

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU’AZU
SUIT NO: FCT/HC/ CV/1190/2024
MOTION NO. FCT/HC/M/14715/2024
DELIVERED ON THE 20/02/2025

BETWEEN:

MR. IBRAHIM ABDUL OLU.....CLAIMANT/APPLICANT

AND

- | | | |
|---|---|----------------------|
| 1. MINISTER FEDERAL CAPITAL TERRITORY | } |DEFENDANTS/ |
| 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA) | | RESPONDENTS |
| 3. PENNEK NIG. LIMITED..... | | DEFENDANT/RESPONDENT |

RULING

The plaintiffs commenced this suit vide a writ of summons against the Defendants jointly and severally seeking the following declarations, namely:

- 1. A **DECLARATION** that the Claimant is the lawful allottee or holder of the statutory Right of Occupancy over property known and described as plot No. **M543B** Kubwa Extension III (FCDA SCHEME) measuring about **1000sqm** covered by Right of Occupancy within Kubwa FCT, Abuja.*

2. *A **DECLARATION** that the Claimant is the lawful allottee or holder of the statutory Right of Occupancy over property known and described as plot No. **M545** Kubwa Extension III (FCDA SCHEME) measuring about **1000sqm** covered by Right of Occupancy within Kubwa, FCT, Abuja.*
3. *A **DECLARATION** that the act of demolishing the Claimant's fence and gate house by the 1st and 2nd Defendants on the purported complaint of the 3rd Defendant without any order of court is illegal and unconstitutional.*
4. *A **DECLARATION** that the 3rd Defendant purported Defendant's claim of title over plot Nos. **M543B** and **M545** both within Kubwa Extension III (FCDA SCHEME), measuring about **1000sqm** each, covered by Right of Occupancy and the act of entry of the land without the authorization and consent of the Claimant is an act of trespass.*
5. *A **DECLARATION** that the Claimant is entitled to a new/regularised/recertified Right of Occupancy in respect of Plot No. **M543B** Kubwa Extension III (FCDA SCHEME), measuring about **1000sqm** covered by Right of Occupancy*
6. *A **DECLARATION** that the Claimant is entitled to a new/regularised/recertified Right of Occupancy in respect of plot No. **M545** Kubwa Extension III (FCDA SCHEME) measuring about **1000sqm** covered by Right of Occupancy.*
7. *AN **ORDER** mandating the 1st and 2nd Defendants to issue to the Claimant a new/regularized/recertified/ Right of*

Occupancy in respect of plot NO. M543B Kubwa Extension III (FCDA SCHEME) measuring about 1000sqm covered by Right of Occupancy.

8. *AN ORDER mandating the 1st and 2nd Defendants to issue to the Claimant a new/regularized/recertified Right of Occupancy in respect of plot No. M545 Kubwa Extension III (FCDA SCHEME) measuring about 1000sqm covered by Right of Occupancy.*
9. *AN ORDER of this Honourable Court setting aside any allocation to the 3rd Defendant by the 1st and 2nd Defendants.*
10. *AN ORDER of this Honourable Court setting aside any allocation to the 3rd Defendant by the 1st and 2nd Defendant of plot No. M545 Kubwa Extension III (FCDA SCHEME) measuring about 1000sqm covered by Right of Occupancy.*
10. *AN ORDER of this Honourable Court setting aside any allocation to any other person/party unknown by the 1st and 2nd Defendant of plot No. M543B Kubwa Extension III (FCDA SCHEME), measuring about 1000sqm covered by Right of Occupancy.*
11. *AN ORDER of this Honourable Court setting aside any allocation to any other person/party unknown by the 1st and 2nd Defendants of plot No. M545 Kubwa Extension III (FCDA SCHEME) measuring about 1000sqm covered by Right of Occupancy.*
12. *AN ORDER of perpetual injunction restraining the Defendants, their servants, agents, privies, and assigns*

from further trespassing upon the lands or from further interfering or construction or interfering with and or disturbing the Claimant's Occupation and use of the said lands.

