

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 22**

**CASE NUMBER : SUIT NO: CV/2715/20**

**DATE: : TUESDAY 30<sup>TH</sup> MARCH, 2021**

**BETWEEN:**

**AGUR & SAGE CAPITAL LTD..... CLAIMANT  
/APPLICANT**

**AND**

**ABUJA LEASING COMPANY LTD... DEFENDANT**

**RULING**

The Claimant/Applicant approached this Honourable Court praying the Court for the following:-

1. An Interlocutory Order of injunction restraining the Defendant, whether by itself, agents, servants, employees or privies possession, selling, or taking any steps whatsoever towards disposing of, from their owners, pending the hearing and final determination of this matter, the properties as follows:-
  - a. Plot No. 839,861, Cadastral Zone, Gudu District Abuja, belonging to Ahmed Danfulani, with a Certificate of Occupancy No. 22awb018z-5513r-d7leu-10.
  - b. No. 9 Owo Close, Off Makurdi Street, Area 10, Garki, with Certificate of Occupancy

No. 20abw-341ez-47atr-138du-10,  
belonging to Paul Enokela and

- c. House 74, Rooms 1 & 2, Kadanya Avenue,  
Floor 00, Dwelling Plot No. 1517, Plot No.  
2393, covered by Certificate of Occupancy  
No.534uw-1735b-5b6cr-1483e-10,belonging  
to Caleb Zagni, from their owners as stated  
herein.

In support of the application is 60 paragraphs  
affidavit deposed to by One Prince  
AyobamiTinuonye, a director in the Company of  
Claimant.

It is the deposition of the Claimant that the Claimant  
approached Abuja Leasing Company for a loan  
facility in March 2019, in respect of financing its  
deal with Kingzol International, Niger Republic.

That as a matter of fact, the Defendant's credit committee did their investigation and due diligence on the purpose for which the loan was sought and upon its due diligence found out that the loan was to finance the purchase of a foreign Bank Guarantee, which will serve as collateral and comfort for the Claimant's foreign investor, who was ready to give the Claimant the sum of \$200 Million to finance the lease, and exploitation of oil blocks, offered to the Claimant by Kingzol International in Niger Republic, for eight years.

Applicant avers that the loan was approved with the condition that the Claimant will produce two different properties which will serve as third party collateral for the total sum of the loan while the offer of loan which the Claimant duly accepted was subsisting, the Defendant offered the Claimant

another loan of another N100 Million Naira, by an offer letter dated the 5<sup>th</sup> day of April, 2019, by which another initial sum of N50 Million Naira was given to it. A copy of the said offer letter is attached and marked as Exhibit '2'.

It is the affidavit of the Applicant that, on the 1<sup>st</sup> of November, 2019, the Defendant issued the Claimant again with a loan offer of N150 Million Naira, which the Claimant duly accepted. A copy of the said offer letter is attached and marked as Exhibit '3'. And that the said properties form part of the 'Res' in this matter, and there is an urgent need for this Honourable court to protect the 'Res' herein.

That the Defendants will suffer no inconveniences should this application be granted by this

Honourable Court, pending the hearing and determination of this case.

In line with law a written address was filed wherein a sole issue to wit; *whether this Honourable Court can exercise its unfettered discretion in favour of this application by granting same was formulated for determination.*

Arguing on the above issue, learned counsel submit that the Claimant has demonstrated by the affidavit in support of the Motion that the balance of convenience tilt in his favour and that the determination of where the balance of convenience lies is a question of fact and not law. That the court is expected to deduce the answer from the facts before it.

***KOTOYE VS C.B.N (1989) 1 NWLR (Pt. 98) 419.***

Court was finally urge to grant the application in the interest of justice.

Upon service, the Respondent filed a counter affidavit of 29 paragraph deposed to by NoyaSediInwutube, a Legal Practitioner in the law firm of the Respondent.

It is the deposition of the Respondent that the Claimant applied to the Defendant and obtained a loan from it with a representation that it was going to finance the purchase instruments needed for lease of an Oil Block. It is not true that it had any deal with Kingzol International or any other organization whatsoever. Defendant innocently acted on the false and fraudulent representation of the Claimant. A criminal and fraudulent representation currently being investigated by the Nigeria Police.

