

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 10, AREA 11, GARKI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE

MOTION NO. FCT/HC/M/135/2022

DATE: 17-7-24

B E T W E E N

JIGWA NIGERIA LIMITED

} CLAIMANT

AND

1. AMINATU CONSULT LTD.
2. ARI KOBIS JNR KOBIS
3. RAJOL JIREH NIGERIA LIMITED
4. MINISTER OF THE FEDERAL CAPITAL
TERRITORY
5. FEDERAL CAPITAL DEVELOPMENT
AUTHORITY

} DEFENDANTS

R U L I N G

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

The Claimant/Applicant in this case JIGWA NIGERIA LIMITED vide a Motion No. M/135/2022 dated and filed 31st March, 2022 prayed this Court for the following orders:

1. **An Order of Mandatory Injunction** compelling the 1st – 3rd Defendants to immediately fill up the excavation and foundation being laid during the pendency of this suit by their workmen on the subject matter of the suit being Plot 1103, Cadastral Zone A09, Guzape District, Abuja in flagrant disrespect to this Honourable Court.

2. **An Order for Immediate Inspection** of Plot 1103, Cadastral Zone A09, Guzape District, Abuja by this Honourable Court.

3. **An Order of Interlocutory Injunction** restraining the 1st – 3rd Defendants whether by themselves, their agents or privies from further excavating or further laying any foundation or doing any manner of construction work on Plot 1103, Cadastral Zone A09, Guzape District, Abuja, which is the subject of this suit, pending the hearing and determination of the substantive suit.

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

It is brought pursuant to **Sections 15(3) and 30 of the High Court of the Federal Capital Territory, Abuja, Act; Order 42 Rules 4 and 8 of the High Court of the FCT Civil Procedure Rules 2018.**

It is supported by a 33 paragraphs affidavit with 20 Exhibits attached. Also filed is a written address.

Mr. KaluOnuoha while moving the application in Court relied on the processes filed and adopted his written address as he urged the Court to grant his application.

On the part of the 1st – 3rd Defendants represented by M. S. Ibrahim, SAN told the Court that they have 5 paragraphs of counter affidavit in opposition to the grant of this application. Attached thereto are 8 Exhibits marked ATU1 – ATU 8 along with written address which he adopted as his oral argument. He too relied on the depositions in the counter affidavit and urged me to dismiss this application.

While adumbrating, the Learned Silk said the Motion is dead on arrival without Court even looking at their counter affidavit. He argued that the order they are seeking for is a mandatory injunction. He contends that by this prayer, the Applicant has conceded that the act is completed and they are now seeking for restorative order.

He submitted further that, in seeking for restorative order, the main ingredient that must be shown by the Applicant is that there existed an application to restrain the Defendants from doing an action. And the Defendants ignored such restrain and hurriedly did the act in order to foist on the Court fiat accompli situation. He said further that by their own affidavit, they conceded that 1st – 3rd Defendants have been on the land since 2019. And that they have been building on the land since that 2019. He said why is it that this application is coming now, 3 years down the lane after Defendants have been building on the land. He now concluded on this point that there is no basis for this mandatory order. He referred the Court to the case of **BPS ENGINEERING & CONSTRUCTION CO. LTD. VS. FERMA & ORS (2022) L.P.E.L.R. – 59548 (SC)**.

Secondly, the Learned SAN argued that, the Claimant made allusion to the inappropriateness of their counter affidavit. And they (Claimant) agreed that the order for extension of time was granted by this same Court. Per Ebong J.

Thirdly, HE said upon a communal consideration of the affidavits on both sides, the Claimant has not shown a prima facie legal right to the land.

Lastly, he said this matter has been in this Court since March 2023 and the Claimant has been resisting accelerated hearing. He finally urged the Court to refuse this application with substantial cost and direct them to open their case.

The 4th – 5th Defendants said they did not file any counter affidavit because they did not oppose to the grant of the application.

The Claimant's Learned Counsel, who was not inclined to rely on his further affidavit and as well adopted his reply on point of law suddenly changed his view as he later relied on the depositions in

his further affidavit and adopted his reply on point of law which is dated 17th May, 2022 and filed same day.

Finally, he urged the Court to grant his application.

