.
- (4) The 3rd Defendant is still actively constructing on the subject matter of this suit despite the pendency of this action.
- (5) This Honourable Court is invested with powers to preserve the res in appropriate case under Order 4 Rule 4(1) of the extant Rules of Court.

In support of the application is a fourteen (14) Paragraph affidavit deposed to by the Claimant/Applicant with 7 Exhibits attached and marked Exhibit "OSD 1-7". In compliance with the Rules of Court, Applicant filed a Written Address and adopt same as oral argument, in urging the court to grant the application.

The processes were served on the Defendants/Respondents by substituted means to wit by pasting at house number 06 STR within Plot 837, Porshe Terraces Estates, Karimo District, Abuja. The Defendants/Respondents failed to react to the processes despite service on them, and were not in court nor represented by Counsel. The implication of this is that the

application before the court stands unchallenged and uncontroverted. In *Gana Vs FRN* (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

“Where an affidavit does not attract a counter-affidavit the facts deposed to therein have been admitted and must be taken as true”

See also the case of *CBN Vs Igwilo* (2007) 15 NWLR (PT. 1054) @ 406.

In the Written Address the Applicant, Debo S. Ikuesan Esq. for Applicant formulated a sole issue determination, that is;

“Whether given the state of evidence and circumstances of this case, the res ought not to be preserved by this Honourable Court”

In summary, the submission of the Claimant/Applicant’s Counsel is that this court has the powers to preserve the subject matter of a suit as provided by Order 42 Rule 4(1) of the Rules of Court and calls on the court to interpret this rule in a way that it is intended to be construed, without imagining ambiguities where they do not exist. Refer to *Nwosu Vs Imo State Environmental Sanitation Authority* (1990) 2 NWLR (PT. 135) @ 688.

Submits that the grant or otherwise of the application is at the discretion of court which court must exercise judicially and judiciously being guided by the requirement for the grant of interlocutory injunction stated in the case of *Statoil (Nig) Ltd Vs S.D.W.P Ltd* (2015) 16 NWLR (PT. 1485) @ 368.

Submits that the affidavit evidence shows that the Applicant is heavily interested in the subject matter of this suit being the original allottee. Urge court to look at the document and exhibits placed before it to determine

whether there are triable issues or not. Refer to West African Oil Field Services Vs Pielfaco & Anor (1994) 1 NWLR (PT. 319) 164 @ 182; Mhambe Vs Shide (1994) 2 NWLR (PT. 326) @ 329, Fumudol Vs Aboro (1991) 9 NWLR (PT. 214) and Oke Vs Aiyedun (1986) 2 NWLR (PT. 23) 348.

Finally urge court to hold that the nature and scope of interlocutory injunction is dictated by the facts of each case and above all to preserve the res and to stop the mischief complained of, that any party to this suit still actively tempering with the subject matter of this suit is definitely a mischief and same should be tamed by an order of injunction.

Having carefully considered the affidavit evidence of the Applicant which is unchallenged and uncontroverted, the attached Exhibit "OSD 1 -7", the submission of Counsel as well as the judicial authorities cited the court finds that there is only one (1) issue for determination which is;

"Whether or not the Applicant has placed sufficient facts for the grant of the relief sought"

An Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. The objects is to keep the matter in status quo, while 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 deny permanent relief on the merit. See Yusuf Vs IITA (2009) 5 NWLR (PT. 1133) 39 Para A – B.

In an application for interlocutory injunction, it is not necessary that Applicant must make out a case as he would on the merit, it is sufficient

that he should established that there is a serious issue to be tried. It is unnecessary to determine the legal rights to a claim since at that stage there can be no determination, because the case has not been tried on the merit. It is on this basis the court will consider this application.

In *Kotoye Vs CBN* (2001) All FWLR (PT. 49) 1567 @ 1576, the Supreme Court set out certain guidelines to be followed by the court in deciding whether or not to grant interlocutory injunction amongst these factors to be considered are;

- (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 *Yusuf Vs I.I.T.A* (Supra), *Owerri Municipal Council Vs Onuoha* (2010) All FWLR (PT. 538) 896 @ 898.

On whether there are triable issues at the main trial, the position of the law is that all the court need to establish is that the claim is not frivolous or vexatious. From the facts stated in the affidavit of the Applicant particularly in Paragraph 2, 3, 4, 5, 6, 7, 8, 9 and 10 clearly shows that there are issues to be tried. The success or otherwise of it, is not the function of the court to resolve at this stage but for the main suit.

On the issue of whether the Applicant have a right to be protected from Paragraph 2,3,4,5,6, and 7 of the supporting affidavit and the Exhibit "OSD 7" and the claim before the court, the Applicant have stated her legal rights and in the court's view they are rights worthy of protection by this court.

On the issue of whether the Applicant will suffer irreparable injury if the application is not granted or whether the balance of convenience is in favour of the Applicant, this is an area, where the discretion of the court comes into play judicial discretion is not a one way traffic. It takes into consideration the competing rights of the parties to justice. It must be based on facts and guided by law of the equitable decision on what is just and proper under the circumstance. In the instant application, The Applicant have by her affidavit stated that the continuous unabated construction on the subject matter of this Suit would render the outcome nugatory. Though it is not for the court to determine the merit of the case at this stage, it is the view of this court that the Applicant would suffer more injury if the application is not granted.

In all of these, the 1st, 2nd and 3rd Defendants/Respondent who were duly served with the processes of court did not react to the Motion. The implication is that the facts contained in the affidavit evidence before this court are deemed true and the court can act on it. They stand unchallenged and uncontroverted. It is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See the Nigerian Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 2008 (SC) where Fabiyi JSC stated;

“It is basic that unchallenged evidence stands. The court should accept same and act on it. Per Fabiyi JSC 2 11 Para D – F”.

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law, the court finds that the Claimant/Applicant have succeeded in making a case deserving of the grant of the relief sought. The application therefore succeeds.

It is hereby ordered follows:-

- (1) An Order of Interlocutory Injunction restraining the Defendants/Respondents from further construction and maintaining status quo ante on the property known as House Number 06 STR, lying within Plot 837, Porsche Terraces Estate Karmo District Abuja, the subject matter of this Suit, pending the final determination of the substantial Suit.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

10/3/2022

APPEARANCE:

DEBO IKUESAN ESQ - FOR CLAIMANT/APPLICANT.

NO APPEARANCE FOR THE 1ST, 2ND AND 3RD DEFENDANTS/RESPONDENTS