13. AN ORDER OF THIS HONOURABLE COURT AWARDING ₦20,000,000.00 (Twenty Million Naira) only as special damages for Defendant's demolition and destruction of the Claimant's fence, gate house and other properties on the said plot without a valid order of court.

14. AN ORDER OF THIS HONOURABLE COURT AWARDING ₦50,000,000.00 (Fifty Million Naira) only as general damages for Defendant's acts of trespass.

15. The cost of this litigation.

The suit dated the 1st November, 2024 and filed on the same date was duly served on all the Defendants. A Memorandum of conditional appearance dated the 24th May, 2024 and filed on the 28th May, 2024 was entered on behalf of the 1st and 2nd Defendants. Similarly, a Memorandum of conditional appearance dated the 29th April, 2024 and filed on the same date was entered on behalf of the 3rd Defendant.

The 1st and 2nd Defendants filed their Statement of Defence dated the 24th May, 2024, on the 28th May 2024, while their amended Statement of Defence dated the 11th November, 2024 was filed on the 13th November, 2024. The 3rd Defendant filed its Statement of Defence dated the 12th November, 2024 on the 13th November, 2024. In response, the Claimant filed his reply

to the 1st and 2nd Defendant's joint Statement of Defence dated the 25th November, 2024 on the same date; while his reply to the 3rd Defendant's Statement of Defence dated the 25th November, 2024 was filed on the same date.

The aforementioned procedure clearly shows that issues have been joined by the parties and the matter was therefore due for hearing.

However, by a motion on notice dated the 4th November, 2024 and filed on the same date the 3rd Defendant seeks for the following orders namely:

1. **AN ORDER** of interlocutory injunction restraining the Defendants/Respondents jointly and severally either by themselves, their agents, servants, privies or any other person(s) howsoever called and in whatever capacity from continuing with the development/building or completing the ongoing building or further improvement on the plot, the subject matter of this suit pending the hearing and determination of the suit.
2. **AN ORDER** of interlocutory injunction compelling the 3rd Defendant/Respondent to comply with the Registrar's endorsement on the amended writ of summons in this suit to mandatorily maintain status quo pending the hearing and determination of the substantive suit.
3. **AN ORDER** of interlocutory injunction compelling the parties herein to maintain status quo pending the hearing and determination of the substantive suit.

4. AND for such order or further order as the Honourable Court may deem fit to make in the circumstances of this suit.

The above orders being sought by the Applicant are based on the following grounds, namely:

- (a) The Claimant was granted/ allocated plot Nos. M543B and M545 both within Kubwa Extension III (FCDA SCHEME), Kubwa Abuja, the subject matter of this suit.
- (b) That the Claimant/Applicant immediately took possession by erecting fence on plot Nos. **M543B** and **M545** both within Kubwa Extension III (FCDA SCHEME), Kubwa Abuja, the subject matter of this suit.
- (c) The Claimant/Applicant also built fence house for the said plots and bought some construction materials (sand, gravel, stone dust etc.) on the said plots.
- (d) That in 2015, the Claimant/Applicant submitted his title documents in furtherance to the request by the 1st and 2nd Defendant for recertification of lands title within Federal Capital Territory and thereafter his file numbers were changed to **KG54381** and **KG54645** respectively.

The application is supported by a 19 paragraph affidavit sworn to by one Mohammed Alfa, a brother and a friend of the Claimant. The affidavit has Exhibits **A**, **B** and **C** attached to it and a written address which the Applicants counsel sought to be adopted as his oral arguments in support of the application. The Respondents filed a counter affidavit of 27 paragraph with

Exhibits A - D attached thereto and a written address. The Applicant equally responded further by filing a further and better affidavit in opposition to the 3rd Defendant's counter affidavit. The said further and better affidavit is accompanied with an Exhibits A - F attached thereto. The 3rd Defendant did not file any further and better counter affidavit to the response by the Applicant.

At this juncture it will be in the interest of justice to peruse critically salient paragraphs of all the processes filed before this Honourable Court with a view to ascertaining whether or not adequate and sufficient materials have been placed before this Honourable Court to warrant granting this application.

