

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
HOLDEN AT APO, ABUJA.**

**ON THURSDAY THE 30TH DAY OF SEPTEMBER 2021  
BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.  
(JUDGE.)**

**SUIT.NO. FCT/ HC/540/2020**

**M/1775/2021**

**BETWEEN**

**MRSJUSTINA ICHIKOONAH-----**

*suing as the representative of the estate of  
late Mr AdogaOnahCLAIMANT/ APPLICANT  
(Suing through her Lawful Attorney  
( MR ERIM ENYA)*



**AND**

**DITTOHOLARIS LIMITED -----**



**RESPONDENT**

**[RULING.]**

*The claimants filed this suit on 23/02/2021. On the same date he filed motion on notice No. M/1775/2021 praying the Court for the following orders:*

*1. An order of interlocutory injunction restraining the defendants/respondents either by themselves, their agents, privies assigns or workmen by whatsoever name or nomenclature so called or referred to from further development or continuation of working on erection of the building structures in respect of the two plots of land described as plot 3017 measuring 1,000m<sup>2</sup> covered by right of occupancy with file number CR41151 and plot 3018 measuring 1,000m<sup>2</sup> covered by right of occupancy with file number CR41105 situate and being at Lugbe 1 extension, Abuja. FCT or doing anything whatsoever on the parcel of land in dispute pending the hearing and determination of the substantive suit pending and extant before this honourable court*

*2. Such further or other order (s) as this Honourable Court may deem fit to make in the circumstance of this case.*

*The processes filed in support of the application are:*

*A 23-paragraph affidavit of one Erim Enya deposed to on the 23/2/2021 and Exhibits A, B, C, D & E attached thereto, with the written address of Ikechukwu Micheal Onyimba Esq. dated 23/2/2021.*

*The defendant filed a 26-paragraph counter affidavit deposed to by one NepleNanle Peter on the 23//2/2021; attached thereto are Exhibits dito 1, dito 2, dito 5, dito 6, dito 7, dito, dito 9, dito , dito 12. J.k.Kolawole Esq. filed a written address in support of the counter affidavit*

*This court shall refer to the relevant portions of the affidavit in support of the motion on notice and the counter affidavit along with all exhibits when and if the need arises.*

*The written addresses by both learned counsel aforesaid are hereby incorporated in this ruling.*

*At the hearing, learned counsels for the Applicant and defendants each relied on the contents of the paragraphs of their supporting affidavit and counter affidavit as well as the annexures. They both adopted the submissions contained in their written addresses and urged the court to grant their respective prayers therein.*

*Learned counsel to the Applicant in his written address distilled a sole issue for determination namely: - whether the plaintiff /applicant is entitled to the discretion of this honourable court granting interlocutory injunction against the defendant /respondent.*

*On his part, learned counsel for the respondent formulated two (2) issues for determination by this Honourable Court namely: -*

- 1. Whether the Applicant's application as presently constituted is competent; and*
- 2. Whether the applicant here has met the requirement qualifying her for the court granting her an equitable relief of an injunction*

*It is trite law that the grant or refusal of an order of interlocutory injunction is at the discretion of the court. The discretion must be exercised judicially and judiciously depending on the facts of each case. There are established guiding principles for the grant or refusal of this equitable remedy, to wit:*

- 1. Whether the applicant has a legal right;*
- 2. Whether there is a serious question or substantial issue to be tried in the substantive suit;*
- 3. Whether the balance of convenience is in favour of granting the application i.e. whether more justice will result in granting the injunction than in refusing it;*
  
- 4. Whether damages will be adequate compensation for the applicant if the interlocutory injunction is refused and he wins the substantive suit;*

5. Whether the applicant's conduct is reprehensible e.g., by being guilty of undue delay in bringing the application; and

6. Whether the applicant has given an undertaking to pay damages in the event of a wrongful exercise of the court's discretion in granting the interlocutory injunction.

For the listed principles preceding this paragraph, see the cases OF KOTOYE V. CENTRAL BANK OF NIGERIA [1989] 1 NWLR [PT. 98] 419 AND BAJELA O. FADINA & ORS. V. VEEPEE INDUSTRIES LTD. [2001] 2 NWLR [PT. 698] 518.

