

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 7, NYANYA ON THE 28TH DAY OF
JANUARY,2021

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CV/0685/18.

COURT CLERK: JOSEPH BALAMI ISHAKU.

BETWEEN:

1. SALAMATU ABUBAKAR

(TRADING UNDER THE NAME AND STYLE OF
LAMY SALAM INTERNATIONAL)

}CLAIMANTS

2. ABDUL SAMAD MOHAMMED

AND

1. HIS NIGERIA LIMITED

2. INT TOWERS LIMITED }DEFENDANTS/RESPONDENTS

3. EMCHUCKS ASSOCIATES LIMITED...DEFENDANT/APPLICANT

RULING

The 3rd Defendant/Counterclaimant/Applicant's application dated 10/02/20 and filed on the same date is for an Order of:

1. Interlocutory Injunction restraining the 1st and 2nd Defendants in this Suit from further trespass and illegal use of Park No. 3987C, AO4 known as Asokoro Recreation Park,

Asokoro, Abuja measuring about 0.3 Hectares for its telecommunication Mast and any other use pending the hearing and determination of this suit.

2. An Order restraining the 1st and 2nd Defendants from transacting or further transacting with any one whosoever claiming title to the allocation and ownership of Park No. 3987C, AO4 known as Asokoro Recreation park, Asokoro, Abuja measuring about 0.3 Hectares pending the hearing and determination of this suit.
3. An Order sealing up Park No. 3987C, AO4 known as Asokoro Recreation Park, Asokoro, Abuja measuring about 0.3 Hectares for its telecommunication mast and any other use pending the hearing and determination of this suit.

4. And for such Further Order or Orders as the Court may deem fit to make in the circumstance.

The Learned Counsel to the 3rd

Defendant/Counterclaimant relied on the Affidavit filed in support deposed to by Obiduba Chukwuemeka.

He deposed that 3rd Defendant/Counterclaimant expressed interest and was leased the said Park Asokoro to develop, manage and operate same on the 3rd July 2007 by the Abuja Metropolitan Management Agency. The letter of Lease is Exhibit EAL1.

That it obtained a Technical Drawing Plan (TDP) of the plot with all the Beacon Numbers. The TDP is Exhibit EAL2. That in 2008, when he was to develop the Park, he discovered that there was a trespass on the Park by way of installation of a

telecommunication mast on the Park. He discovered that the act of trespass was committed by MTN Nig. Ltd but several efforts to enquire from MTN was rebuffed. That 3rd Defendant engaged the services of the law firm of Taiwo Julius to take legal steps to abate the trespass. The law firm was informed upon enquiry that it was 1st Defendant IHS Nig Ltd who is infrastructure and telecommunication facilities managers to MTN Nig. Ltd that is operating and managing the mast installed in the 3rd Defendant plot of land.

That its Counsel wrote a letter of demand for payment for illegal occupation. The letter dated 9/08/18 is Exhibit EAL3.

The 1st Defendant replied stating that there is a pending Suit on the subject matter as it relates to ownership of the plot of land which Plaintiff is laying claim to.

The letter is Exhibit EAL4.

The 3rd Defendant through its Counsel applied and obtained all the CTC of the Suit CV/0685/18. The 3rd Defendant was joined in the Suit in order to claim its property.

The 1st Defendant in its reply claimed to have a Lease Agreement with one Mr. Ilobi Uchenna Joseph upon which it entered the said land.

That the continuous trespass and encroachment into the plot of the 3rd Defendant/Counterclaimant by the 1st and 2nd Defendants has caused the 3rd Defendant grave financial loss and otherwise since 2007.

That the telecommunication mast and equipment erected on the Park poses serious environmental and health dangers to fun seekers which is the purpose for which the Park was granted.

That the Res should be protected by restraining the 1st and 2nd Defendants.

If the Orders are not granted, the damage to 3rd Defendant will be unquantifiable.

The 3rd Defendant undertakes to pay damages. That the balance of convenience is on the side of the 3rd Defendant.

The 1st and 2nd Defendants' Counsel relied on the 20 paragraph Counter Affidavit deposed to by Usaini Usman of No. 6 Dar Esalaam Street, Wuse 2, Abuja.

He deposes as follows:

The 2nd Defendant is currently in possession of a little portion of the disputed area and owns a telecommunication mast on the site measuring about 15m x 15m only.