The salient paragraphs of the Applicant's affidavit in support of his application could partly be reproduced as follows:

1. Paragraph 7: **"That in 2015, the Claimant/Applicant submitted his title documents in furtherance to the request by the 1st Defendant for recertification of lands title within Federal Capital Territory and was issued Regularization of land title and documents of FCT Area Council Acknowledgement dated 22nd of September, 2015 copy of which is attached and marked Exhibit C".**
2. Paragraph 13: **"That the 3rd Defendant commenced development of plot Nos. M543B and M545 both within Kubwa Extension III (FCDA SCHEME) and is continuing development of the subject matter of this**

suit. Pictures are herewith attached and marked as exhibit D and E respectively".

- 3. Paragraph 15(iii):"That there is a series issue to be tried at the hearing of the substantive suit".**
- 4. Paragraph 16:"That I am prepared to enter into an undertaking to pay damages to the 3rd Defendant/Respondent if by the granting of this application the 3rd Defendant/Respondent suffer loss andor damages".**

On the other hand, the 3rd Defendant's Counter affidavit discloses the following relevant facts, to wit:

- 1. Paragraph 11:"I know that the 3rd Defendant acquired and till date it holds a legal interest in a parcel of land located in Kubwa Extension, Kubwa, Abuja, specifically described as plot 2880, Cadastral Zone F 15, Kubwa Extension, measuring approximately 2.35 hectares, with new file number MISC 51635. I reassert that both I or the 3rd Defendant have absolutely no knowledge of any land known as plot Nos. M543B and M545 within Kubwa Extension III (FCDA SCHEME)".**
- 2. Paragraph 12:"The 3rd Defendant acquired its interest in plot 2880, Cadastral Zone F15, Kubwa Extension measuring approximately 2.35 hectares with new file number MISC 51635, from it's original Allottee, Housing Construction and Development Co. Ltd, via a Deed of assignment and an Irrevocable Power of**

Attorney, both dated June, 3, 2022. The 3rd Defendant shall rely on the deed of assignment as receipt of payment of the purchase price. The Deed of Assignment and Irrevocable Power of Attorney both dated June, 3, 2022 are hereby attached and marked as Exhibit A & B respectively".

3. Paragraph 16(a):"In specific response to paragraph 14 of the plaintiffs affidavit in support, I state and only if the land the Claimant is referring to is indeed the same as the 3rd Defendants housing estate land, that I know for a fact that.

(a) The acts which the plaintiff seeks an order of injunction to restrain has already been completed and a large portion of the estate has already been occupied by several individuals who purchased houses in the estate from the 3rd Defendant".

4. Paragraph 19(c)(d):"The 3rd Defendant was never allocated/granted Right of Occupancy in respect of plot Nos. M543B and M545 as alleged by the plaintiff as no such plot number exists to the knowledge of the 3rd Defendant."

19(d):"The plot Nos. M543B and M545 within Kubwa Extension III (FCDA SCHEME) referred to by the plaintiff are not the same as the 3rd Defendant's plot. The plots referred to by the plaintiff do not form any part of the 3rd Defendant's land described above."

In a further reaction to the counter affidavit of the Defendant, the Applicant in his further and better affidavit of 22 paragraphs deposed to the following facts, namely:-

1. Paragraph 7-: **"That contrary to paragraphs 6 and 7 of the 3rd Defendant's counter affidavit, the 3rd Defendant is well aware of plot Nos. M543B and M545 Kubwa Extension III (FCDA SCHEME) Kubwa, Abuja as the said plots were shown to one JAMES AMENDE, counsel to the 3rd Defendant in this suit who called to be shown the said plots on ground."**
2. Paragraphs 10-: **"That contrary to paragraphs 11, 12, 13, and 14 of the 3rd Defendant counter affidavit the Claimant assert that it has no claim to plot 2880 Cadastral Zone F15 Kubwa Extension but plot Nos. M543B and M545 Kubwa Extension III (FCDA SCHEME) Kubwa, Abuja, the subject matter of this suit."**
3. Paragraph 11:**"That contrary to paragraphs 15 and 16 of the 3rd Defendant counter affidavit, the construction on the properties, the subject matter of this suit is still on going and not completed. Pictures of the surest stage of construction work are hereby attached and marked Exhibit A."**

The combined effect of paragraphs 12 and 13 could be seen from part of the averment to the effect that **"That even mylord**

on two occasions cautioned counsel to the 3rd Defendant to stop development of the said plot to no avail".

