

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT GUDU - ABUJA
ON THURSDAY THE 21ST DAY OF NOVEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO-ADEBIYI
SUIT NO. FCT/HC/PET/146/2024
MOTION NO: M/5058/2024

BETWEEN:

MRS. TALUBI SAFRAT ADENIKE ----- PETITIONER/RESPONDENT

AND

MR. TALUBI KAZEEM ADEGOKE ----- RESPONDENT/APPLICANT

RULING

By a Motion on notice brought pursuant to Order 42 Rules 5; Order 43 Rules 1 (1) (2) of the High Court of the FCT Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court, the Applicant is praying the Court for the following orders;

1. AN ORDER of Interim Injunction restraining the Petitioner/Respondent by herself, servants, agents and privies from running the school known as Amana International School, pending the hearing and determination of the substantive suit.
2. AN ORDER of Interlocutory Injunction restraining the Petitioner/Respondent by herself, servants, agents and privies from operating the Stanbic 1BTC account of Amana International School pending the hearing and determination of the substantive suit.
3. AN ORDER of Interlocutory Injunction restraining the Petitioner/Respondent by herself, servants, agents and privies from taking over the land in the name of Amana International School pending the hearing and determination of the substantive suit.
4. AN ORDER of Interlocutory Injunction restraining the Petitioner/Respondent by herself, servants, agents and privies from taking over the property housing the Amana International School owned by the Respondent/Applicant pending the hearing and determination of the substantive suit.
5. AN FOR SUCH FURTHER or other Orders as this Honourable Court may deem fit to make in the circumstances pending the hearing and determination of the substantive suit.

In support of the application is a 34 paragraph affidavit deposed to by Mr. Talubi Kazeem Adegoke, the Respondent/Applicant in this suit. In summary deponent averred that the Respondent/Applicant registered the school, Amana International School and allowed the Petitioner to run the school as a qualified educationist. That the Respondent invested lots of money in the school's family business and was involved in the management of the school. That the Respondent/Applicant bought the land in the name of the school and authorized the use of his property by the school. That the Petitioner has been making plans to convert the school, his properties as her own and for her use. Furthermore, that the school has three accounts and the Petitioner is a sole signatory to one of the accounts which she has continuously embezzled money from without the authorization of the Respondent. That the Petitioner/Respondent has filed a petition before this Court for the dissolution of the marriage between parties and sought the ownership of the properties while illegally occupying them and embezzling the funds belonging to the school. That the Respondent has responded to the Petitioner's petition and filed a cross-petition which is pending before this Court. That the Respondent is filing this Motion for interlocutory injunction to prevent the Petitioner from the destroying and distorting his properties and to prevent the Petitioner from continuous embezzlement of the school's funds. Attached are two (2) documents marked as follows;

- i. Renaissance Practitioners official receipt no. 0201 marked Exhibit A.
- ii. OBI-Anioke & Co. receipts nos. 0180 and 0181 marked Exhibit B.

The Applicant's Counsel also filed a written address wherein he raised a sole issue for determination to wit;

“Whether the Respondent/Applicant has made out a case for grant of the reliefs sought in the application”.

Summarily learned counsel submitted that the Applicant has established some right in the management of the school, properties owed and used by the school which ought to be protected by injunction. That the balance of convenience tilts in favour of the Respondent/Applicant. As regards damages and compensation, that it is trite that the term “irreparable damage” or injury in the consideration of an application for interlocutory injunction means a type of injury which is substantial and could never be adequately remedied or atoned for by damages. That once an applicant succeeds in showing that irreparable injury or damage will be done or he could

not be adequately compensated in damages in the event he succeeds, the question of the ability of the respondent to pay damages becomes irrelevant and the question of balance of convenience between the parties will not even arise. Counsel then submitted that damages will not be enough to compensate Applicant/Respondent. That the Respondent has indicated his willingness to give an undertaking as to damages if the court so orders. Counsel submitted that it is only wise and reasonable to put matters on hold pending the determination of the substantive matter before the court and urged the Honourable court to grant the order of the interlocutory injunction as prayed and to resolve the sole issue in the application in favour of the Respondent/Applicant. Counsel relied on the following authorities amongst others: *Adeyemi v. Oladapo* (2002) 42 WRN 148 CA; *Kotoye V. CBN* (1989) 1 NWLR (Pt 98) 419; *ACB V Awogboro* (1991) 2 NWLR (pt 176) 711 at 719; *Victory Merchant Bank V Pelfaco Ltd* (1991) 9 NWLR (Pt 317) 340; *Peter V Okoye* (2002) 3 NWLR (Pt 755) 529 and *Ezebilo V Chinwuba* (1997) 7 NWLR (Pt 511)

