

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO

CLERK: CHARITY ONUZULIKE
COURT NO. 15

SUIT NO: FCT/HC/CV/181/21
M/668/2021
DATE: 16/02/2021

BETWEEN:

THE ATTORNEY GENERAL OF RIVERS STATE.....PLAINTIFF

AND

HON. ABDULLAHI HARUNA SAN & 3 ORS.....DEFENDANTS

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This Rulings concerns an application vide a Motion Ex-parte M/668/2021 dated 27/1/21 and filed on the same day. The application was brought pursuant to Order 43 Rule 2 and 3 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018. The prayer as contained in the Motion paper are as follows:

An Order of Interim Injunction restraining the 1st, 2nd and 3rd Defendants from continuing with the conduct or purporting to conduct further proceedings in the arbitration between the 4th Defendant and the Government of Rivers State or in any manner taking any step or steps to enhance progress in the conduct of the said arbitration pending the hearing and determination of the Claimants' Motion on Notice for Interlocutory Injunction.

And for such further or other orders as this Honourable Court may deem fit to make in the circumstances.

There are eight (8) grounds upon which the above prayers are anchored; to wit:

1. The 1st, 2nd and 3rd Defendants are arbitration practitioners who purport to have been constituted into an Arbitration Panel to hear and determine an alleged commercial dispute between the 4th Defendant and the Government of Rivers State as arising from a hospital management contract agreement.
2. Although the Claimant/Applicant did not appoint an arbitrator in respect of the composition of the said Arbitration Panel, the 4th Defendant obtained an order of the Federal Capital Territory High Court for the appointment of an arbitrator for the Claimant in his absence.
3. In spite of the fact that the decision of the Court appointing the said arbitrator is now the subject matter of a pending appeal before the Abuja Division of the Court of Appeal, the 1st, 2nd and 3rd Defendants have proceeded post haste to embark on the conduct of arbitral proceedings in the absence of the Claimant and without further recourse to him.
4. The Claimant duly filed an application before the arbitral panel challenging the arbitrators and their jurisdiction to continue to entertain the matter on the grounds of bias and breach of Claimants rights of fair hearing but the 1st, 2nd and 3rd Defendants rendered a Partial Award/Ruling thereon on the 21st day of January, 2021 refusing to

disqualify themselves and insisting on continuing with the proceedings.

5. The Claimant/Applicant has pleaded with the 1st, 2nd and 3rd Defendants and requested them to release to him the copies of the record of proceedings of the arbitration as well as the Partial Award/Ruling to enable him prepare for the proceedings and take appropriate informed steps but they have refused to avail him any of the processes and insisted on proceeding with the conduct of further proceedings.
6. The Claimant has taken out a writ of summons before this Honourable Court against the Defendants and praying for declaratory and injunctive reliefs for the enforcement of his fundamental rights against the Defendants and have also filed a motion on notice for orders of interlocutory injunction to preserve his rights pending the determination of the suit.
7. That inspite of having become aware of the said writ of summons and motion on notice which was duly presented to the 1st, 2nd and 3rd Defendants Arbitral Tribunal in the course of their proceedings on 26th January, 2021, they have insisted on proceeding with the matter and continued in their determination to proceed with the arbitral proceedings poste haste to over reach the pending suit and unless restrained by orders of this Honourable Court, they will create irreparable damage to the legal rights of the Claimant and over reach this suit before this Honourable Court.
8. The Claimant has brought the instant application in the interest of justice for the maintenance of the *status quo ante bellum* and preservation of the *res* of litigation to afford

this Honourable Court an opportunity to hear and determine the issues involved in this case and have duly entered into an undertaking to pay damages in respect of the application.

In support of the applications are three (3) affidavits.

- (1) 14-paragraphs supporting affidavit
- (2) 15-paragraphs affidavit of urgency
- (3) 9-paragraphs further affidavit of urgency to which is attached Exhibit A.

Attached to the Motion Ex-parte is a written address dated 27/1/2021.

Mr. Godwin Obla SAN of Counsel to the applicant relied on all the processes aforementioned while moving the application and urged me to grant the application.