The grant or refusal of an order of interlocutory injunction is at the discretion of the court. The discretion must be exercised judicially and judiciously depending on the facts of each case.

With respect to the first and second principles listed above, learned counsels are in agreement to the extent that indeed there exist a triable issue which both the applicant and respondent claim they are entitled to. I have carefully considered all the processes filed on behalf of the Applicant.

The issue to be resolved by this application falls within a very narrow legal compass with very well-defined principles already stated earlier in this ruling. I have carefully considered all the processes filed on behalf of the Applicant.

*The issue to be resolved by this application falls within a very narrow legal compass with very well-defined guiding principles.*

*The basis for the grant of an injunction is the need to protect the applicant by preserving the circumstances that are found to exist at the time of the application until the rights of the parties can be finally established. This need is weighed against the corresponding need of the respondents to be protected against any injury resulting from having been prevented from exercising their legal rights for which they could not be adequately compensated in damages if in the end the substantive case is decided in their favour. SEE ODUTAN V GENERAL OIL LTD (1995) 4 NWLR (PT.387) 1 AT 12 H – 13 A. The essence of the injunctive relief is the preservation of the status-quo. The order is given in the light of the threat, actual or perceived, to the applicant's rights. The order is put in place to forestall irreparable injury of the applicant's legal or equitable rights. SEE MADUBUIKE V MADUBUIKE (2001) 9 NWLR (PT.719) 698 AT 708 A-C*

*The applicant herein has showed its prima facie legal right on the subject matter in dispute situate at Plot 3017 and plot 3018, Lugbe extension, Abuja F.C.T, while paragraphs 6,11-13 and paragraph 19 as well as exhibit B disclose matters that goes to the balance of convenience which it was contended are in favour of the plaintiff, paragraph 20 is an undertaking to indemnify the respondent in monetary damages where the substantive suit is found to be frivolous. The learned counsel to the*

respondent contends that even if the applicant satisfied all factors listed, they still have a duty to consider the fairness of the order. He contends further that granting this injunctive order we inflict damage on innocent third parties who had acquired interest for value partly in the subject matter.

For emphasis the whole basis of an order of interlocutory injunction is to preserve the status quo pending the determination of rights of the disputants. SEE ODUTAN V GENERAL OIL LTD (1995) (SUPRA).

Order 4 rule 9 civil procedure rules 2018 provides that

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

"The law is that an injunction can only be granted to support a legal right. SEE COMMISSIONER FOR WORKS (BENUE STATE) V. DEVCON LTD. (1988) 3 N.W.L.R (PT.83) 407 and will be refused where no prima facie of a legal right to the matter sought to be restrained has been established. SEE LADUNNI V. KUKOYI (1972) 3 S.C. 31; EGBE V. ONOGUN (1972) 1 ALL (PT.1) N.L.

KARIBI-WHYTE ,J.S.C (Pp. 20-21 paras. F-F)R 95. The remedy of interlocutory injunction as its name implies is temporary. Being an equitable remedy, it is also discretionary. Hence the central objective of the court granting an interlocutory injunction is to exercise its

*discretion to keep the parties in status quo pending the determination of the substantive action.*

*Hence the basis of the decision to grant the application is that the court has before it a substantive action seeking for the determination of the issue, subject matter of the application.*

*That the applicant has shown from the affidavit in support of his application that there is a prima facie case that there is a genuine dispute between the parties to be determined before the Court. It has always been a strong ground in favour of an applicant to show that the conduct of the respondent is unjustified and that applicant cannot be satisfactorily or adequately compensated in damages. Our Courts have never refused an application for interlocutory injunction because applicant was unable to show a prospect of obtaining a permanent injunction at the end of the trial.*

*This is because the interlocutory injunction merely seeks to maintain the position of the parties, till the determination of the substantive action. It is only sufficient for applicant to show that there is a serious question between the parties to be tried at the hearing."*

*With respect to whether the plaintiff has shown that there are substantial issues to be tried in the main suit, it is worthy of note that one of the claims of the plaintiff in this suit is an order declaring plaintiff as the rightful owner of the subject matter in this claim, the respondent however contend otherwise thereby joining issues with*

applicant on the subject matter. There is therefore substantial issue to be tried in the main suit.