The learned counsel to the Applicant, JEREMIAH IDAKWOJI Esq in a bid to convince this Honourable to grant his application formulated a sole issue for determination to wit:

"Whether the Honourable court has the power to grant the relief and if claimant/applicant is entitled to relief sought therein".

The learned counsel referred to the case of **YUSUF V. EDUN (2007) 21 WRNA 163 AT PGS 172 - 173 LINES 45 - 46** where the court held that "for an interlocutory injunction to be granted the court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff is entitled to the relief".

The learned counsel equally refer to the case of **KWANKWASO V. GOVERNOR OF KANO STATE (2006) 29 WRN pg 35 Pt. 66 lines 15 - 35** where it was held that:

"In an application for an interlocutory injunction, all that the Applicant is to show is that there are serious issue to be tried, that the balance of convenience is on his side, that his injury, if the Defendant is not restrained cannot be compensated with damages and that he is ready to enter into an undertaking as to damages".

He also refer to the case of **ITEX LTD V. FIRST INLAND BANK Plc (2007) 14 WRN pg 134** on the same principle cited above.

It will be in the interest of Justice to refer to paragraphs **1, 3, 5, 7, 13, 14** and particularly paragraphs 15(iii) and 16 wherein the Applicant has averred that there is a serious issue to be tried at the hearing of the substantive suit. He also averred to the fact that he undertakes to pay damages to the 3rd Defendant/Respondent if by the granting of this application the 3rd Defendant/Respondent suffer loss and/or damages. Similarly, by paragraphs **7, 10, 11, 12, and 13** of the Applicant's further and better affidavit it is clear that:

1. The learned counsel to the 3rd Defendant one James Amendi Esq was shown plot Nos. **M543B** and **M545** physically as being situated at Kubwa Extension III (FCDA SCHEME) Kubwa, Abuja, respectively.
2. That the Applicant is not laying claim to plot **2880** Cadastral Zone **F15** Kubwa Extension but plot Nos. **M543B** and **M545** Kubwa Extension III (FCDA SCHEME) Kubwa, Abuja, the subject matter of this suit.
3. The pictures of the surest stage of construction work are attached and marked as Exhibit **A** and that even the Honourable Court on two occasions cautioned the learned counsel to the 3rd Defendant to stop development of the said plot but to no avail.

On the other hand, the learned counsel to the Respondents, PIUS OWHOAVWODUA Esq also formulated three issues for the determination by this Honourable Court to wit:

- (a) WHETHER GIVEN THIS APPLICATION AND THE substantive suit is based on all alleged legal right concerning an unidentified Bwari Area Council land, and the determination of the identity and validity of the title to the land requires evidence to be presented and evaluated by the court, the court should dismiss this application and order accelerated hearing instead.**
- (b) WHETHER, in view of the fact that the disputed land may in fact be the 3rd Defendant's fully developed housing estate, with owners who are not parties on record currently occupying the properties, the court can grant this application concerning a completed act?**
- (c) WHETHER the grant of an interlocutory injunction being an equitable remedy, the Applicant is entitled to the grant of same in view of the special circumstances of this case?**

In order to bring home his stand on this suit the learned counsel to the 3rd Defendant referred to a number of judicial authorities that include; **D. P. C. C. V. B. P. C. Ltd (2008) 4 NWLR (pt. 1077) pg 376 at pgs 412 - 413, F - D KOTOYE V. SARAHI (1994) 7 NWLR PT. 353 AT PG 352 PARA F - H, SHELL PETROLEUM DEV. CO. V. LAWSON - JACK (1998) 4 NWLR (PT. 545) AT PGS 278 - 279 PARA H - B** to the effect

that a court of law should refrain from adjudicating and determining the merits of the matter at the interlocutory stage. He further referred to the case of **ABDULHAMID V. HABIB (2001) 18 WRN pg 174** where it was held thus:

"Where the grant of an interlocutory injunction would invariably determine a leg or all of the reliefs in the substantive action the courts are enjoined to refuse the application and, in its stead, make an order for accelerated hearing of the action ".

