

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON THE 7<sup>TH</sup> DAY OF FEBRUARY, 2020**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.**  
**OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/88/18**  
**MOTION NO.: FCT/HC/M/6974/19**

**BETWEEN:**

**PRINCESS CHIAMAKA OGBONNA ----- PLAINTIFF**

**AND**

**EJIKE NWAFOR & 1 OR } ----- DEFENDANTS**  
**CHIBUIKE ODOH }**

**RULING**

In the writ filed on the 29/6/18 the plaintiff – Princess Chiamaka Ogbonna claimed these reliefs:

**Declaration that she is the exclusive owner of all the properties –vacant land**

- ⇒ 100 x 150 sqm around Nigeria law school Bwari**
- ⇒ Two bedroom flat at Ushafa**
- ⇒ 7 self contained rooms at Ushafa**
- ⇒ 3 self contained rooms at Ushafa Bwari Abuja.**

She attached photocopies of the document of title and give notice to the Defendants to produce the original copies of the documents of title.

She also sought for an Order that the purchase sum/price of the 7 room apartment be given back to the 2<sup>nd</sup> Defendant so as to enable her retake possession of the property.

An order of Injunction restraining the Defendants, their agents, privies and assigning from entering or trespassing into the 7 room apartment or other properties belonging to the Claimant.

Also (N100, 000,000.00) Hundred Million Naira as general damages against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

Cost of the suit.

Upon receipt of the Originating Process the Defendant filed Statement of Defence and Motion on Notice for restraining against the plaintiff.

In the Motion the Defendant is seeking for the following Reliefs:

**[1] Order of Interlocutory Injunction restraining the Claimant from continuing collecting the rent from the tenants in the property in dispute located at Ushafa Extention, Bwari Abuja following the determination of the substantive suit**

**[2] An Order compelling all the tenants in the property – (Res) to be paying their annual rent into an interest yielding Account of the High Court of FCT pending the determination of the substantive suit .**

**[3] An Order compelling the Claimant/Respondent to remit all the rent collected from the tenants in the Res during the pendency of this suit into the interest yielding account of the High Court.**

**[4] Deeming this application as properly filed and served on the Respondents.**

**[5] Omni bus prayer.**

The Defendants supported this Motion with an Affidavit of 11 paragraphs.

He attached a document marked as **EXH A – Power of Attorney between Mr. and Mrs. Princess E. Nwafor as (donor) and Mr. Odoh Chibuike as Donee and Deed of Assignment** meanwhile Chibuike Nwafor is the Defendant in this Suit.

In the Written Address the Defendant/Applicant raised an Issue for determination which is:

**“Whether the court can grant these reliefs as sought”.**

The Counsel submitted that the combined reading of **Order 43 R 1 and Order 42 R 1 FCT High Court Rule 2018** the Defendant/Applicant is within his right to apply for the relief sought in this application. That for an Applicant to succeed for grant of an Interlocutory Injunction he must show there is a Legal Right in existence and serious triable issues in the substantive Suit, balance of convenience on his part, damages not being adequate compensation and an undertaking to pay damages among other things. They referred to the case of:

**Nnadi V. Amodi**

**(2011) 4 NWLR (PT.1238) 553 @ 567 – 568 paragraph H – B.**

**Adenuga V. V.J.K Odumeru & ors  
(2003) 8 NWLR (PT.821) 163**

That any party whose Legal Right is threatened can apply to Court to seek protection of that right and Order of Interlocutory Injunction can be granted to protect such right in law and in equity.

That the Court is empowered and empanelled to grant such relief sought as in this case in order to protect, preserve the Res and for the parties to maintain Status quo pending the determination of the substantive suit . He urged the Court to grant the Reliefs sought.

In opposition the Plaintiff/Respondent filed a Counter Affidavit of 11 paragraphs which she deposed to in person.

In the Written Address the Plaintiff/Respondent raised a sole Issue for determination which is:

**“whether the 2<sup>nd</sup> Defendant/Applicant is entitled to the Reliefs sought in this case”.**

She answered the question in the negative and submitted that the Defendant/Applicant is not entitled to the Interlocutory Injunction as sought in this application. That he has misconstrued and misapplied the provision of Order 42 R 1 FCT High Court Rules. That the above Rule can only be invoked where there is particular amount in dispute which needs to be secured.

That there is no liability standing to the credit or discredit of the Defendant/Applicant in this suit that calls for the application of the above cited Rules of this Court. She urged the court to so hold.

