

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 27TH DAY OF JANUARY, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 9
SUIT NO: CV/377/2018
MOTION NO: M/1013/2018

BETWEEN:

1. MUHAMMAD SANI
2. HARUNA ALIYU ----- CLAIMANT/APPLICANT

AND

1. THE BWARI AREA COUNCIL
2. URBAN SHELTERS LIMITED. ----- DEFENDANTS/RESPONDENT

RULING

Before this Court is a Motion on Notice filed on the 28th November, 2018. The Claimants/Applicants are praying this Court for the following reliefs:

1. An order of interlocutory injunction restraining the Defendants/Respondents, their agents, privies and or any other person by whatsoever name called acting or claiming through them from further trespassing into the Plaintiffs plots of land situate at Shagari/deidei under Bwari Area Council and to further stop the Respondents from further entering, developing, building, constructing anything or otherwise in anyway dealing with the property situate at Shagari/deidei within Bwari Area Council Abuja, covered by letters of allocation for open space dated 09/11/2001 as pleaded in this suit, pending the hearing and determination of this case.
2. Any other order as this Honourable Court may deem fit to make in the circumstances of this application.

The application is supported with 17 paragraphs affidavit duly sworn to by the 1st Applicant, Muhammed

Sani. Also, attached to the application are bundle of documents which the Applicant's marked as exhibits A1 - A18, B1 - B18 and C1 - C15 respectively. Aliyu Muhammed Esq Counsel to the Applicants also filed a written address which he duly adopted while urging this Court to grant the application.

Upon service of the Motion on Notice to the Defendants/Respondents, the 2nd Respondent filed a 5 paragraphs Counter affidavit on the 10th October, 2019. The counter affidavit is deposed to by one Peter Udoka, a Legal Practitioner in the Law firm of Rosemary Emovon & Co. Counsel representing the 2nd Defendant/Respondent. Two documents were attached to the counter affidavit marked as exhibits Y and Z accordingly. Rosemary Emovon Esq. Counsel for the 2nd Respondent equally filed a written address in support of the Counter affidavit and urged the Court to dismiss the application.

On the 8th December, 2020, the motion on Notice was heard and argued by the parties. The Applicants in their written address have raised a sole issue for determination which is:

“Whether the Plaintiffs/Applicants are entitled to the reliefs sought herein”?

Counsel cited and referred to the cases of Uket vs. Okpa (2006) ALL FWLR (Part 311) page 1906, Udo vs. I.T.C.M.E.C. (2010) ALL FWLR (Part 507) page 103 - 104, where the Court of Appeal stated the principles to be considered before an order of interlocutory injunction can be made.

Counsel submitted that the Applicants have satisfied all the requirements for the grant of an interlocutory injunction as contained in their affidavit in support of the application as prayed. On their part, the 2nd Respondent also raised a sole issue for determination in their written address as follows:

“Whether this Honourable Court ought to grant the Claimants/Applicants prayers considering the peculiar facts and circumstances of this case as presented by the 2nd Defendant/Respondent in its affidavit.”

Counsel submitted that the facts the Court may consider amongst others in deciding an application for interlocutory injunction would depend largely on the peculiar facts and circumstances as disclosed in the application of both parties before it.

Counsel further submitted that the Claimants/Applicants did not furnish sufficient facts in warranting or moving the Court to grant the injunction, as injunctions are not granted as a matter of grace, routine or course but rather injunctions are granted on deserving cases, based on hard law and facts, which the Claimants/Applicants have not shown.

Counsel referred to the cases of Koleoso vs. Ogunyemi (2012) ALL FWLR (Part 623) page 2011 - 2023, Buhari & Ors. vs. Obasanjo & Ors. (2001)11 NWLR (Part 724) 369, Udo vs. I.T.C.M.E.C. (2010) ALL FWLR (Part 507) page 88 at 101.

Finally, Counsel urged this Court to exercise its discretion judicially and judiciously not to grant the application of the Claimants/Applicants and at best to order for an accelerated hearing.

