

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. 13
CASE NUMBER : SUIT NO: CV/1868/2024
DATE: : WEDNESDAY 5TH MARCH,
2025

BETWEEN:

1. ENGR. DATTI AHMED
2. NAFIU WADA KURA



PLAINTIFFS

AND

1. DADI
2. AFANJA
3. ENGR. BENSON JACOB
4. DCP RABO



DEFENDANTS

RULING

This Ruling is at the instance of the Plaintiffs who approached this court vide motion on notice dated 28th March, 2024 and filed on 2nd April, 2024 praying the court for the following reliefs:-

1. An Order of Injunction restraining the Defendants, their agents, privies or whosoever is claiming through the Defendants, from trespassing or further trespassing, tampering or dealing with the subject matter of this suit to wit; **Block No SDX/D 103A and Block No SDX/D 103B** situate at **System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja** in any manner prejudicial to the interest of the Plaintiffs/Applicants pending the hearing and determination of the substantive suit already filed and pending before this Honorable Court.
2. And for such further order or Orders as the Honorable Court may make in the circumstances.

The grounds upon which the application is brought are encapsulated in the Applicant's affidavit, thus, there is no need to reproduce here.

The application is supported by a 32 Paragraph affidavit deposed to by Nafiu Wada Kura, the 2nd Plaintiff/Applicant in this suit. It is the deposition of the Plaintiff/Applicants, that sometime in 2015, he negotiated with Saraha Homes Limited for the purchase of two shops at Dubai Abuja, International Market.

That after payment of the agreed purchased prices for the shops, letters with reference number: **ZCC/GLD 12A & 12B** dated 13th & 3rd March and February, 2015 respectively was issued to the 2nd Applicant.

That the 2nd Applicant and **Saraha Homes Limited** agreed and opted for a plot of land in lieu of the shops with the above reference number.

That the agreement with **Saraha Homes Limited**, vide allocation letters all dated 23rd January, 2023, two Plots of land known and described as **Block No SDX/D 103A and Block No SDX/D 103B** situate at **System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja** was allocated to the 1st Applicant herein. Attached and marked as Exhibits "A1" and "A2" are the copies of Allocation.

That following the allocation of **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property**

Development Consortium Estate plot No G. (313), Galadimawa District, Abuja, 2nd Applicant requested to be shown the Plots physically.

That the Plots known as **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate plot No G. (313), Galadimawa District, Abuja** was shown to 2nd Plaintiff/Applicant but local owners were still in active occupation of the plot and he was made to understand that unless the locals are settled and compensated by him or the allottee, the plots will not be accessible.

That consequently, 2nd Plaintiff/Applicant paid and settled the local owners of building and trees on the plots through the representatives of **Saraha Homes Limited** and his representative appended his signature as witness to developer/Settlers' agreement forms. The developer/Settler's agreement forms was herein attached and marked as Exhibits "B1" and "B2" respectively.

That upon payment of the compensation to the local owners, Plaintiffs/Applicants enjoyed peaceful and uninterrupted possession of the Plots known as **Block No SDX/D 103A and Block No SDX/D 103B Situate at System Property**

**Development Consortium Estate plot No G. 313),
Galadimawa District, Abuja.**

That 2nd Plaintiff/Applicant started receiving calls from 1st Defendant sometime in 2023 inquiring about their plots of land known as **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja.**

That sometime in February, 2024, after 2nd Plaintiff/Applicant traveled to Egypt for a medical checkup, he was informed by his agent Kabir Umar vide phone around the hours of 3:00Pm which information he verily believed to be true that the 1st Defendant hurriedly commenced construction on the plots of land known as **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate plot No G. (313), Galadimawa District, Abuja** without any justifiable basis.

That the 2nd and 3rd Defendants are aiding the 1st Defendant to encroach and trespass on the plots and are fervently trying to collaborate with the 4th Defendant to sustain the encroachment on the **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium**

Estate Plot No G. (313), Galadimawa District, Abuja despite the valid and subsisting allocation of the plots to the 1st Plaintiff.

That they deployed their agent Kabiru Umar to stop further encroachment and avert further surreptitious construction by the 1st Defendants and his collaborators on **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja** but despite frantic efforts by the agent, the 1st Defendant continued with his intrusion.