The Applicant's Counsel in his written address submitted one issue for determination. The issue is this;

“Whether having regard to facts and circumstances of the instant case, this Honourable Court ought to exercise its discretionary powers in favour of the Claimant/Applicant”

He submitted that the instant application seeks preservation of the subject matter of this suit. It also prays for inspection of the subject matter. The Applicant's prayers fall within the provisions of Order 42 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.

Having regard to the affidavit in support, he submitted that this application is worthy of sympathetic consideration by this

Honourable Court. The 1st – 3rd Defendants are aware of the pendency of this suit. They were duly served with the originating processes and they have filed their joint statement of defence.

Clearly endorsed on the face of the Writ of Summons served on the Defendants is the requirement under Order 4 Rule 9 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018. Parties are required to maintain status quo until otherwise ordered by this Honourable Court.

But the 1st – 3rd Defendants have shown gross disrespect to this Honourable Court by commencing construction after being served with the processes of this Honourable Court and after taking steps in the matter.

In the circumstances, he urged the court to exercise his discretionary powers in favour of the Applicant as the 1st – 3rd Defendants have resorted to self-help while this suit is pending before a Court of competent jurisdiction. In **EKWEOZOR VS. SAVANNAH BANK LTD. (2016) L.P.E.L.R. – 42128 (CA), pages 39 – 40**, it was noted:

“What the Courts frown at is for any of the parties in dispute to employ self-help to steal a march during the pendency of a dispute”

It is further submitted that unless this Honourable Court grants orders sought, the 1st – 3rd Defendants will foist a fait accompli on the Court before the conclusion of trial in this suit.

There is no doubt that this Honourable Court has the jurisdiction to make the orders sought. The overriding considerations in application of this nature are: (a) maintenance of the status quo; and/or (b) preservation of the res.

On the other hand, the Learned Counsel to the 1st – 3rd Respondents also submitted a lone issue for determination to wit:

“Whether the Applicant has made out a case to warrant the grant of this application”

He argued that it is not in every case that application for injunction is granted. For an Applicant to succeed, he must amongst other conditions, establish a strong prima facie case for the existence of his right. It is only when the Applicant is able to establish a strong prima facie case of the existence of his right over the property that the issue of maintenance of the status quo can come to play.

He argued that from the facts of this case, can it be said that the Applicant has established a strong prima facie case of any right relating to Plot 1103, Cadastral Zone A09, Guzape District, Abuja? He answered same in the negative.

The 1st – 3rd Defendants cleared the plot when it was bush, have been in occupation, fully erected perimeter fence, installed security gate, carried out excavation and skeletal work and was molding blocks for full development before the Applicant cooked its documents to disturb the quiet enjoyment of the 1st – 3rd Defendants over the property.

Where was the Applicant when the 1st – 3rd Defendants were carrying out these activities if the Applicant has any genuine interest in the property.

The 1st – 3rd Defendants are enjoying their legal right over the property for which it is not the law for them to be restrained. The facts of this case is not an issue of double allocation or a case that the property was initially allocated to the Applicant and was revoked and re-allocated to the 1st Defendant. In which case the Court will be considering whether the revocation was properly done or not prior to the allocation of the property to the 1st Defendant. It is a case that the Applicant has not been able to cast any aspersion on the right of the 1st – 3rd Defendants/Counterclaimants.

In the case of **AZUH VS. UNION BANK (2014) L.P.E.L.R. – 22913 (SC)**; the Supreme Court held thus:

“It is also well settled that an order of injunction is usually granted to protect a party’s existing legal right from invasion by another” See **AKAPO vs. HAKEEM**

(1992) 7 S.C.N.J. 1191, ORJI vs. ZARIA INDUSTRIES LTD. (1992) 1 S.C.N.L. 29, UNIVERSAL TRUST BANK & ORS. vs. DOLMETSCH PHARMACY (NIG.) LTD. 2007 6 SC (PART 11); (2007) 16 N.W.L.R. (PART 106), 520 per kekereEkun JSC. (page 30 paras. A – B)”

The Learned Counsel to the Claimant/Applicant had cited and made heavy weather of decisions of Court to the effect that it is not permissible for a party to an action pending before the Court to take a premeditated action aimed at destroying or changing the ownership status of the subject matter as same amounts to stealing the march.

In the first instance, the ownership status of plots in Abuja is as determined by the records in the office of the 1st Defendant and not otherwise. There is no action of the 1st – 3rd Defendants that is capable of changing the ownership status of the property in question.