In opposition the Petitioner/Respondent file an 18 paragraph affidavit deposed to by Mrs. Talubi Sarafat Adenike, the Petitioner in this suit. In summary, deponent averred that the Applicant allegedly purchased a bus for Amana International School but used the school's funds for personal expenses across multiple bank accounts, with records of large withdrawals without accountability. That for over seven years, the Applicant withdrew approximately N77.5 million from the school's accounts without justification. That the Applicant reportedly instructed staff to withdraw cash for his use and arranged drafts for specific companies. That aside from a bus the Applicant bought for Amana International School the Applicant did not contribute to the school's development, which she primarily funded. That the Applicant engaged in violent and abusive behavior toward the Petitioner and their children, escalating since the lawsuit began. That she contributed significantly to the property and school and that there was no agreement to pay the Applicant rent. That the Applicant deceived her into relocating the school to ultimately shut it down. That both parties contributed to acquiring and building marital property, with the Respondent providing oversight on-site. That she holds shares in Modulex Turn-Key Projects Ltd which has contributed to the school's funding. That the Respondent manages the school as a sole proprietor, while Applicant works out-of-state. All school fees were typically paid into Polaris and Jaiz accounts which

the Applicant receives bank statements, except for one term, due to Applicant seizing the checkbooks. That she agreed to handle family upkeep, while the Applicant focused on “capital projects,” although the term was not fully understood by her. That both parties had a dispute leading to police intervention which the Area Commander clarified that the police have no jurisdiction over marital assets and advised Applicant not to disrupt the school’s operations. That after the suit was filed, Applicant reportedly sent someone to remove air conditioners from the school, disrupting classes, which led to police involvement. That the Applicant attempted to sell assets and claimed financial distress despite holding substantial funds in Polaris Bank. That the Applicant collects rent from properties in Abuja without contributing to family expenses since 2014. That Applicant threatened to remove Respondent from the home for a new partner and Respondent seeks court intervention for fair proceedings and to maintain the current status. That Respondent has filed statements for all school accounts with the court, seeking accelerated hearings and maintaining the status quo.

The Respondent Counsel also filed a written address wherein he raised a sole issue for determination in the written address, which is,

“Whether this Honourable court can grant accelerated hearing of the matter instead of an injunction especially where there is no threat of damage from the Petitioner”.

In summary, learned counsel submitted that the Applicant has not shown any reasons why injunctive orders should be granted to him against the Petitioner who has placed all card before the honourable court. That the Applicant’s application is frivolous and vexatious. That the Applicant has not shown this honourable court that irreparable injury or damage that will be done to him in the event his counter claim succeed as nobody is running away with any property that has been placed before this honourable court to decide upon them. In conclusion counsel submitted that injunction are not granted in a vacuum as there is no threat of the Petitioner taking over the property mentioned and urged the court to dismiss Applicant’s application with cost of N5,000,000.00 only. Counsel relied on the following authorities amongst others; **Section 109 & 111 Matrimonial Causes Act; KARIBO and others v. GREND and Anor (1992) 3 NWLR (Pt. 230) 426; Odutola and ors v. Mabogunje and ors (2013) 7 NWLE Pt. 1354) 5122; Odutola holding ltd v. Ladejobi**

(2006) 26 NSCQR Pt 2 Pg. 1026 and Kotoyo v. Central Bank of Nigeria (1989) 2 SC Pt 1, Pg 1.

I have considered the processes before this court, the issue for determination is;

“Whether prayer of the Applicant can be granted at this preliminary stage?”

The principles crystallizing from a chain of superior decided authorities regarding the grant of interlocutory injunction under our laws may be summarized thus:

1. The grant of an interlocutory injunction is a remedy that is both temporary and discretionary.
2. An application for an interim injunction postulate that the applicant has a right, the violation of which he seeks to prevent and to do so effectively, he wants the Court to keep matters in status quo (The state in which things are).
3. The applicant must show that there is a serious issue to be tried.
4. The applicant must show that the balance of convenience is on his side which means that he stands to lose more if the status quo ante is not maintained until the final determination of the case.
5. The applicant must show that he will suffer irreparable damage or injury if the respondent is not restrained.
6. The conduct of the applicant is relevant. He cannot ask for an injunction on the basis of fraud. (He who comes to equity must come with clean hands) delay by the plaintiff may adversely affect the application. (Delay defeats equity). It is not possible to get an injunction to restrain an act, which has been carried out.
7. The applicant must give an undertaking as to damages. The plaintiff/applicant by this accepts to be liable for any damage suffered by the defendant as a result of the order of injunction if he (plaintiff/applicant) eventually loses the action.

These superior authorities are: *Obeya Memorial Hospital v. A-G Federation* (1987) 3 NWLR (Pt. 60) 1; *Akapo v. Hakeem-Habeeb* [1992] 6 NWLR (Pt. 247) 266; *U.T.B. Ltd v. Dolmetsch Pharm. (Nig.) Ltd* (2007) 16 NWLR (Pt. 1061) 420; and *Kotoyo v C. B. N.* (1989) 1 NWLR (Pt. 98) 419.

