

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

**HOLDEN AT APO, ABUJA.**

**ON TUESDAY THE 9<sup>TH</sup> DAY OF NOVEMBER s 2021**

**BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.**

**SUIT.NO. FCT/ HC/M/1285/2020**

**BETWEEN**

CELESTINE CHUKA HOMES EZE ----- APPLICANT

**AND**

- AB BRAINY HOMES LTD
- HENRY ABUTU ----- RESPONDENT

**[RULING].**

By a motion on notice dated 8/02/2021 and filed on the 11/02/2021.The Claimant/Applicant is praying for an order of this Honorable court granting to the Claimant/Applicant an interlocutory injunction restraining the Defendant by themselves, agents servants, administrations[sic], successors in title, privies or any one Claiming through them how so ever, from entering and or trespassing,

disturbing, challenging or in any way, or manner adversely affecting the Claimant's title and possession of Plot No 809 measuring about 797.72M<sup>2</sup> situate at Sabon Lugbe East, FCT, pending the determination of the suit duly filed before this honorable Court.

In support of the motion on notice is a 14-paragraph affidavit deposed to on the 11/02/2021 by Chief Celestine Chuka Eze the Applicant herein, attached to the affidavit are exhibits A1, A2, A3, A4, A5, A6, A7, A8 exhibits B1, B2, B3 and exhibit C.

Learned Counsel for the Applicant Ike Ugwoke Esq. filed a written address in support of this motion on notice wherein he distilled a lone issue for resolution to wit:

"Whether in the circumstances of this case the claimant is entitled to the relief(s) sought in this application".

The said written address was adopted by Learned Counsel for the Applicant at the hearing of this motion on notice on the 06/10/2021.

The Defendant/Respondent on his part did not file any response to the motion on notice, however from the processes before this honorable court, there is proof of service in the case file to the effect that the Defendant/Respondent was served with the motion on notice.

Learned Counsel for the Applicant relied on paragraph 2 of the affidavit in support of this motion and submits that the averments therein established the prima facie legal right of the claimant Applicant, he relied on the case of **COBHAM V. DUKE (2004) NWLR PT 856 150 AND OBEYA MEMORIAL HOSPITAL V. ATTORNEY - GENERAL OF THE FEDERATION (2004) NWLR PT 98 419.** and submits that if this honorable court does not intervene by restraining the Defendants/Respondents, an irreparable damage will be done to the

property, the subject matter of this Application and further submits that the balance of convenience is on the Claimant /Applicant.

*Learned Counsel for the Applicant submits further that paragraph 2 establishes a prima facie case in favour of the Claimant/Applicant. Paragraph 2 of Claimants/Applicant affidavits reproduced hereunder:it reads:*

*“That the plot of land was initially allocated to one Ibrahim Yahaya, but same plot was subsequently allocated to me by Abuja municipal area council through change of ownership. The allocation papers and official fees are hereby attached and marked as exhibits A1,A2,A3,A4,A5,A6 and A8 respectively”.*

*In the case of Abel O. Woluchem v. Dr. Charles InkoTariahWokoma (1974) 3-5 SC. 153 at 156, D. O.Ibekwe, J.S.C. delivering the judgment of the Supreme Court stated thus:*

*"The rule is that a plaintiff seeking an interlocutory injunction must establish a strong prima facie case for the existence of his right and at least that he was likely to succeed on that issue and also a prima facie case of infringement of his right. In exercising its discretion to grant the relief, the Court would have regard to the balance of convenience."*

*Then he went on to comment thus:*

*"We fail to see how a Court of law could be able to satisfy all or any of these principles before pleadings were filed and without evaluating some sort of evidence (be it oral or affidavit evidence by both parties."*

*The Court at page 137 adopted with approval the dictum of Ungood-Thomas, J. in Donmar Production Ltd. v. Bart and Ors (1967) 1 WLR 740 at 742with respect to this point, it reads that:*