Defendant avers that Exhibit ‘1’ in the affidavit is the initial loan agreement for project finance is contained in the Defendant’s letter of offer dated 25<sup>th</sup> March, 2019, which was accepted by the Claimant. It was for the sum of N100,000,000.00 (One Hundred Million Naira). Exhibit ‘2’ captures disbursement of the second tranche. And that it was agreed that the loan is for a period of three (3) months (90) day at an interest rate of 7% per month. Based on this agreement, the Defendant disbursed the initial sum of N50,000,000.00 (Fifty Million Naira) to the Claimant.

Defendant contended that the loan of 5<sup>th</sup> April, 2019 (Exhibit ‘2’) was supplementary to the first one granted and as a second tranche of the initial loan wherein a further sum of N50,000,000.00 (Fifty Million Naira) was disbursed to the Claimant. This



supplementary loan agreement was based on the same terms as the first one dated 25<sup>th</sup> March, 2019. And Exhibit ‘2’ of the Applicant’s affidavit was not another loan with ‘initial’ disbursement. The said transaction was as stated therein capturing the final disbursement of the earlier N100,000,000.00 (One Hundred Million Naira) loan granted.

It is further the affidavit of the Defendant that it graciously granted a further loan of N50,000,000.00 (Fifty Million Naira) and disbursed it on 7<sup>th</sup> June, 2019. This loan was a separate loan transaction captured by loan agreement dated 7<sup>th</sup> June, 2019 with an interest rate of 7% per month for 30 days. The agreement is here attached and marked Exhibit ‘ALC 2’.

That parties agreed that a separate and additional security will be used to secure the loan of 7<sup>th</sup> June, 2019. Consequently, the Claimant got the landed property measuring 2250 square metres described as Plot 839, Cadastral B01 belonging to Ahmed ShaibuDanfulani covered by Certificate of Occupancy No. 226aw-018z-55f3r-d71eu-10 as security.

The properties referred to in paragraph 38 were already sold to the Respondent.

This application is frivolous and is an attempt to use this court to frustrate the Respondent from exercising its right of sale.

A written address was filed wherein the following issues were formulated for determination.

1. Whether from the materials before the Court, the Claimant/Applicant has any cause of action as far as the claims and the interlocutory injunction is concerned.
2. Whether the Claimant/Applicant has any locus standi to bring this application for interlocutory injunction.
3. Whether the Court in the absence of the owners of the properties has the legal power and jurisdiction to grant the application to preserve the property of persons who are not parties to the suit.

On issue one, whether from the materials before the Court, the Claimant/Applicant has any cause of action as far as the claims and the interlocutory injunction is concerned;

Counsel argued that a cause of actions are the facts or combination of facts which give rise to a right to sue and that there is no cause of action in the Claimant to complain about the properties that neither belonged to them or claimed to belong to them.

***EGBUE VS ARAKA (1988) NWLR Pt. 84 Page 598 at 613.***

On issue two, whether the Claimant/Applicant has any locus standi to bring this application for interlocutory injunction;

Counsel contended that the Applicant lacks the locus to institute this action as the rights and obligation of the Applicant are not threatened, violated or put in danger or peril.

***EHIRIM VS GOVT. OF IMO STATE & ORS  
(2014) LPELR 24359 CA.***

On issue three, whether the Court in the absence of the owners of the properties has the legal power and jurisdiction to grant the application to preserve the property of persons who are not parties to the suit;

Counsel submit that Court has no powers over a person who is not a party to the suit. Either on his behalf in his favour or against him as it will be a breach of the right of hearing.

***A.G. LAGOS STATE VS A.G. FEDERATION  
(2017) 12 NWLR (Pt. 1580) 364, 402.***

Court was urged to dismiss the application in the interest of justice.

Upon service, the Applicant filed a further affidavit wherein the Applicant stated that the Claimant did not make any fraudulent representation to the Defendant as there is no pending matter in that regard being investigated by the police.

That the Defendant unlawfully terminated the agreement it had with the Plaintiff, without fully keeping to its part of the loan agreement and that the Defendant has deliberately hidden these facts from the court.

That there is serious issue to be determined by this Honourable Court.

**Court:-**The essence of interlocutory injunction is to serve as a stop – gap measure. It is granted usually at an early but critical stage in the life and pendency of the substantive case before the court has had

opportunity to fully hear and weigh the evidence and determine one way or another the case of parties.

It is similarly important to note that the jurisdiction of court to grant interlocutory injunction is equitable, the manner of the exercise of the discretion depends upon the precise nature of the particular rights which is sought to be protected and upon all the materials and circumstances. This is so because relief for interlocutory injunction, like most other reliefs, is punitive and therefore should be granted after due process of the law which involves given parties fair hearing, as done in this case.

