IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 18TH FEBRUARY, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CV/1788/18
MOTION NO.:-FCT/HC/M/5983/18

BETWEEN:

DR. IGBINOSA BEN OSAMUYI
(*Suing for himself & 20 other Members of Penthouse Estate 3, Residents Association)* **:……..CLAIMANT/ APPLICANT.**

AND

1) PENTHOUSE PROPERTIES LTD
2) SEGUN OLU IBUKUN
3) HON. MINISTER, FCT
4) FEDERAL CAPITAL DEVELOPMENT AUTHORITY. **:….DEFENDANTS/ RESPONDENTS.**

Chuks N. Eriugo for the Claimant.
Defendant not represented.

RULING.

This is a Motion on Notice filed by the Claimant, wherein he seeks the following reliefs;

a. An order of interlocutory injunction restraining the 1st and 2nd Defendants/Respondents, their agents, privies, servants, workers or any other person howsoever described, from carvingout for alienation, alienating for clinic or any other purpose, from selling or attempting to sell any portion of the only recreational area in the

Penthouse Properties Estate 3, Lugbe, Abuja, pending the determination of this suit.

b. An order of interlocutory injunction restraining the 1st and 2nd Defendants/Respondents from demanding from, asking or collecting annual service charge from Landlords/Residents of Penthouse Properties Estate 3, Abuja, henceforth, pending the determination of this case.
c. An order restraining the 1st and 2nd Defendants from parading themselves as the SOLE FACILITY MANAGER of the estate of the Claimants pending the determination of the substantive suit now pending before this Court.
d. Any further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The application was supported by a 16 paragraphs affidavit deposed to by the Claimant/Applicant, letters of allocation annexed as exhibits, and a written address.

The grounds of the application as stated in the affidavit in support of the application, is that the 1st and 2nd Defendants, who had sold two out of three recreational areas in the Penthouse Estate 3, Lugbe and converted them to other uses, thereby distorting the aesthetic value of the entire estate where the members of the Claimant own houses, now threatens the only one recreational area left in theestate as they have dismembered same for sale as clinic to the irritation and annoyance of members of the Claimant.

The Applicant averred that all entreaties made to the 1st and 2nd Defendants by members of the Claimant/Applicant to retain the only recreational facility in the estate, has been ignored; rather, the 1st and 2nd Defendants have resorted to arm twisting and the use of Police to harass the Chairman of the Claimant/Applicant.

In his written address in support of the application, learned counsel for the Claimant/Applicant, ChuksMpamaEriugo, Esq, posited that in an application of this nature, it is fundamental that the applicant must establish a legal interest in the property in which he applied for an order of injunctive relief. He relied on **Raston properties Ltd v. First Bank of Nig PLC (2007) All FWLR (pt 392) 1954 @ 1967,** while referring the Court to grounds 1, 2 and 3 of the application, Exhibits 'A' & 'B' and paragraphs 1,2,3 & 4 of the affidavit in support of the motion.

Relying on Order 43 Rules 1(i)(ii) & 3(i) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, to posit that this is a proper case in which application for interlocutory injunction could be made. He argued that a careful perusal of the affidavit in support of this application, as well as the exhibits attached thereto, will show that this is a case in which interlocutory injunction is most deserving.

Relying on **Gbadamosi v. Aleya (1998) 12 NWLR (Pt 578) 402; Obeya Memorial hospital v. A.G. Federation (1987) 2 NWLr (Pt 60)325,** he submitted that an interlocutory injunction will be granted where there are serious cause to be tried at the hearing of the substantive suit, and where on the balance of convenience, the pendulum swings in favour of the Claimants.

He argued that the res, if disposed or decimated by the Defendants,the Claimants would be left without a recreational area or facility and no amount of monetary compensation can remedy their situation.He urged the Court to grant the application.

In response to the counter affidavit in opposition to the application filed by the 1st and 2nd Defendants/Respondents, the Claimant/Applicant filed a Reply on points of law, wherein learned Applicant's counsel relied on **UBN v. Ozigi (1994) 3**

NWLR (Pt 333) 385 and Bank of the North v. Aliyu (1999) 7 NWLR (pt 612) 622,to submit that oral evidence cannot be used to contradict the contents of documentary evidence, Exhibits 'C' and 'D'.

He contended that the case of **FHA v. Emehiw (2013) 3 NWLR (Pt 1342) 478 @ 484** is inapplicable here and should therefore, be discountenanced.