That in the 1st Defendant's desperation to illegally interfere with the peaceful possession and ownership of their right over the plots, the 1st Defendant mobilized workers to the land and following intervention by the Plaintiffs/Applicants' representative on the site, Kabiru Umar, they were constrained to cause a criminal complaint to be filed before Area Court.

That following the invasion and further construction on **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja** by the 1st Defendant through his privies, the 1st Plaintiff was constrained to cause

criminal complaint to be filed before an Area Court in order to forestall further illegal encroachment by the 1st Defendant and his privies.

That despite the service of the summon and court processes of the Area court on the 1st Defendant by pasting same on the plot, the 1st Defendant disdainfully continued his surreptitious construction on the plot. Attached and marked as Exhibits "C1", "C2", and "C3" are the pictures showing the encroachment on the plot and the processes pasted which were later removed by the 1st Defendant.

That the acts of 1st Defendants and their privies constitute a serious threat to the Applicants' right to the undisturbed possession and enjoyment of **Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja** lawfully allocated to the 1st Plaintiff by the owners/developers of the estate.

That unless the Defendants are restrained, they may likely continue with their further construction and further interfere with the 1st Plaintiffs' rightful ownership and possessory right without any lawful power or authority.

That as a result of the above development, the activities of the 1st Plaintiff have been put on hold because they are under fear and apprehension that the defendants may at any time further invade, and forcefully takeover the plot without any lawful authority.

That there is a legal right in this suit.

That the Res is in danger or imminent danger of being destroyed and/or irreversibly altered.

That the Plaintiffs/Applicants are not guilty of delay or that the urgency is not self-induced.

That there is a need to keep matters in status quo.

That based on the facts stated above, the balance of convenience tilts in favour of the Applicants.

That unless this Honourable Court intervenes by way of stop gap and/or interim reliefs vide orders of interlocutory injunction, the Plaintiffs/Applicants will suffer colossal loss should the Defendants/Respondents go ahead with the further invasion and intrusion on the subject matter before the hearing and determination of the substantive suit.

That if the Defendants/Respondents go ahead to surreptitiously the subject matter of the substantive suit during the pendency of the substantive suit, there will be a fait accompli in the event that the Plaintiffs/Applicants succeed at the end of the trial.

That the Plaintiffs/Applicants undertake to pay damages should this application turn out to be frivolous.

Those damages will not adequately compensate to the Plaintiffs/Applicants in the circumstances of this suit.

That the interest of justice will be better served if this application is granted.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether in the circumstances of this case, the Applicants have placed material facts to entitle them to the reliefs sought in this application"

It is the submission of learned counsel, that in the determination of the above question... the main consideration before the Court would be whether the Plaintiffs/Applicants have satisfied the conditions as laid down by the Supreme Court in the case of

KOTOYE V. C.B.N. [1989] 1 NWLR (Pt. 98) 419 at Pages 441-442, Paragraphs D-B, which are:-

"That the applicant must show that there is a serious question to be tried i.e. that the applicant has a real possibility, not probability of success at the trial, notwithstanding the defendant's technical defence (if any).

That the applicant must show that the balance of convenience is on his side i.e. that more justice will result in granting the application than in refusing it.

That the applicant must show that damages cannot be an adequate compensation for his damage or injury, if he succeeds at the end of the day.

That the applicant must show that his conduct is not reprehensible e.g. that he is not guilty of any delay.

That the applicant must make an undertaking as to damages".

It is submitted that at this stage, the Plaintiffs/Applicants do not need to show a strong prima facie case (which it has however shown).

The only thing the law requires of the Plaintiffs/Applicants at this stage is to show there is a serious issue or question to be tried at the hearing of the case.

OBEYA MEMORIAL SPECIALIST HOSPITAL VS. A.G. FEDERATION (1987) 3 NWLR (Pt. 60)325 was cited.

Learned counsel also submits, that there is a great possibility of the success of the Plaintiffs' suit against the Defendants/Respondents and that makes this application worthy of the consideration of this court.

Learned counsel further submits, that the balance of convenience is on the side of the Plaintiffs/Applicants and that more justice would result in granting this application thereby restraining the Defendants/Respondents, their agents, privies or whosoever is claiming through the Defendants, from invading, tampering or dealing with the existing disputed plots in any manner prejudicial to the interest of the Plaintiffs pending the hearing and determination of the substantive suit already filed and pending before this Honorable Court.