The claim in this Suit is for a declaration that the Claimants are the lawful owners of the subject matter.

That the said Park was allocated to one Ilobi Uchenna Joseph who entered into a Lease Agreement with MTN.

The Lease Agreement is Exhibit INT1

MTN transferred its towers and cellular masts to the 2nd Defendant.

MTN notified Ilobi Uchenna Joseph of the transfer of the residue of its interest including all rights, obligations, privileges under the Lease Agreement to INT Towers Ltd, the 2nd Defendant.

On the strength of the above, the Court joined the 2nd Defendant.

The 3rd Defendant also applied to be joined and was so joined.

That 2nd Defendant runs the mast on the plot.

That 2nd Defendant is not in trespass. The issue of ownership of the plot between 3rd Defendant,

Claimant and Ilobi Uchenna Joseph, is not resolved.

That the mast was completed since 2008.

That mast endangered nobody neither has it caused any damage.

The Res is not perishable. That the balance of convenience is not on the side of the 3rd Defendant but on the side of the 2nd Defendant

There cannot be any irreparable loss or damage if the application is refused.

The factors taken into consideration for the grant or otherwise of an Interlocutory Injunction are well settled. An Interlocutory Injunction or any other injunction for that matter are not granted whimsically.

1. There must be a subsisting action which clearly denotes a legal right.
2. There must be a substantial issue to be tried.

3. The balance of convenience must be in favour of the Applicant.
4. The Applicant must show that there was no delay on his part in bringing the application.
5. That damages cannot be an adequate compensation for the injury he wants the Court to protect.
6. The Applicant must make an undertaking to pay damages in the event of a wrongful exercise of the Court's discretion in granting the injunction.
7. The protection of the Res.

See ***KOTOYE VS. CBN (1989) 1 NWLR (PT.98) 419 SC.***

The 1st and 2nd Defendants have a mast on the plot of land in dispute. The mast is run, operated and managed by 2nd Defendant.

It occupies a portion of the land in dispute. The Applicant has not shown that the balance of convenience is in its favour. The 3rd Defendant/Applicant has nothing to lose if the Injunction is refused.

The 3rd Defendant/Applicant has been aware of this encroachment since 2008 but did nothing by way of filing a Motion for injunction till 10/2/2020.

In my humble view, there has been undue delay in bringing this application. It is an equitable relief, delay defeats equity.

The law is that an Interlocutory Injunction is concerned principally with the protection of the Res and maintaining the status quo.

It is only where the subject matter will be permanently destroyed and cannot be recovered or replaced that an Order of Interlocutory Injunction will

be appropriate to maintain the status quo until the final determination of the Suit.

In the instant case, the Res, the subject matter cannot be permanently destroyed.

See ***GLOBE FISHING INDUSTRY LTD VS. COKER (1990) 7 NWLR (PT.162) 265 SC.***

The Court of law is indeed obliged to take into account the socio economic factors before granting Interlocutory Injunction.

The 3rd Defendant has not developed the park.

The 1st and 2nd Defendants masts are already operational. The Res is land, it is not perishable. The better option in my view is to go to trial.

See ***MODILE VS. GOV, LAGOS STATE (2004) 12 NWLR (PT.887) 354 CA.***

There is nothing to suggest from the Affidavit evidence that in case the Applicant succeeds in his claim, he

would not be adequately compensated by an award of damages against the Respondent and the Respondents are financially in a position to pay the damages so awarded.

The law is settled that an Interlocutory Injunction is not a remedy for an act that has been completed or carried out.

Consequently, no interlocutory Injunction would be granted to restrain a completed act.

See ***LAFFERII NIG. LTD VS. NAL MERCHANT BANK PLC (2002) 1 NWLR (PT.748) 333 C.A.***

The 1st and 2nd Defendants must have been constructed. It is operational. It is a completed act.

An Interlocutory Injunction cannot lie against the 1st and 2nd Defendants.

In the circumstance of this application and the reasons stated hereinbefore, the application is unmeritorious. It is accordingly dismissed.

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HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
28/01/21.

Parties absent.

M.J. Haruna with Khomi Babai for the 1st and 2nd

Defendant/Respondents.

Omang C. Omang for the 3rd Defendant/Applicant.