

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

**ON THURSDAY THE 17TH DAY OF NOVEMBER 2021**

**BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.**

**(JUDGE.)**

**SUIT NO. FCT/ HC/CV/663/2021**

**BETWEEN**

**SAHEED ISMAIL-----CLAIMANT/RESPONDENT**

**AND**

**RITA OLABISI Esq -----DEFENDANT/APPLICANT**

**FEDERAL HOUSING AUTHORITY---DEFENDANT /RESPONDENT**

**[RULING.]**

By Motion on notice number M/4474/2021, dated and filed on the 13/7/2021 the 1<sup>st</sup> Defendant/ Applicant is seeking for:

1. An order of interlocutory injunction restraining the Claimant/Respondent either by himself, servants, privies, agents, officers or through any person or persons whosoever from trespassing or further trespassing, entering,

alienating by way of sale or lease, or howsoever disposing, tampering and or interfering with or doing anything whatsoever on the 1<sup>st</sup> Defendant's land located at Plot 1076 695 Road, off 69 Road, Gwarinpa II Estate, FCT Abuja measuring about 720sqm pending the determination of the suit.

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

The grounds upon which this application is based are as contained in the motion papers. The motion on notice is supported by a 12-paragraph affidavit deposed to by one Danjuma John on the 13/07/2021 and 12 annexures namely; exhibits A, B, C, C1, C2, C3, C4, C5, C6, C7, C8 and D.

In compliance with the rules of this honourable Court, Learned Counsel for the 1<sup>st</sup> Defendant/Applicant filed a written address in support of this application, wherein he formulated a sole issue for determination by this honourable court, to wit;

*"Whether the 1<sup>st</sup> Defendant/Applicant is entitled to be granted an interlocutory injunction in the circumstance."*

On his part and in response to the Motion on notice, Learned Counsel for the Claimant/Respondent, upon obtaining leave of this honourable Court for extension of time, filed its counter-affidavit of 7 paragraphs deposed to on the 14<sup>th</sup> day of September, 2021 by one John Isaac along with written address settled by Safiya Hamza Esq.

In the said written address, Learned Counsel for the Claimant/Respondent, formulated one issue for determination:

*"Whether the 1<sup>st</sup> Defendant/Applicant is entitled to be granted an interlocutory injunction in the circumstance."*

Learned Counsel for the 1<sup>st</sup> Defendant /Applicant filed a further affidavit of 9 paragraphs deposed to by one Danjuma John on the 20/9/2021 and reply on point of law dated and filed on the 20/9/2021 in support of 1<sup>st</sup> Defendants/Applicant's motion on notice.

At the hearing of the Motion on notice on the 20/10/2021, Learned Counsel for the 1<sup>st</sup> defendant /Applicant and the Learned Counsel for

Claimant/Respondent each adopted their written addresses, while Learned Counsel for 2<sup>nd</sup> Defendant/Respondent informed Court that the 2<sup>nd</sup> Defendant/Respondent is not opposed to the application sought by the 1<sup>st</sup> Defendant/Applicant. The aforesaid written addresses are hereby incorporated into this ruling, reference shall be made to the relevant portions where the need arises.

It is the submission of Learned Counsel for the 1<sup>st</sup> Defendant/Applicant that this Honourable Court has the inherent powers to grant an order for interlocutory injunction to restrain the Claimant/Respondent from his act of trespass on the plot/land in dispute and subject matter of the substantive suit before this Honourable Court .

He submits that the purpose of an order of this nature is to ensure that the res would not be dissipated pending the determination of the substantive suit, that the 1<sup>st</sup> Defendant/Applicant has satisfied the conditions for the grant of an interlocutory injunction as provided in the case of **Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419.**

He therefore urged this honourable Court to grant the reliefs sought by the 1<sup>st</sup> Defendant/Applicant in this suit.