By way of adumbration a few minutes ago, learned silk emphasised the issue of urgency and referred to paragraph 4 of the further affidavit of urgency and the content of Exhibit A attached. The learned SAN also submitted that they undertake to pay damages in the event that the applicant turns out to be frivolous. He referred to paragraphs 11 of the supporting affidavits.

I have considered this application. The applicant's Counsel submitted a lone issue for determination to wit:

"Whether the Claimant/Applicant has made out a proper case for the exercise of judicial discretion in favour of the grant of the order of interim injunction."

I also agree that this is the sole issue for determination in this one-sided application.

For all his argument, the learned SAN relied *inter alia* on the following cases: IDEIT VS. ONYEJESE (1997) 8 NWLR (PT. 518) 610, AGBAJE VS IBRU SEA FOODS LTD (1972) 5 SC, AGBOGU VS OKOYE (2009) ALL FWLR (PT. 414) 1494 ACB VS. AWOGBORO (1991) 2 NWLR (1991) 2 NWLR (PT. 179) 711 etc.

In this ex-parte application, the principal prayer in an order of interim injunction.

It is trite that interim injunction is made pending the determination of Motion on Notice or all pending applications before the Court. So, there must be a pending Motion on Notice.

Do I find one attached in this case as mandatorily provided in Order 43 Rule 3(1) of the Rules of this Court? The answer is yes. See. M/607/2021.

By their nature, Interim Injunction are usually applied for ex-parte i.e. without notice to the other party. It is to keep matters in *status quo* to a named date, usually not more than a few days or until Respondent can be put on notice. The rationale is to cure the delay or serious mischief that would be caused if the other side were to be put on Notice. Such Interim Injunction are for cases of real urgency. See NJOKANMA VS. UYANA (2006) 13 NWLR (PT. 997) 433; LAFFERI NIG. LTD VS. NAL MERCHANT BANK PLC (2002) 1 NWLR (PT. 748) 333.

It is also not meant to last forever or ad-infinitum. It is an equitable remedy meant to operate for a short period of time.

Also, the applicant must not be guilty of delay and the applicant must undertake to pay damages. See **NJOKANMA VS UYANA (Supra)**.

From, everything I have said above, it is clear to me that I must be satisfied as to existence of the following parameters:

- (1) Real urgency
- (2) No delay
- (3) Two Motions one Ex-parte and other on Notice
- (4) Undertaking as to damages

The issues of legal Right, triable issues, and balance of convenience shall also be brought into focus. See **GLOBE FISHING INDUSTRY LTD VS. COKER (1990) 7 NWLR (PT. 162) 265.**

Real Urgency:

I agree with the learned SAN that there is real urgency in this matter. See paragraph 4 of further affidavit of urgency when 1st, 2nd and 3rd Defendants are said to have entered what they termed "order No. 2" and this Thursday 18th and Monday 22nd February, 2021 is fixed for hearing and conclusion of the matter. See also paragraph 6 of the further affidavits.

No Delay:

This application was filed as far back as 27/1/21. But because of issues of assignment of the Acting Chief Judge's office, it was referred to this Court only 8/2/21 and my attention drawn to it on 15/2/21. See also paragraph 12 of supporting affidavit.

Balance of Convenience:

The Respondent will not be prejudice in any way if this application is granted since their right of fair hearing would be accorded to them when the Motion on Notice is taken in a few days' time.

Undertaking as to Damages:

This criterion is met by virtue of paragraphs 11 of the supporting Affidavits.

Finally, and without further rigmaroling, this application vide Motion number M/668/2021 succeeds and granted as follows:

- (1) An Order of Interim Injunction restraining the 1st, 2nd and 3rd Defendants for continuing with the conduct or purporting to conduct further proceedings in the arbitration between the 4th Defendant and the Government of Rivers State or in any manner taking any step or steps to enhance the progress in the conduct of the said arbitration pending the hearing and determination of the Claimants' Motion on Notice for Interlocutory Injunction.
- (2) The Order is to last for seven days from the date of service on the Respondents after which it would lapse automatically.

- (3) Hearing date for the Motion on Notice – M/607/2021 is now fixed for 25/2/2021 for the hearing of the Motion on Notice.

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S. B. Belgore
(Judge) 16-2-21