It is the evidence of the Plaintiffs/Applicants that they made payments to the local owners and also paid for clearance, change of ownership, valuation and site plan registration and will also

suffer substantial lost as a result of the Defendants/Respondents' threat to invade or interfere with the Plaintiffs/Applicants' site.

That damages would not be adequate compensation for the Plaintiffs/Applicants' injury, and huge financial loss, if this suit succeeds before this Court.

In conclusion, learned counsel urge this Honourable Court to grant the orders as prayed because inter alia;

- i. The Plaintiffs/Applicants have shown that they have a legal right capable of being protected by an order of injunction until the final determination of this suit.
- ii. There is a substantial issue to be determined by this court and the case is not frivolous and vexatious.
- iii. The action of the defendants' complained about, threatens to completely erode the subject matter of this suit.
- iv. This Honourable Court has a duty to preserve the subject matter of the suit before it.

On their part, 1st, 2nd, 3rd and 4th Respondents filed 10 paragraph counter affidavit deposed to by Afonja Jacobs, 2nd Respondent herein. It is the deposition of 1st, 2nd, 3rd and 4th Respondents,

that paragraphs 1, 2, 3, 4, 5, 6 and 7 of the affidavit in support of the motion are denied specifically and that none of the said Respondents has the description ascribed to them in the said affidavit.

That the 1st, 2nd, 3rd and 4th Respondents are not in a position to admit or deny paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 of the affidavit in support.

That after they acquired the property, they took possession and made payments for excavation and all other developmental levies to enable them enter into the property to develop same.

That they subsequently asked the 1st Respondent to help them develop the property since he has the wherewithal and experience to do same.

That upon developing the property since November 2023, 1st and the 2nd Respondents have received all kinds of interruptions from the 1st Applicant targeted at disrupting the ongoing work.

That on several occasions, the 1st Applicant has sent thugs to the site to disrupt work, disturb public peace and generally cause mayhem at the site.

That the continuous actions of the 1st Applicant has led to this case being reported at the police station seeking for protection from the thugs of the 1st Applicant and to stop them from further harassment.

That they have also sought for the intervention of the issuing company through their MD, Site Engineer (the 3rd Respondent) and manager, one Mr. Paul and at every meeting, it was CLEARLY pointed out to the 1st Applicant that his allocation is COMPLETELY different from the plot they are working on.

That both at the Police station and at the reconciliatory meetings held, it was sufficiently pointed out to the 1st Applicant by showing him the Survey Plan, Layout and TDP of the area that the plots he was complaining about is completely different from theirs. Copy of the Site Plan was herein attached as Annexure "D".

That a close or even casual look at the Exhibits "A1" and "A2" attached to the motion shows that they bear (BLOCK SDX/D 103B) and (BLOCK SDX/D 103A) whereas their allocation and plot on which they are working is (BLOCK SDX 132B). These are different locations as confirmed to both parties by the 2nd Respondent being the Surveyor, the site Engineer and manager

yet the 1st Applicant is bent on interfering with their peaceful enjoyment of the property.

That there has not been any re-numbering or redesign of the estate to make the 1st Applicant mistake his plot for their own except that he has set out to cause confusion by mischief.

To further establish their ownership and take possession of the land, in July 2023, 2nd Defendant's developer paid compensation to those who have either economic trees or any valuable crop on the land. Evidence of compensation paid to one Barnabas Godwin and Amos Gado was herein attached as Annexures "E", "F" "G".

That it was brought to their knowledge that the applicant has obtained an interim order to restrain them from continuing the development on the property which is not a subject matter in this suit based on the documents and they want the court to vacate the said order.

That the 1st Applicant has caused untold hardship to them and made them suffer so much economic loss as a result of his continuous interference, harassment, intimidation and disruption of their developmental activities on the said plot.

It is in the interest of Justice to refuse the instant application of the applicants and allow them to carry out their lawful development of my legitimately acquired property.