The next factor is whether the plaintiff has shown that the balance of convenience is in his favour. Balance of convenience is determined by weighing what the applicant will lose if the application is refused and he succeeds in the substantive suit on the one hand, and what the respondent

will lose if the application is granted and he succeeds in the substantive suit on the other.

See the case of OBEYA MEMORIAL SPECIALIST HOSPITAL V. ATTORNEY-GENERAL OF THE FEDERATION [1987] 3 NWLR [PT. 60] 325.

In order to determine where the balance of convenience lies, the court is expected to pose these questions: 'who will suffer more inconvenience if the application is granted?' and 'who will suffer more inconvenience if the application is not granted?'

SEE EDOSOMWAN V. EREBOR [2001] 13 NWLR [PT. 730] 265

In determining on whose side, the balance of convenience tilts, I am mindful of the need to avoid making any finding or pronouncement that may prejudice or pre-judge the live issues for trial in the substantive suit. It is the law that in determining an interlocutory application, a court must refrain from pre-judging or deciding live issues that would arise in the main suit. See

THE CASE OF C.G.C. NIG. LTD. V. BABA (2004) 10 NWLR [PT. 882] 65

Issue one formulated by counsel for applicant which is;

*I hold that in order to maintain the status quo in this matter, it is expedient or necessary to grant the order of interlocutory injunction; more justice will result in granting the injunction than in refusing it.*

*The next factor for the Court to consider is whether damages will be adequate compensation for the applicant if the interlocutory injunction is refused and it wins the substantive suit.*

*I have looked at the plaintiff's claims, which include ₦1,000,000,00 million as general damages,. It is my firm view that damages recoverable if the suit succeeds will not be adequate compensation for the plaintiff if the interlocutory injunction is refused and applicant wins the substantive suit.*

*Is plaintiff guilty of any reprehensible conduct such as delay in bringing? Is plaintiff guilty of any reprehensible conduct such as delay in bringing this application? It is deposed in paragraph 14 the affidavit in support that plaintiff visited the subject matter January and saw that the defendant where in the process of erecting building structure.*

*The plaintiff filed this application on 23/02/2021. I hold therefore that plaintiff is not guilty of any reprehensible conduct.*

*The last factor to consider is whether applicant has given an undertaking to pay damages to respondent if it turns out that the order for interlocutory injunction ought not to have been granted by the Court.*

*It is correct that plaintiff gave the said undertaking in paragraph 20 of its affidavits. However, the Court can extract such undertaking from an applicant for interlocutory injunction as a condition for granting the order.*

*SEE ANIKE V. EMEHELU [1990] 1 NWLR [PT. 128] 603. Thus, failure of an applicant to give the said undertaking, without more, will not defeat an application for interlocutory injunction.*

*Issue one as formulated by learned counsel for the applicant, that is whether the plaintiff /applicant is entitled to the discretion of this honourable court granting interlocutory injunction against the defendant /respondent is resolved in the affirmative while issues 1 and 2 distilled by learned counsel for the respondent which are in substance the same with the lone issue formulated by learned counsel for Applicant and also resolved in the affirmative.*

*In conclusion, motion on notice No. M/1775/2021 praying the Court for;*

*An order of interlocutory injunction restraining the defendants/respondents either by themselves, their agents, privies assigns or workmen by whatsoever name or nomenclature so called or referred to from further development or continuation of working on erection of*

*the building structures in respect of the two plots of land described as plot 3017 measuring 1,000m<sup>2</sup> covered by right of occupancy with file number cr 41151 and plot 3018 measuring 1,000m<sup>2</sup> covered by right of occupancy with file number cr 41105 situate and being at lugbe 1 extension, Abuja. FCT or doing anything whatsoever on the parcel of land in dispute pending the hearing and determination of the substantive suit pending and extant before this honourable court is hereby granted.*