

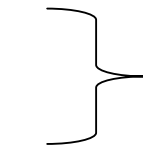
IN THE HIGH COURT OF JUSTICE
OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON THE 24TH DAY OF JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
COURT 26.

SUIT NO.: FCT/HC/CV/1700/19

BETWEEN:

1. SAM'S ENGINEERING LTD

2. JLASH INVESTMENT LTD



----- PLAINTIFF

AND

1. NATIONAL COUNCIL FOR ARTS & CULTURE

2. OTUNBA OLUSEGUN RUNSEWE



----- DEFENDANTS

RULING

In a Writ filed by Sam's Engineering Ltd and Jlash Investment Ltd against the National Council for Arts & Culture and Otumba Olusegun Runsewe, the Plaintiff claims the following:

- (1) A Declaration that the Claimants are in possession of the property known and described as**

**Twin Towers Plaza situate at plots 2070 and 2071
CAD Zone A02 Wuse Zone 3, Abuja.**

- (2) A Declaration that the Defendants' entering and altering the Plaintiffs' property in the said Twin Tower Plaza without the consent of the Claimants amounts to trespass to the property.**

- (3) An Order of Perpetual Injunction restraining the Defendants, its agents, privies, assigns, attorneys or any other person howsoever described from entering, further entering or trespassing on the said Twin Tower Plaza.**

- (4) Five Hundred Million Naira (N500,000,000.00) only, being general and exemplary damages to Claimants against the Defendants for the trespass.**

- (5) 10% interest on the Judgement sum from date of Judgement until final liquidation of Judgement sum.**

In order to secure, protect and preserve the Res, the Plaintiffs also filed Motion Exparte and Motion on Notice seeking basically to restrict the Defendants, their privies, assigns, attorneys and other person by whatever name so described from entering the said property to harass, intimidate and/or disturb the quiet and peaceful occupation and possession of the Claimants/Applicants pending the hearing of the Motion on Notice and the substantive Suit respectively.

They also want an Order Interim and Interlocutory against the Defendants, privies etc as already described above from entering the Res for the purpose of having control or in the name of management of the Res or tampering with the structure in whatever guise pending the hearing of the Motion on Notice and the substantive Suit.

In the Motion on Notice the application also want:

“An Order of Court appointing a reputable Estate Valuer for the purpose of conducting evaluation of the building materials of the Claimants destroyed/vandalized by the officials/agents of the Defendants for the purpose of accessing the cost/special damages occasioned therein”.

The Motion was based on the following grounds:

- (1) Plaintiffs are bonafide owners of the Res and are currently in possession and occupation of the said Res.*
- (2) The Economic and Financial Crime Commission (EFCC) in the course of investigation of Senator Bala Mohammed and on suspicious that the Res was owned by him, approached the Federal High Court (FHC) Abuja Division to obtain an Order of Interim Forfeiture of the property pending the conclusion of their investigation/prosecution of the Senator.*
- (3) That on being aware of the Order, the Applicant approached the Federal High Court (FHC) via Motion on Notice to urge the Court to discharge the said Order of Interim Forfeiture as it claims through documentary evidence attached to its Affidavit in support of the Motion that the property belonged to it and not to Senator Bala Mohammed.*

- (4) *That while the Motion is pending and yet to be determined, the Economic and Financial Crime Commission (EFCC) obtained a 2nd Order of Interim Forfeiture against the 2 (two) companies in respect of the same property.*
- (5) *That there are also pending applications at the Federal High Court (FHC) for the discharge of the said Order of Interim Forfeiture by the 2 (two) companies.*
- (6) *That the Defendants/Respondents have entered the property destroyed the warehouses housing the building materials for the construction work ongoing on the Res and remove some of the fittings in the buildings and are currently altering the buildings for use as office.*
- (7) *That there is no Order of Permanent Forfeiture of the property by the Court yet.*
- (8) *That the Applicants are entitled to their constitutional Right to the property.*
- (9) *And that it is only a Court of Law that is imbued with the powers to deprive the Applicants of the right to their property.*

They supported both applications with Affidavit of 45 paragraphs each deposed to by Aisha Abubakar. They attached 14 documents marked as **EXH Sam's 1 – Sam's 14** in support of the application.

They raised a sole Issue for determination which is:

“Whether in the circumstance of this case the Claimants/Applicants are entitled to the Orders sought in this application”.

Answering the question in the affirmative, the Counsel for the Plaintiffs/Applicants submitted that the Applicants have the legal and possessory rights to the said property to have this question posed properly investigated and determined by this Court. He referred to the case of:

Kotoye V. CBN

(1989) 1 NWLR (PT. 98) 491 @ 441 Para C.

He submitted that the Applicants have shown that they have legal right over the Res going by the averment in **paragraph 8, 9 & 13** of Affidavit in support of this application. That they have also in **paragraph 32** shown that the Defendants entered into the Res without the consent and authorization and are carrying out works and restructuring of the Res.