In line with procedure, written address was filed wherein sole issue was formulated for determination to-wit;

"Whether in the circumstances of this case, the Applicants have placed material facts and evidence before the court to entitle them to the reliefs sought"

It is the submission of learned counsel, that it is only when an applicant for an interlocutory injunction has convinced the court of the coexistence of the above listed conditions in his/her favour, that the application may be favourably considered by the court. In other words, those conditions MUST exist conjunctively and concurrently.

Learned counsel further submits, that the Applicant has not established the existence of a clear legal right justifying the invocation of the discretionary powers of this Court to grant an order of injunction. That the Court can only consider this application on being convinced that there exists a clear, direct and legally cognizable right. The Court cannot afford to work on the basis of assumptions, conjectures and speculations which are

the footings on which the Applicant has brought the instant application.

Learned counsel also submits, that into consideration the fact that the injunctive powers of the Court is rarely exercised by a court of law given its disruptive or restrictive nature on rights of parties, the Court will be more inclined to withhold the exercise of such powers, where, upon a dispassionate consideration of the facts, it is shown by the Applicants themselves that application for injunction is geared towards the protection of financial interest compensable by monetary damages as in this case.

In ***BELLO VS A.G LAGOS STATE [2007] 2 NWLR (Pt. 1017) 115, at 138 Paragraph D***, the Court of Appeal held that: ***"By irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury, which cannot possibly be repaired."***

The fact that the plaintiff may have a right to recover damages is an objection to the exercise of jurisdiction by injunction if this right cannot be adequately protected or vindicated by damages."

Learned counsel contends, that Applicant has not shown that this is a matter involving life or limb, or preservation of a perishable item, or destruction of a res or irreparable injury.

On the strength of ***BELLO VS. AG LAGOS STATE (Supra)***, that the fact that the Applicant will have the right to recover damages, in the unlikely event that it succeeds in this suit, calls for the withholding, by the court of the exercise of the discretionary powers of injunction in this case.

Learned counsel submits, that It must be noted that the Applicant in an apparent effort to seek to satisfy the requirement of undertaking as to damages, made a bare assertion in paragraph 29 of the affidavit in support of the application for injunction that it undertakes to compensate the Respondents in damages in the event that the application is granted and turns out frivolous.

However that the above bare assertion is not enough, especially in a matter of this nature involving a potential disruption of the Respondent's rights. It is therefore imperative that the Applicant in an application of this nature, not only gives an undertaking as to damages, but also proceed to give details of the means at his disposal to substantiate and establish his financial capacity to pay such damages whenever called upon to do so.

Learned counsel concludes by urging this court to resist and decline the invitation of the Applicant for the exercise of its discretion to grant an order of injunction in this matter.

The circumstances of this case calls for judicial caution and circumspection especially considering the fact that the Applicant has instituted this action in an abuse of the process of the Court and engaging in multiplicity of actions.

All the above coupled with the fact that whatever injury the Applicant seek to remedy can conveniently be compensated in damages, makes this a compelling case in which this Honourable Court ought properly to decline to grant an order of injunction, and rather direct the Applicant to proceed with her suit and await whatever final orders the Court may make in the circumstances.

This court is therefore urged to dismiss the instant application with costs.

COURT

The function of an injunctive order be it interim or interlocutory, which are both stop gap measure to protect the “Res” from any form of tampering.

For a court of law to make such an Order of injunction, the legal right of such an Applicant is often taken into account.. where there is no existence of a legal right, an Applicant clearly would be a meddlesome interloper.

See ***KOTOYE VS. CBN (1989) 1 NWLR (Pt. 98) 419;***

MOROHUNFOLA VS. KWARA STATE COLLEGE OF TECHNOLOGY (1990) LPELR – 1912 (SC).

I have considered the affidavits in support of the application and the written argument on the one hand, and the counter affidavit and written address on the other hand.

It is very instructive to note that, at this stage, the Court is only enjoined to determine whether or not, from the documents and averments contained in the affidavit in support of this Application, the Applicant indeed have a legal right worthy of any protection by this Court.

In determining the said right of the Applicants, I am also encouraged to avoid any overlap into the main issue as not to determine the substantive issue at stake, thereby denying either of the parties the right of trial at this stage.

See ***NDIC VS S.B.N PLC (2003) NWLR (Pt. 801) page 311 at 423 paragraph H.***

See also the case of ***LAWRENCE DAVID LTD VS ASUTON (1991) 1 ALL ER 385 at page 394 – 6.***

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.