He further submitted that contrary to the argumentsof learned Respondent's counsel; that there is a clear difference between interlocutory injunction sought in this application and perpetual injunction sought in the substantive suit.That by the grant of interlocutory injunction in this matter, the Court is not called upon to make any finding of fact, rather, to keep matters in status quo until the substantive matter is determined. He referred to **MufutauAkinpelu v. EbunolaAdegbore (2008) 4-5 SC (Pt 11) 7 @ 80;Akapo v. Hakeem Habeeb (1992) NSCC 313.**

In opposition to the Motion for interlocutory injunction, the 1st and 2nd Defendants filed an eight (8) paragraphs counter affidavit deposed to by one Odinaka Wilson, and same supported by a written address.

The 1st and 2nd Defendants/Respondents averred that they neverallocated any property to the Claimant/Applicant, as they only dealt with individuals who applied to be allocated plots of land at Penthouse Properties Estate 3, Lugbe, Abuja, and not an association or members of the Claimant's association.

The 1st and 2nd Defendants/Respondents further averred that the reliefs for injunction sought by the Claimant in this application are the same reliefs being sought in the substantive

suit. That the 1st and 2nd Defendants would be prejudiced by the grant of this application.

Learned counsel for the 1st and 2nd Defendants/Respondents, Ephraim K. Shiho, Esq, in his written submission in support of the counter affidavit, raised a sole issue for determination, namely;

> ***"Whether having regards to the facts and circumstances of the case, this Honourable Court can grant the application of the Claimant/Applicant".***

Learned counsel argued to the effect that the reliefs of the Claimant are predicated on a revised plan that has already been carried out. He contended that an injunction cannot lie against an action that has taken place. He referred to **FHA v.Emehiw (2013) 3 NWLR (Pt 1342) 478 at 484.**

He further contended that the interlocutory reliefs of the Claimant/Applicant are exactly the same reliefs as contained in the substantive suit. That the Court cannot delve into the substantive suit at the interlocutory stage. He referred inter alia, to **Hart v. TSKJ Nig Ltd (1998)12 NWLR (Pt 578) 372 at 392; Elutoje v. Halilu (1993) 6 NWLR (Pt 301)570.**

Arguing that the grant of this application will be overreaching to the 1st and 2nd Defendants, he urged the Court to refuse the application and to dismiss same.

The instant application is for an interlocutory injunction, which essentially is aimed at preserving the res, pending the hearing and determination of the substantive suit.

In **Akinpelu v. Adegbore&Ors (2008) LPELR-354 (SC),** the Supreme Court, per Tobi, JSC held that;

"One factor for granting interlocutory injunction is the preservation of the res. It is the province of the law that the res should not be destroyed or annihilated before the judgment of the Court".

The conditions for the grant of interlocutory injunction were well spelt out by the Supreme Court in the case of **Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (pt 98) 419,** thus;

"(a) That the applicant must show that there is a serious question to be tried; i.e. that the applicant has a real possibility, not a probability of success at the trial, notwithstanding the defendant's technical defence (if any).

(b) That the applicant must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it.

(c)That the applicant must show that damages cannot be adequate compensation for his damage or injury, if he succeeds at the end of the day.

(d) That the applicant must show that his conduct is not reprehensible, forexample, that he is not guilty of any delay.

(e) No order of an interlocutory injunction should be made on notice unless the applicant gives a satisfactory undertaking as to damages save in recognised exceptions.

(f) Where a Court of first instance fails to extract an undertaking as to damages, an appellate court ought

normally to discharge the order of injunction on appeal."

Without much ado, it is crystal clear from the affidavit in support of this application, that the Applicant has failed to fulfil the conditions for the grant of the reliefs being sought in this application.

The Applicant, particularly failed to give any undertaking as to damages, which is a fundamental requirement for the grant of an interlocutory injunction. See **Kotoye v. Central Bank of Nigeria (supra); International Finance Corporation v. DSNL Offshore Ltd &Ors (2007) LPELT-5140 (CA).**

Flowing from the foregoing, reliefs a, b and c fail, and are hereby struck out.

In the interest of justice, this Court grants relief (D) of the application, and in doing so, the Court draws from the principle of lispendens and orders all parties to maintain status quoto ensure the preservation of the res and not destroyed or annihilated pending the hearing and determination of this suit.

HON. JUSTICE A. O. OTALUKA
18/2/2020.