That by these averments and facts stated therein, the Applicants have shown that they have raised triable Issues for Court to determine in the substantial Suit the competing rights and interest of the Parties.

That this application is brought to prevent fait accompli being foisted on the Court as there is a need to restrain the Defendants/Respondents from entering the Res or conducting themselves in such a manner as if they were the owners of the property or physically preventing the Applicants from having access to the said property or altering the structure of the Res until final determination of the substantive Suit.

They urged Court to hold that from the facts disclosed in the Affidavit the Applicants have both legal and possessory right of the subject matter throughout to be protected.

They submitted that balance of convenience tilts none in favour of the Applicants being the Party that will suffer more of this application is refused.

That if the Defendants/Respondents are allowed to continue the fragrant action of entering the property without permission and destroying the Applicants' building materials and altering the structure of the buildings the Applicant will suffer irreparable damages.

That the Respondents have nothing to lose if the Court grants this application pending the determination of the substantive Suit.

That the Plaintiff stands to lose more if the application is not granted. That in **paragraph 39 & 40** of the Affidavit in support, the Respondents are altering the structure of the Res by the petitioning of it and to fit into an office complex. That if this is allowed, the nature and character as well as the structure of the Res will permanently be affected and it will be impossible to restructure same to its original form/state and will require incurring huge cost to restore it back to its original form.

That since the matter is pending at the Federal High Court (FHC) it will foist fait accompli on that Court too. He urge Court to hold that the balance of convenience tilts in favour of the Plaintiffs as refusal to grant the application will cost them more than the Respondents who can always claim damages for loss of time or delay.

That continuous trespass by the Respondents without restraint will change the structure of the Res and cause irreversible loss to Claimants.

They submitted that damages will not be adequate compensation for the loss which the Applicants will suffer if the application is not granted.

That the Respondents also undertake to pay damages as averred in **paragraph 41** of the Affidavit in support in the event that the

Defendants/Respondents suffer any loss and on the unlikely event that this Suit is found to be frivolous.

That Court has all the discretionary power to order that status quo is maintained pending the final determination of the Suit.

They urged the Court to grant the application as doing so will preserve the Res pending the determination of the substantive Suit.

Upon receipt of the Motion on Notice, the Defendants jointly filed a Counter Affidavit of 25 paragraphs deposed to by Oikeh Obozokhai.

It is the stay of the Defendants that they are in occupation of the property based on the strategic understanding they have with the Economic and Financial Crime Commission (EFCC) for the purpose of absolute monitoring of activities/movements in the Res and prosecution of the case. That they are not trespassers and that the 2nd Defendant did not enter the Res in his personal capacity but in his official capacity as the Director – General of the 1st Defendant carrying out his executive functions on behalf of the Federal Government.

That by the Interim Order of Forfeiture they issued to Economic and Financial Crime Commission (EFCC), the Respondent entered into the said property legally with the consent, permission and authorization of the Economic and Financial Crime Commission (EFCC) based on an understanding between the Respondents and Economic and Financial Crime Commission (EFCC) as agencies of the Federal Government.

That by the Order of Interim Forfeiture the Economic and Financial Crime Commission (EFCC) to over possession, occupation and control and management of the Res pursuant to the said Order pending the determination of the criminal charge against the person currently facing criminal trial in connection with the property before the Federal High Court at the instance of the Economic and Financial Crime Commission (EFCC).

That by the Interim Orders the Plaintiffs' right to the property has been forfeited to Federal Government.

That as at the time they entered into the property in April 2019, the Claimants have no possession over the Res having lost same since the day the Order was made.

That the said Order still subsists and has not been vacated. That Applicants are not in occupation and do not maintain any kind of presence in the premises – Res.

That they never pulled down any warehouse or damaged any building material in the Res belonging to the Claimants/Applicants or any other person.

That the Respondents only cleared the construction debris evacuated same and occupied it in the Interim at the pleasure of the Economic and Financial Crime Commission (EFCC) pending the determination of the charges already pending at the Federal High Court going by the Interim Order of Forfeiture made on the 4th day of October, 2018.

That the alteration carried out by the Respondents was not unusual. That it was done in a bid to occupy part of the plaza. That the said alteration cannot be reversed and that it was done with the consent of the Economic and Financial Crime Commission (EFCC) who are in control of the Res.

That they are not trespassers as the Applicants alleged. That they are in occupation based on public interest pending the determination of the criminal matter at the Federal High Court or upon vacation of the Interim Order.

That the Applicants vacated the premises and stopped construction because of the Order and not because of the pendency of the Suit at the Federal High Court as they claimed in paragraph 38 of their Affidavit in support.

That any damage that the Applicants will suffer can be adequately compensated monetarily. That balance of convenience is on their side and not in favour of the Applicants.

That it will occasion great injustice on the Respondents and the public if the Court grants the Injunctive Order as sought.

That the Applicant lacks the capacity to sue the Respondents in this Suit let alone earning the Relief sought in this motion.

