

**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/2871/2021

MOTION: M/7342/2021

BETWEEN:

YOUNG AFRIKANA INVESTMENT LTD.....CLAIMANT/APPLICANT

VS

1. JOGRAFAN NIGERIA LTD

2. UNKNOWN PERSONS.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 27/10/2021 but, filed on 29/10/2021 with Motion No: M/7342/2021, brought pursuant to Order 43 Rule 1 (1), 42 (8) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court, praying for the following reliefs;

- (1) An Order of Interlocutory Injunction restraining the Defendants/Respondents, their Agents, Servants or Privies howsoever described or anybody else acting on their behalf from unlawfully trespassing continuing and/or destroying any structure on Plot MF 159 Sabon Lugbe East Extension measuring 1ha pending the hearing and determination of this suit.

(2) And the Omnibus relief.

In support of this application is a Nineteen (19) Paragraph affidavit deposed to by one Abraham Opeoluwa Property Manager of the Claimant/Applicant with one (1) Exhibit attached and marked Exhibit "A". In compliance with the Rules of Court, Applicant filed a Written Address and adopts same as oral argument in urging the court to grant the relief sought.

The processes were served on the 1st and 2nd Defendants/Respondents by pasting on the Wall/Gate of Plot MF 159 Sabon Lugbe East Extension Layout – Abuja vide Order of Court made on 10/1/2022. Despite service, the 1st and 2nd Defendants/Respondents failed to react to the processes. The implication of this, is that the application before 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 of the Applicant Anthony Biose Esq. of Counsel formulated a sole issue for determination that is;

“Whether by the facts and circumstances of this case the Plaintiff has disclosed sufficient facts to warrant the grant of the interlocutory Injunction pending hearing and determination of this case?”

In summary, the submission of Claimant/Applicant's Counsel is that the aim of Injunction is to protect existing legal right with the object of keeping matters in status quo in Order to protect the Res pending the hearing and determination of the substantive suit. Refer to Ita Vs Nyong (1994) 1 NWLR (PT. 318) 56 and Ogunro Vs Duke (2006) 7 NWLR (PT. 978) 130 @ 132 Ratio 1.

Submits that by the depositions in Applicant's affidavit in support of the Motion, Applicant has disclosed an existing legal right which is threatened by the Defendants. Submits further that the grant or refusal of the application is at the discretion of court and the court must exercise it judiciously and judicially. Refer to Obeya Memorial Specialist Hospital Ltd Vs Attorney General of the Federation & Anor (1987) 75

SC 52 and Lafferri (Nig) Ltd Vs Nal Merchant Bank Plc (2002) 1 NWLR (PT. 748) 333.

Submits that it will serve the course of justice to grant the application pending the determination of the suit before the court. Refer to Obeya Memorial Hospital Vs A. G Federation (Supra), Ojukwu Vs Governor of Lagos State (1986) 3 NWLR (PT. 26) 39 and Kotoye Vs Central Bank of Nigeria (1989) 1 NWLR (PT. 98) 419.

Applicant's Counsel urge court to consider this application in line with the guiding principles stated in the case of Uket Vs Okpa (2006) 8 NWLR (PT. 983) 464 @ 466 Ratio 1.

Submits finally that where an application of this nature is filed and served, parties thereto must refrain from taking any action on the Res as a mark of

respect for the court pending the determination of the suit. Refer to *Ojukwu Vs Governor of Lagos State (Supra)*. Urge court to grant the prayer of the Applicant.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibit marked "A", the submission of Counsel as well as the judicial authorities cited, the court finds that there is only one (1) issue that calls 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 object 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 I.I.T.A (2009) 5 NWLR (PT. 1133) 39 Para A – B*.

In an application for Interlocutory Injunction, it is not necessary that an 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 right 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 4, 7, 8, 9, 10 and 13 clearly shows that there are serious 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 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 the law or the equitable decision of what is just and proper under the circumstance. In the instant application, the Applicant have by her affidavit in support of the Motion shown that she would suffer irreparable injury if the application is not granted. See Paragraph 12 and 14 of the affidavit. Though it is not for the court to determine the merit of the case at this stage, it is the view of the court that the Applicant have by her affidavit evidence shown clearly that she would suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to be protected, from the Paragraph 3,5 and 6 of the supporting affidavit and Exhibit "A" and the claim before this court, the Applicant have stated her legal rights and in the court's view they are rights worthy of protection by this court. The Applicant also undertakes to pay damages to the Respondents if the application is granted but turns out to be frivolous.

In all of these the 1st and 2nd Defendants/Respondents who were duly served with the processes did not react to the Motion. This court therefore deemed these facts contained in the affidavit in support of the application true and will 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 Nigeria Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 20085 (SC) where Fabiyi (JSC) stated thus;

"It is basic that unchallenged evidence stands. The court should accept same and act on it"

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law, the court finds that the Claimant/Applicant have succeed in making a case deserving of the grant of the relief sought. The application therefore succeeds. It is hereby ordered as follows;

- (1) An Order of Interlocutory Injunction restraining the Defendants/Respondents, their agents, servants or privies, howsoever described or anybody else acting on their behalf from unlawfully trespassing continuing and/or destroying and structure on Plot MF 159 Sabon Lugbe East Extension Layout measuring 1ha pending the hearing and determination of this suit.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

23/3/2022

APPEARANCE:

ANTHONY BIOSE ESQ. FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR 1ST AND 2ND DEFENDANTS/RESPONDENT