From the affidavit evidence filed by the parties across the divide, the annexure filed for and against the application and the arguments canvassed by Counsel in their written address, it is observed that, the two issues raised separately by Counsel in their address seem to be the same, I will therefore proceed to determine the application on same.

Before an applicant for interlocutory injunction can succeed, he must establish the following, namely: that there is a serious question to be tried in the substantive action; that the balance of convenience is on his side; that damages cannot be adequate compensation for his damage or injury if he succeeds at the end of the day; that his conduct is not reprehensible, for instance, that he is not liable for any delay; and that the injunction is necessary to preserve the res, which is in imminent danger of being destroyed. See Okomo vs. Umoetuk (2004) 10 NWLR (part 882) page 526, Adefarati vs. Gov. Ondo State (2006) 1 NWLR (part 960) page 145, Kotoye vs. CBN (1989) 1 NWLR (part 98) page 419.

In this instance, there is no doubt that there is a subsisting suit, to which the applicant has filed a writ of summons dated 28th of November, 2018. The applicant at this stage is not expected to show a strong prima facie

case. Once the applicant establish that there is a substantial issue to be tried at the hearing, the burden is discharged see Oduntan vs. General Oil Ltd (1995) 4 NWLR (part 387) page 1 at 13.

From the averments in the supporting affidavit this Court is satisfied that the applicant has a legal right which needs to be protected and there are serious questions to be tried, over the subject matter of this suit.

The other most important and vital condition precedent for the grant of this application is the balance of convenience, and whether damages would not be adequate compensation e.t.c. In considering the balance of convenience, this is determined by what the applicant will lose if the application is refused and they succeed at the trial, and what the respondent will lose if the application is granted and they succeed at the trial. See American Cynamid vs. Ethicon Ltd (1975) 1 AC, Orji vs. Zaria

Industries (1992) 2 NSCC page 313 and Laffri Nig. Ltd vs. Nal Merchant Bank Plc (2001) 35 WRN.

It is the duty of the Court in finding balance of convenience to be satisfied that there are facts disclosed in the affidavit in the matter before it. See the case of Bello vs. A. G. Lagos State (2006) All FWLR (Part 324) page 1958. The applicant has stated that they bought the subject matter from the original allottees and while waiting for the 1st defendant/respondent to issue them with prototype design for the building of the stores/corner shops in the said plots of land, the 2nd respondent moved into the plot and began to develop the plot. The 2nd respondent on the other hand did not deny developing the plot but claimed being the rightful allottees.

In this circumstance, I am of the view that defendants/respondents has nothing to lose if this application is granted. At this point, it is the

plaintiff/applicant who will suffer more if this application is refused and the 2nd defendant goes ahead to fully develop the plot in dispute. I hold therefore that the balance of convenience tilts in favour of the applicant.

The objective of interlocutory injunction is to protect a plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in an action if the uncertainty were resolved in his favour at the trial. See Adewale vs. Gov. Ekiti State (supra) page 634 at 657. The question that follows is whether the applicant has established that damages will not be adequate compensation? From the entire scenario put forward by the applicant in the supporting affidavit, this Court is of the considered view that damages will not be adequate compensation for the injury that will occasion the applicant if this application is refused.

The applicant has undertaken to pay damages in the event that this application is frivolous. I am therefore satisfied that the conditions for the grant of this application have been met. Justice will be better served if this application is granted in the interim.

Consistent with the rules of this Court i.e. Order 4 Rule 9 of the FCT High Court Civil Procedure Rules, 2018, this Court is fortified in granting this application albeit to maintain status quo. The Rules provide:

“Every originating process shall contain an endorsement by the Registrar that parties maintain status quo until otherwise ordered by the Court.”

In the circumstance, the 1st and 2nd defendants/respondents, their agents, privies and/or any other person by whatsoever name called acting or claiming through them are restrained by an order of interlocutory

injunction from further dealing on the subject matter of this suit and to maintain status quo pending the determination of the substantive suit.

Signed

Honourable Judge

Appearances:

Aliyu Mohammed Esq – for the plaintiff

R.F. Olabisi (Mrs.) – for the 1st defendant

Charles Osagie Esq – for the 2nd defendant