*“So, in an application for an interlocutory injunction, the applicant must establish a probability or a strong prima facie case that he is entitled to the right of whose violation he complains and, subject to this right being established, the governing consideration is the maintenance of the status quo pending the trial.*

*The Claimant /Applicant dealt heavily with prima-facie proof however this Honourable Courts notes that it is a well-established principle of law that in deciding whether the matter shall be maintained in status quo or not, regard must be had to the extent to which any damage to the plaintiffs can be cured by payment of damages rather than by the granting of interlocutory injunction. Of course, the burden of proof lies on the Applicant throughout.*

*Principles governing the grant or refusal of an application for interlocutory injunction is basically aimed at maintaining the status quo pending the determination of the issues submitted for adjudication by the court. It is an equitable jurisdiction which the court is called upon to exercise in the light of the facts presented before it by the applicant. To enable the court, exercise its equitable jurisdiction, the applicant must present convincing facts which in themselves vindicate the well laid down principles for granting the injunction as decided in Kotoye v. CBN (1989) 2 S.C. (Pt. 1) 1; (1989) 1 NWLR (Pt. 98) 419 and the group of cases. The injunction is not granted as a matter of grace, routine or course. On the contrary, the injunction is granted only in deserving cases, based on hard law and facts. Some of the principles or factors to be considered in an application for interlocutory injunction are: 1. There must be a subsisting action. See The Praying Band of C. and S. v. Udokwu (1991) 3 NWLR (Pt. 182) 716. 2. The subsisting action must clearly denote a legal right which the applicant must protect. SEE KOTOYE V. CBN (SUPRA), WOLUCHEM V. WOKOMA (1974) 3 S.C. 153; OBEYA MEMORIAL HOSPITAL V. ATTORNEY GENERAL OF THE FEDERATION (1987) 3 NWLR (PT. 60) 325. 3. The applicant must show that there is a serious question or substantial issue to be tried. See Kotoye v. CBN (supra); (3) above, the*

*status quo should be maintained pending the determination of the substantive action. See Kotoye v. CBN (supra), Fellowes v. Fisher (1975) 3 All ER 829; American Cyanamid Co. v. Ethican Ltd. (1975) AC. 396.4. The applicant must show that the balance of convenience is in favour of granting the application. See Kotoye v. CBN (supra), Obeya Memorial Hospital v. Attorney General of the Federation (supra); Akinlose v. A.I.T. Ltd. (1961) WNLR 116. 5. The applicant must show that there was no delay on his part in bringing the application. See Kotoye v. CBN (supra). 6. The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect. See Kotoye v. CBN (supra), Obeya Memorial Hospital v. Attorney-General of the Federation (supra) 7. The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the court's discretion in granting the injunction. See Kotoye v. CBN (supra); Hama v. Osaro-Lai (2000) 6 NWLR (Pt. 661) 515." Per TOBI J.S.C (Pp. 38-40 paras. F-F)*

*In the light of the above and so as not to fall into the temptation of prejudging the substantive case this honourable court will avoid making any pronouncement on paragraph 2 of the supporting affidavit reproduced above save as to the effect that a prima-facie case was made out by the applicant, however there is nothing in the supporting affidavit that discloses or suggest that damages will be inadequate to the Claimant/Applicant*

*Now looking at the motion on notice number m/1285/2021, as well as the written address on behalf of the claimant/applicant there is nothing to show to this honourable court that damages will be inadequate compensation to the Claimant/Applicant, furthermore the originating process in this suit contains an endorsement in compliance with order 4 rule 9 of the rules of this honourable court 2018 to the effect that parties shall maintain status -quo which in is the sole purpose for the grant or refusal of an interlocutory injunction of this nature. See KOTOYE V CBN (SUPRA).*

*This honourable is therefore not persuaded to exercise its discretion in favour of the Claimant/ Applicant. The application therefore fails, it is hereby refused. Motion number m/1285/2021 is accordingly dismissed. This honourable court deems it appropriate in the circumstances of this case to order accelerated hearing to meet the justice of this case.*

*I make no order as to cost.*