He argued that the grant of an injunction order at this stage is capable of determining a leg or all of the reliefs sought in the substantive action.

The learned counsel also referred this Honourable Court to various Judicial authorities to show that an injunction will not be granted over a completed act. These judicial authorities include **KOTOYE V. CBN (1989) 1 NWLR (Pt. 98) pg 419**, **ANGADI V. PDP (2018) LPELR - 44375 (SC)**, and in particular the case of **OBIOHA V. MILITARY ADMINISTRATOR OF IMO STATE (1998) 10 NWLR (Pt. 569) pg 205 at pg 222** where the Supreme Court held thus:

"The purpose of an interlocutory injunction is to maintain the status quo and thereby preserve the res, the subject matter of litigation from being wasted, damaged, frittered away, with the result that if the appeal succeeds the result would be nugatory in that the

successful Appellant would only reap an empty judgment ".

According to the learned counsel to the Respondent there is no existence of legal right worthy of protection at this interlocutory stage. This is because the Defendant's property is situate at plot **2880**, Cadastral Zone **F15** Kubwa Extension, measuring approximately **2.35** hectares, with new file number MISC **51635**, which is obviously not the same as plot Nos. **M543B** and **M545** within Kubwa Extension III (FCDA SCHEME), while the 3rd Defendant's property measures, approximately **2.35** hectares, the Claimant's position is that his alleged plots measures 1000sqm each.

He further invites this Honourable Court to consider the twin issues of balance of convenience in favour of the 3rd Respondent and third parties resident on the 3rd Defendant's land, who are unnamed in this suit as well as if damages recoverable under the plaintiff's undertaking as to damages would be adequate compensation before granting the application. He finally urged this Honourable Court to dismiss this application with substantive cost for being an abuse of judicial process, frivolous and highly unmeritorious.

Having paraphrased the salient paragraphs of the various processes filed before this Honourable Court and the submissions of the respective learned counsel to the parties, it becomes imperative to evaluate them with a view to deciding whether or not this Application should be given a favourable

consideration. To achieve this end this Honourable Court has adopted the sole issue formulated by the Applicant and one of the issues formulated by the 3rd Defendant to wit:

- 1. Whether the honourable court has the power to grant the relief and if Claimant/Applicant is entitled to relief sought therein.**
- 2. Whether the grant of an interlocutory injunction being an equitable remedy, the Applicant is entitled to the grant of same in view of the special circumstances of this case?**

In an Application of this nature, it has been held in the case of **CHIEF BISIRIYU ARIYO & 5 ORS V. JULIUS BERGER NIG. LTD & 1 OR (2016) 11 (Pt. 1) JUDGMENT OF APPEAL CASES OF NIGERIA** pg 1 at pgs 4 - 5 that:

"The law is well settled that a party who seeks the exercise of the discretion of the court in his favour has the bounden duty to place before the court all the material facts, in a manner or form admissible in law, that are necessary for the exercise of the court's discretion in his favour. Thus, where the relevant and necessary materials are not placed before the court no such indulgence would be granted to such an Applicant".

The Applicant by his affidavit in support of this application and the further and better affidavit has placed all the necessary materials that are necessary for this Honourable Court to

exercise its discretion particularly the content of paragraphs **7, 10, 11, 12** and **13** of the further and better affidavit of the Applicant.

There is no doubt that while the Applicant is not claiming plot **2880** Cadastral Zone **F15** Kubwa Extension but plot Nos. **M543B** and **M545** Kubwa Extension III (FCDA SCHEME) Kubwa, Abuja, the subject matter in the suit, the reverse is the case with 3rd Defendant. The 3rd Defendant in his own counter affidavit and precisely, paragraph 11, the 3rd Defendant denies ever laying claims to plot Nos. **M543B** and **M545** within Kubwa Extension III (FCDA SCHEME) but lays claim to plot 2880, Cadastral Zone **F15** Kubwa Extension.