On his part, Learned Counsel for the Claimant/Respondent contends that the 1<sup>st</sup> Defendant/Applicant is not entitled to the reliefs sought in this application since the reliefs impacts on the substantive suit. He argued that granting the relief would imply that the 1<sup>st</sup> Defendant/Applicant is the owner of the plot of land in dispute; whereas the question of ownership of the land is already pending for determination in the substantive suit before this Honourable Court .

Learned Counsel further argued that the 1<sup>st</sup> Defendant/Applicant has not entered appearance in this suit, that it would not be proper for this honourable Court to accord her any right of audience in the circumstances, he submitted further that the balance of convenience is in favour of the Claimant/Respondent and therefore urged this Honourable Court to discountenance the Application of the 1<sup>st</sup> Defendant/Applicant.

Replying on point of law, Learned Counsel for the 1<sup>st</sup> Defendant /Applicant while denying the depositions in the counter affidavit therein stated that the 1<sup>st</sup> Defendant/Applicant did enter appearance in this suit.

Now the issue for determination distilled by both Learned Counsels in their respective written addresses appear to be the same which in effect is whether the 1<sup>st</sup> Defendant/Applicant is entitled to the relief sought?

The crux of the Applicant's case is that after the Claimant had filed the extant suit in Court, the Claimant took advantage of the industrial action embarked upon by the Judicial workers to embark on intensive construction work on the land in issue. That, same prompted 1<sup>st</sup> Defendant to report the matter to both the Police at Galadima Divisional Headquarters and the Federal Housing Authority prompting the service of the stop work notice [exhibit] issued by the Development Control Unit of the Federal Housing Authority on the Claimant/Respondent.

The 1<sup>st</sup> Defendant/Applicant contends that the Claimant/Respondent continued to develop the land, hence the need for this application for an interlocutory injunction to restrain the Claimant from the continued act/acts of trespass to forestall a breakdown of law and order. Pictures of a building under construction marked as **Exhibits C, C1, C2, C3, C4, C5, C6, C7 and C8**, as well as letter from the 1<sup>st</sup> Defendant to the DPO, Galadima Divisional Headquarters dated 8<sup>th</sup> April, 2021 marked as Exhibit D are attached to prove that the act complained about took place after the matter had been filed in court. Learned Counsel for Claimant/Respondent on his part contends that the act complained about was prior to the institution of the substantive suit now pending before this Honourable Court.

*The 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
2. The subsisting action must clearly denote a legal right which the applicant must protect.
3. The applicant must show that there is a serious question or substantial issue to be tried above, the status quo should be maintained pending the determination of the substantive action.
4. The applicant must show that the balance of convenience is in favour of granting the application.
5. The applicant must show that there was no delay on his part in bringing the application
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), WOLUCHEM V. WOKOMA (1974) 3 S.C. 153; OBEYA MEMORIAL HOSPITAL V. ATTORNEY GENERAL OF THE FEDERATION (1987) 3 NWLR (PT. 60).**

So as not to fall into the temptation of prejudging the substantive case, this honourable court will avoid making any pronouncement with regards to the subject matter herein, however from the processes before this honourable court, I am persuaded that the applicant has made out a good case to necessitate this Honourable Court to exercise its discretion in favour of the 1<sup>st</sup> Defendant/Applicant to preserve the res in this suit pending the hearing and determination of the substantive suit and effectively prevent breakdown of law and order.

Motion on notice number M/4474/2021 therefore succeeds. However to better meet the justice of this case and to preserve the res in issue, an order of interlocutory injunction is hereby ordered restraining the Claimant/Respondent and the Defendant/Applicant either by themselves, servants, privies, agents, officers or through any person or persons whatsoever from carrying any work howsoever or disposing, tampering and or interfering with or doing anything whatsoever on the land located at Plot 1076 695 Road, off 69 Road, Gwarinpa II Estate, FCT Abuja measuring about 720sqm pending the hearing and determination of the substantive suit.

*HON JUSTICE F. E. MESSIRI*  
*[JUDGE]*