See ***RANSTON PROPERTIES LTD VS F.B.N PLC (2007) ALL FWLR (pt. 392) 1954 at 1965 – 1986 C – D.***

When an application for an interlocutory injunction to restrain a Defendant from doing acts alleged to violation of Plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when hypothetically, the existence of the right or the violation of it is or both are uncertain until final judgment is given in the action. The practice of granting the Plaintiff's relief by way of interlocutory injunction arose to mitigate the risk of injustice to him during the period the uncertainty could be resolved.

Above was stated by ***PETER ODILI JCA*** (as he then was) in the case of ***STALLION (NIG.) LTD V- E. F. C. C. (2008) 7 NWLR (Pt. 1087) 461 at 473 paragraph A- C.***



In granting an interlocutory injunction, the scope usually is limited to the actual ‘Res’ in the suit.

It is usually based on specific claims or reliefs sought in the substantive suit.

See the case *NWANNEWNINE VS NWANNEWNINE(2007) NWLR (pt. 1059) 1 at 13 paragraphs B – C.*

I wish to state reiteratedly that Applicant’s real prospect of success in the right claimed must, at the outset, be satisfied that the Plaintiff’s claim is not frivolous or vexatious and that there is a serious question to be tried at the substantive suit. Where Plaintiff fails to satisfy these requirements, it will in effect automatically bring to an end or defeat his application.

See page 18 paragraphs B – D in *FALOMO VS BANIGBE & ORS (1998) 6 S. C 141*.

The Power to grant or refuse an interlocutory injunction is discretionary but as discretionary as it is to a Judge, it must be exercised judicially and judiciously, bearing in mind the competing interest of parties and the circumstances of each case.

It has been decided in plethora of cases that all an Applicants need to prove in an application for an interlocutory injunction is the existence of a legal right which ought to be protected.

Claimant/Applicant stated in it affidavit in support of motion on notice that loan facilities were granted to it with a collateral and that the collateral form part of the ‘Res’ of this litigation. An averment vehemently opposed to by the Defendants.

What then constitute legal right in law?

Legal right was defined by SC in *A-G LAGOS STATE VS AG FED. (2004) 18 NWLR (pt. 9041) 1 per NIKI TOBI JSC* (as he then was) to mean “a right recognized in law. It means a right recognized by law and capable of being enforced by the Plaintiff.

It is a right of a party recognized and protected by the Rule of law, the violation of which would be a legal wrong done to the interest of the Plaintiff, even though no action is taken.

The determination of the legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action.”

It is instructive to note the trite position of law that, the essence of interlocutory injunction is to restrain a party from taking special step. It is often made before the actual trial of a case and is granted to keep matters in status quo until trial. See ***ANTHONY VS SURVEYOR GENERAL, OGUN STATE (2007) ALL FWLR (pt. 354) 370 at 390 paragraph E-F.***

I shall for the purpose of law and posterity preserve the res from annihilation. Court of law must avoid delving into the facts of cases at the stage of considering interlocutory application.

On the whole, after a careful study of both the affidavit in support of the motion on notice and counter affidavit and on the sound reasoning I have come to a conclusion that the Claimant/Applicant

has establish a case for an order of interlocutory injunction to be granted.

Accordingly, I hereby ordered as follows:-

1. An Interlocutory Order of injunction restraining the Defendant, whether by itself, agents, servants, employees or privies possession, selling, or taking any steps whatsoever towards disposing of, from their owners, pending the hearing and final determination of this matter, the properties as follows:-

a. Plot No. 839,861, Cadastral Zone, Gudu District Abuja, belonging to Ahmed Danfulani, with a Certificate of Occupancy No. 22awb018z-5513r-d7leu-10.

b. No. 9 Owo Close, Off Makurdi Street, Area 10, Garki, with Certificate of Occupancy

No.20abw-341ez-47atr-138du-10, belonging to Paul Enokela and

- c. House 74, Rooms 1 & 2, Kadanya Avenue, Floor 00, Dwelling Plot No. 1517, Plot No. 2393, covered by Certificate of Occupancy No.534uw-1735b-5b6cr-1483e-10,belonging to CalebZagni, from their owners as stated herein.

*Justice Y. Halilu*  
*Hon. Judge*  
*30<sup>th</sup> March, 2021*

**APPEARANCES**

**MeindinyoNimi** – for the Claimant.

Defendant not in court and not represented.