I have considered the arguments and submissions of both Learned Counsel in favour of grant and against the grant of this mandatory injunction otherwise known as restorative injunction.

In the case of **KWANKWASO VS.GOVERNOR OF KANO STATE & ORS. (2006) L.P.E.L.R. – 11617 (CA)** it held as follows;

"Generally Courts have always been, and are still reluctant to issue orders for mandatory injunction except in very clear cases. They have always required the clearest evidence as well as very high standard of proof so as to make sure that at the trial it will still appear that the order of the mandatory injunction was rightly made, as grave consequences could follow such an order. In practice therefore, there must be either a trial of a claim for mandatory injunction or at least a substantive prayer in an application for it in clear terms followed by undisputable evidence of the infringement that entitled the applicant

to the order. The principles to guide the grant of order of mandatory injunction has been enunciated in the case of ATTORNEY-GENERAL ANAMBRA STATE V. OKAFOR (1992) 2 NWLR(PT.224) 396 and they are as follows:

(a) Whether in the circumstance as they exist after the breach, a mandatory order and if so

(b) What kind of mandatory will produce a fair result.

(c) The benefit which the order will confer on the plaintiff and the detriment which it will cause the defendant.

(d) A plaintiff should not be deprived of a relief to which he is justly entitled merely because it would be disadvantageous to the defendant.

(e) A plaintiff should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and will materially be detrimental to the defendant.

See MODILE V. LAGOS STATE GOVERNMENT & 7 ORS.(2004) 12 NWLR (PT.887) 354 at 383." Per BA'ABA ,J.C.A in kwankwaso v. gov of kano state &ors (2006) LPELR-11617(CA) (Pp. 24-25 paras. F)

The distinction between a mandatory injunction and an interlocutory injunction is made clear in the above case.

The guiding principles governing the grant of a mandatory injunction is as stated in the case of **SHINNING STAR (NIG.) LTD. & ANOR. VS. ASK STEEL (NIG.) LTD. & ORS. (2011) L.P.E.L.R. – 3053 (SC)** where it was held as follows:

"In the case of Daniel v. Ferguson (1891) 5 CH. D. 27 at 30 the principles guiding the grant of mandatory injunction have been spelt out clearly as follows:-

"1. The state of affairs which is complained of must be such that would have entitled the plaintiff obtain prohibitory injunction.

2. The state of affairs which might have been prohibited from coming about must have arisen at the time when the material order is made.

3. It must not have been impossible for the defendant to restore to the earlier position.

4. It must appear that damages and other legal remedies are not sufficient to put the plaintiff in a favourable position as if he had received equitable relief in spent.

5. It must appear in all the circumstances and particularly in view of equitable considerations such as laches, hardship, impossibility of performance or compliance and inconveniences as between the parties, that the most just course is that of mandatory order be granted.

6. The plaintiff's case must be unusually strong and clear.

7. Where it can be shown that the defendant attempted to steal a march on the plaintiff by

rushing to complete the act, mandatory injunction will lie to restore the plaintiff to the position he would have been". See also ALLPORT v. SECURITIES CORPORATION (1895) 64 L. J CH. 491." (Dissenting)
Per MUNTAKA-COOMASSIE ,J.S.C in shinning star (nig) ltd &anor v. ask steel (nig) ltd &ors (2011) LPELR-3053(SC) (Pp. 59-60 paras. B)See B.P.S. ENGINEERING (supra).

From the foregone authorities, it could be seen that certain criteria must be satisfied before the court can make or grant this type of injunction. I mean this Mandatory or Restorative Injunction.

For instance, can we say damages cannot assuage whatever wrong allegedly done to the Applicant by the 1st – 3rd Defendants? If this is true, then this application is dead on arrival. Also, it was recommended by the Apex Court not to grant this type of Injunction where a plaintiff insist on a form of relief which will confer no appreciable benefit on himself and will materially be detrimental to the defendant.

Therefore, it is for the above reasons, that I hold that this application lacks in all merit and it is therefore refused. In lieu of this application, I hereby grant an accelerated hearing of this case. Moreso, the Applicant can move the court to the *locus in quo* in the course of this accelerated hearing of this case just granted by the Court.

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S. B. Belgore

(Judge) 17-7-24