See the case of ***STALLION (NIG) LTD. VS E.F.C.C. (2008) 7 NWLR (Pt. 1087) 461 at 473 paragraphs A – C.;***

OGUNSOLA VS USMAN (2002) 14 NWLR (Pt. 788) 636.

The position of law that an Applicant for interlocutory injunction must have an established legal right, for his application to succeed, cannot be over emphasized.

Of equal importance is the fact that injunction is usually granted to protect the Plaintiff against injury, by violation of his right for which he could not be adequately compensated in damages recoverably in the action if the uncertainty were resolved in his favour at the trial.

See ***ADAMU VS AG NASARAWA STATE (2007)6 NWLR (Pt. 1031) 485 at 492 paragraph F-G.***

Furthermore, one determining factor for granting an Order of interlocutory injunction is to preserve the Res. It is indeed the province of the law that the Res should not be destroyed or annihilated before the judgment of Court.

See ***AKINKPELU VS ADEGBORE & ORS (2008) 4 – 5 SC (Pt. 11) 75.***

I shall consider the evidence of the Applicant, with the aim of ascertaining the Legal Right which he alleged to be tempered with. This is in view of the facts that, where there is no legal right known to law, the Plaintiff cannot be heard to complain.

The Plaintiffs/Applicants in their affidavit in support of motion on notice stated that they are the owners of the two Plots of land known and described as Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja was allocated to the 1st Applicant herein. That sometime in February, 2024, he was informed by his agent Kabir Umar that the 1st Defendant hurriedly commenced construction on the plots of land known as Block No SDX/D 103A and Block No SDX/D 103B situate at

System Property Development Consortium Estate plot No G. (313), Galadimawa District, Abuja without any justifiable basis.

That the 2nd and 3rd Defendants are aiding the 1st Defendant to encroach and trespass on the plots and are fervently trying to collaborate with the 4th Defendant to sustain the encroachment on the Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja despite the valid and subsisting allocation of the plots to the 1st Plaintiff.

In contention, Respondents stated that the Applicants' plots bear (BLOCK SDX/D 103B) and (BLOCK SDX/D 103A) whereas their allocation and plot on which they are working is (BLOCK SDX 132B). These are different locations as confirmed to both parties by the 2nd Respondent being the Surveyor, the site Engineer and manager yet the 1st Applicant is bent on interfering with their peaceful enjoyment of the property.

Clearly, there is a contention that must be resolved regarding allegations made by both parties.

There is evidently a substantial issue to be determined by this Court.

From the above authority and on the strength of evidence above, it is my considered opinion that the Plaintiffs/Applicants have established a legal interest worthy of being preserved and protected.

Let me state here, that an Injunction is a stop – gap measure. It is granted usually at an early but critical stage in the life and pendency of the substantive cause before the court has had opportunity to fully hear and weigh the evidence and determine one way or another the case of parties.

Of importance to note is that the jurisdiction of court to grant 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 the instance case.

See ***RANSTON PROPERTIES LTD VS. FBN PLC. (2007) ALL FWLR (Pt. 392) 1954 at 1965 – 1986 C-D.***

The power to grant or refuse an injunction is discretionary but as 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 injunction is the existence of a legal right which ought to be protected.

What then constitutes legal right in law?

Legal right was defined by Supreme Court in ***A.G LAGOS STATE VS. A.G FEDERATION (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."

On the whole, after a careful study of both the affidavit in support of the motion on notice and counter affidavit, I have come to a

conclusion that the Plaintiffs/Applicants have established a case for an Order of Injunction to be granted.

On the whole, and in view of my findings above, the Application of Plaintiffs/Applicants for An Order of Injunction restraining the Defendants, their agents, privies or whosoever is claiming through the Defendants, from trespassing or further trespassing, tampering or dealing with the subject matter of this suit to wit; Block No SDX/D 103A and Block No SDX/D 103B situate at System Property Development Consortium Estate Plot No G. (313), Galadimawa District, Abuja in any manner prejudicial to the interest of the Plaintiffs/Applicants pending the hearing and determination of the substantive suit already filed and pending before this Honourable Court **is hereby granted.**

***Justice Y.
Halilu
Hon. Judge
5th March, 2025***