The Petitioner in the substantive suit, filed for dissolution of marriage against the Respondent, seeking for the following;

1. A DECREE OF DISSOLUTION OF MARRIAGE between the Petitioner and the Respondent.
2. AN ORDER OF THIS HONOURABLE COURT granting custody of the couple's 17 years old Daughter of the marriage Tajubi Maryam Mobonuola to the Petitioner.
3. AN ORDER OF THIS HONOURABLE COURT Splitting all the property acquired in course of the marriage in two equal halves between the Petitioner and the Respondent.
4. AN ORDER OF THIS HONOURABLE COURT restraining the Respondent from locking up, trespassing or creating trouble in the Petitioner's School.
5. AN ORDER OF THIS HONOURABLE COURT prohibiting the Respondent from detaining the school buses, school cheque books or anything belonging to the Petitioner's School or tempering with the smooth running of the school. The Sum of N100,000,000.00 (One Hundred Million Naira) against the Respondent for all the setbacks in her business, stress and pain he caused her during the cause of the marriage.
6. AN ORDER PERPETUAL INJUNCTION restraining the Respondent and his agent, mistresses from harassing, intimidating, insulting or interfering with the quiet and peaceful life of the Petitioner.
7. And for such further ORDER(S) AS THIS HONOURABLE COURT may deem fit to make in the circumstance of this petition.

Likewise, the Applicant in this application filed a cross petition wherein he prays the court for the following order;

- a. A Decree of dissolution of marriage between the Cross-Petitioner and the Respondent to Cross petition.
- b. An Order granting custody of the 2 children of the marriage to the Petitioner/Respondent to cross Petition, till they attain the age of majority.
- c. An Order of Court compelling the Petitioner/Respondent to Cross petition to account for all the funds of Amana International School, currently in her custody from the 10th of May, 2023 till the 10th of January, 2024.
- d. An Order of Court compelling the couple herein to liquidate all assets of Amana International School and share same equally between the Cross petitioner and Respondent to cross Petition.

- e. An Order granting the Respondent/Cross Petitioner vacant and exclusive rights over his land and building currently occupied by the Amana International School.

Such other consequential Orders the Court may deem fit to make in the circumstances of the case.

From the above, it is obvious that both parties in the substantive suit are calling for the court's intervention on the issue of the school (Amana International School) and its assets and the property occupied by the school. Parties have thereby joined issues, evidence must be led on issues raised in the Petition and Cross Petition hence, for the Court to determine and grant prayers of the Applicant in this application at this preliminary stage is tantamount to the Court determining issues raised in the Petition and the Cross Petition at an interlocutory stage. The Apex Court has warned several times that where the Court cannot decide a preliminary objection without evidence being led, it ceases to be a preliminary objection. In the case of **ELEBANJO VS. DAWODU (2006) 15 NWLR (PT.1001) 76 @ 137 Para E-F**, where OGBUAGU JSC, held that once issues cannot be determined in the pleadings then the Court ought to proceed to a full trial of the case and decide the point afterwards. A preliminary point ceases to be one strictly speaking once the point could not be decided without evidence being led. In such a case, the point becomes a defence to the action. A trial Court must be cautious when deciding preliminary issues raised in a suit in order to avoid taking a decision on the substantive issues, hence, if issues raised in Applicant's motion is considered at this interlocutory stage, the Court will appear to prejudge or pre-empt the main issues raised in the Petition and the Cross Petition, which relates to the application under consideration. See **EGBE V. ONOGUN (1972) 1 ALL NLR 95; JIMOH VS. OLAWOYE (2003) 10 NWLR (PT.828) 307.**

From the evidence and processes before me, granting the prayers of the Applicant to restrain the Respondent is akin to prejudging the Petition and Cross Petition at an interlocutory stage; to do otherwise is to prejudice the matter in respect of which evidence is yet to be led, else, trial of the substantive suit and particularly the Cross Petition would be an academic exercise in futility, a situation which would bring the Court to mockery and foist a situation of fiat accompli on the Court.

I therefore hold that the prayers of the Applicant in motion no. M/5058/2024 is hereby struck out and the Petition plus the Cross Petition is hereby set down for accelerated hearing.

Taking into consideration the peculiar nature of this suit;

**“IT IS HEREBY ORDERED THAT STATUS QUO BE
MAINTAINED”.**

IT IS FURTHER ORDERED THAT both parties should maintain peace and none of the parties should disturb the other’s peaceful existence pending the determination of this suit.

Parties: Absent

Appearances: Kathrine Ogbeni appearing for the Petitioner. A. U. Suleiman appearing for the Respondent.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE**

21STNOVEMBER, 2024