She submitted that the aim of an Order of Injunction is to protect an established right of the Applicant. She also submitted that the Applicant/Defendant has no established right over the rent paid to the Claimant/Respondent by her tenant. She cited the case of:

**Aboseldehyde lab PLC V. Union Merchant Bank Ltd**

That it has been held that an Order of Injunction is usually granted to protect a party's existing legal right from invasion by another person or persons. She submitted that the Defendant/Applicant has no established legal right over the payment of rents paid to the Claimant/Respondent by her tenant which is the basis upon which this application is brought.

She referred to the cases of:

**Akapo V. Hakeem – Habeeb  
(1992) 7 SCNJ 119**

**Oji V. Zaria Industry Ltd  
(1992) SCNJ 29**

**Azu V. UBN  
(2014) 11 NWLR (PT. 1419) 580**

She urged the Court to dismiss the application as it is frivolous, vexatious and an abuse of Court process.

**COURT**

In every application for Interlocutory Injunction the Applicant usual call for preservation of the Res in issues so that it will not be so transformed or changed that by time Judgement is delivered it may be impossible to retrieve same.

To succeed the Applicant must ensure that he set out facts in the Affidavit. Such fact must be cogent and convincing. For Court to grant an Injunctive relief it must be sure that the application will suffer so much loss if the Order is not granted. But the bottom line is that the balance of convenience is on the side of the Applicant and that the loss must be irreparable on the Applicant.

In this case the Defendant/Applicant has called on the Court to preserve the Res which the Rent collected from the 7 room apartment which is at the centre of the issue in dispute in this case. Presently the Plaintiff/Respondent has been in charge renting and collecting rents on the said Apartments. Meanwhile she instituted this suit seeking for the Court to grant her an Order to refund the purchase price of the 7 Bedroom self contained apartment to 2<sup>nd</sup> Defendant so that she will retake the possession of the said apartment. But the Defendant/Applicant want the Plaintiff/Respondent to pay the annual rent in the Res into an interest yielding account of the High court pending the final determination of this suit and to remit all rents collected from the tenants in the property in dispute during pendency of this suit to said interest yielding account.

It is law that when a matter is pending in a Court parties stay clear of the Res until the final determination of the issue in dispute. That is exactly what the Defendant/Applicant is seeking in this Motion.

The question before this Court is should this Court allow the Plaintiff/Respondent to continue to collect rent in the Res unaccounted for throughout the duration and pendency of this Suit, having in mind that the ownership of the said Res in issue is yet to be determined by this Court? Or should this Court grant the Order as sought by the Defendant/Applicant, stopping the

Plaintiff/Respondent from collecting the said rent and ordering that all rent henceforth be paid into the interest yielding account as sought by the Applicant pending the final determination of the issue in dispute? Will doing so be in the best interest of justice in this case at this stage?

It is my humble view that justice will be better done best and done at this stage by preserving the Res and granting the Order as sought by ordering the tenants in the Res to henceforth pay all rents directly into an interest yielding Account of the High Court pending the determination of the issue in dispute as to the real owner of the Res.

To start with it is not in doubt that there is a tussle as to the owner of the Res – 7 bedroom self contained apartment. The Plaintiff/Respondent had wanted the Court to Order for her to refund the money spent in the purchase of the land. She also wants Court to declare her as the owner of all the properties listed in the Writ particularly the said 7 bedroom apartment. She also want an Order that the defendant release the original document on the Res. The Defendants want accountability of the Rent for the duration of the pendency of this case.

Allowing the Plaintiff/Respondent to continue to collect rent unaccountably while the suit is going on will definitely not be in the interest of justice. Doing so will mean that she is already adjudged the owner while the ownership is still challenged in Court. Ordering that the tenant pay the rents directly to an interest yielding Account is the best thing to do in this case because at the end of the day whoever among the parties that wins the case will inherit whatever rent that have accrued.

Most importantly granting the application will not in any way affect the Plaintiff/Respondent. She will not be prejudiced. More so, if she

eventually wins the case. It will only be like rent was in a fixed deposit for her. So without further ado, this Court grants this application in the interest of justice of the case at this stage because the application is very meritorious.

*It is therefore granted to wit:*

It is hereby ordered that all rent payable in the property in dispute in this Suit is be paid henceforth into an interest yielding account of the High Court pending the final determination of the substantive Suit.

It is also ordered that all rent collected from the tenants in the property in dispute during the pending of this Suit be paid into an interest yielding Account of the High Court pending the final determination of this Suit.

**This is the Ruling of this Court.**

**Delivered today the ----- day of ----- 2020.**

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**K.N. OGBONNAYA**

HON. JUDGE.