It is important to observe at this juncture that the content of the further and better affidavit of the Applicant particularly paragraphs **7, 10, 11, 12** and **13** are weighty and have disclosed serious and new issues that required a further reaction from the 3rd Defendant. Unfortunately, there was never any reaction from the 3rd Defendant in response to those critical averments.

The Applicant attached photographs of the site which he referred to as "pictures of the surest stage of construction work are hereby attached and marked as Exhibit **A**" to debunk the assertion by the 3rd Defendant that the work has been completed and that it has been occupied by persons who are not joined in this matter. The names and particulars of the said occupants could have also been provided by the 3rd Defendant and this

could be done by way of affidavit sworn by the so-called occupant of the subject matter.

Furthermore, the content of paragraphs 12 and 13 of the further and better affidavit equally speak volumes in the sense that this Honourable Court was said to have warned the learned counsel to the 3rd Defendant to advise the 3rd Defendant to stop the construction work on the site. It is my candid view that the 3rd Defendant should not have swept this weighty allegation under the carpet. On the failure of the 3rd Defendant to react to the content of paragraphs 7, 10, 11, 12 and 13 of the further and better affidavit of the Applicant, let me refer to the case of: **ALHAJI ABDULLAHI HAIDO & 3 ORS V. MADUNKA MOTORS LTD (IN RECEIVERSHIP) & 2 ORS (2008) 19 WRN pg 115 at pg 119 Ratio 2** where it was held that:

"It is trite that failure to file counter affidavit or reply to counter affidavit will make the facts deposed to in the said affidavit to be deemed as unchallenged, undisputed and uncontroverted and therefore admitted. The Court has the duty to rely on such admitted facts to resolve the issue in contest".

In the same vein, in the case of **CHIEF BISIRIYU ARIYO & 5 ORS V. JULIUS BERGER NIG. LTD 1 OR (Supra) pg 1 at pg 5 ratio 3** it was held that:

"Where the facts in the subsequent affidavits are near or fresh and not already covered by the counter affidavit that the need to file a further counter affidavit

will arise". See also the case of **GBEDENGBE SURAJUDEEN OLA V. UNIVERSITY OF ILORIN & 2 ORS (2014) 15 NWLR (Pt. 1431) pg 453 at pg 459 Ratio 5** on the same principle stated above.

The gravamine of this application lies in maintaining the status quo so as to preserve the 'res'. Thus, in the cases of **BAKARE V. BAKARE (2012) 16 NWLR (Pt. 1325) pg 29** and **BRAITHWAITE V. STANDARD CHARTERED BANK (NIG) LTD (2012) 1 NWLR (Pt. 1281) pg 301 CA** it was held that:

"The purpose of an interlocutory injunction apart from protecting the right of the Applicant, is also to preserve the 'res' from being eaten up. It does not make sense to allow the 'res' to be destroyed or annihilated before judgment of the court in the substantive matter. Thus, the purpose of an interlocutory injunction is to maintain the status quo ante bellum pending the determination of the suit".

It is therefore clear from the combined effect of the content of paragraphs **7, 13, 15(iii), 16** of the Applicant's affidavit in support of this application and paragraphs **7, 10, 11, 12 and 13** of his further and better affidavit that the Applicant has placed sufficient materials before this Honourable Court to warrant the granting of this application. It is equally clear that this Honourable has the requisite jurisdiction to grant this application being an equitable remedy. Infact, the special circumstances of

the substantive suit as disclosed vide the various processes filed before this Honourable necessitate the granting of this application particularly to preserve the res. The Applicant has in addition to the existence of serious issues to be determined by this Honourable Court deposed to the fact that he has undertaken to pay damages to the 3rd Defendant if by the granting of this application the 3rd Defendant/Respondent suffer loss and/or damages. In the circumstances therefore, this application is meritorious and deserve the favour of this Honourable Court. The application ought to be granted and is accordingly granted.

SIGNED:
HON.JUDGE
20/02/2025

APPEARANCE:

O. R. Omede, Esq, for the Claimant/Applicant

J. J. Esemuze, Esq, for the 1st and 2nd Defendants/Respondents

James Amende, Esq, with A. Chisom, Esq, for the 3rd Defendant/Respondent