In the Written Address they raised a sole Issue for determination which is:

“Whether the Applicants have made out a case warrant the exercise of the Court’s discretion in their favour by granting the Order as sought”.

They submitted that the grant of Order of this nature is within the exercise of discretionary power of the Court which must be exercised judicially and judiciously. He referred to the case of:

**DPCC Ltd V. BPC Ltd
(2008) 4 NWLR (PT. 1077) 376**

He submitted that the grant of the application will occasion injustice and hardship on the Respondents who are currently using the place as office accommodation. That because of the Interim Order, that the Applicants do not have any recognizable right in law over the Res unless for the purpose of application to vacate the said Order made by the Court.

That unless and until the said Order is vacated, the Applicants cannot be entitled to any Interlocutory Injunction since their right over the property have been suspended in the Interim by virtue of the said Order. That for as long as the Order subsists, the Plaintiffs have no legal right for the relief they seek in this case.

That Claimants are not in possession of the Res. They are no longer in physical occupation of the Res either and as such they are not

entitled to any right to enjoy Interlocutory Order of Injunction as they want in this Motion.

They urge Court to dismiss the application as the Plaintiffs/Applicants have no legal right over the Res, such right having been forfeited by the said Order.

That the Plaintiffs have no triable issue before the Court, also since they lost their right in law over the Res they have not made out any case against the Respondents. That their grievance is against the Economic and Financial Crime Commission (EFCC) not the Respondent in this case. That his application is a ploy to rob the Economic and Financial Crime Commission (EFCC) the right of possession and physical control over the Res as ordered by the Court. That the Applicant failed to disclose the existence of any triable issue in this case. They urged the Court to dismiss the Motion.

On the application for Court to appoint Estate Valuer, the Respondents submitted that the alleged claim by Applicants can be quantified monetarily. Hence no need to grant the application as their loss is irreparable, and that balance of convenience is not on the part of the Applicants.

That it is the Respondents that will suffer if this application is granted as the Reliefs, if granted would limit the benefits of the Interim Order of Forfeiture granted. They urged Court to dismiss this application based on the above point.

That there is no need for the Reliefs sought since the Respondents are already in occupation of some parts of the Res. That by EXH 9 & 11 the Respondents erroneously claimed they attached, the Plaintiff/Applicants have no legal right to protect unless and until the Order is vacated.

They urged Court to hold that Applicants are not entitled to the Relief sought as they have failed to establish that they are entitled to the Reliefs sought in this case.

They urged Court to dismiss the application.

COURT

In every Interlocutory application the Court is called upon to preserve the Res pending the final determination of the substantive Suit. At this point the Court is not called upon to determine the substantive issues in dispute. Where the grant of an Interlocutory Injunction will determine the issue in dispute, the Court will Order for hearing of the main Suit rather than grant an Order that will prematurely “Kill” the issues or determine same without hearing the Parties in dispute.

If an Interlocutory relief will have the effect of final decision on the issues in dispute, the Court will not grant same.

The Apex Court had in plethora of its decision outlined the grounds or principles relevant of what must be established before a Court can grant Injunctive Relief. There is no point belaboring the Issue.

Once the Applicant has shown there is a triable issue and it has legal right over the Res, balance of convenience is in his favour, damages not being adequate compensation and has undertaken to pay damages if the Application is found to be frivolous, the Court will grant or is duty bound to grant the Injunctive Relief.

But most importantly, once the Applicants can show that the Res can be permanently defaced, altered, annihilated and drastically change from or change hand before the Substantive Suit is determined, the Court will grant an Injunctive Relief sought in that regard.

Failure of the Applicants to so establish all those points means that the Court will not grant the application. But where otherwise the Court will not waste time in granting the Order in order to preserve the Res from “dying” prematurely.

On all the above see the following cases:

1. Saraki V. Kutoye

2. Obasanjo V. Mohammed Buhari

3. Saraki V. CBN

4. Obeya Memorial V. A-G Federation

In this case the Plaintiffs have been able to establish that the Respondents had occupied the Res, a fact that the Respondents confirmed severally in their Counter Affidavit in opposition to the Motion.

It is not in doubt that Plaintiffs/Applicants have a legal right over the Res notwithstanding the Interim Order of Forfeiture which has not been vacated.

The Defendants had stated and thus confirmed the averment of the Applicants that they have claimed part of the Res where they have converted into office accommodation.

The fact that there is an Interim Order of Forfeiture does not mean that the Plaintiffs/Applicants' right over the Res has been extinguished. After all the Forfeiture Order is Interim not Absolute. So the Plaintiffs/Applicants have a legal right over the Res. They therefore have a triable issue. The occupation of the Res as confirmed by the Respondents no doubt will cause the Applicants to suffer damages and in conveniences.

The conversion and occupation of the Res using same for office accommodation as the Respondents averred has placed the balance of convenience in favour of the Plaintiffs. There is therefore dire need to protect the Res from further defacing pending the determination of the substantive Suit.

The Applicants seeking for an Order of Court to appoint an Estate Valuer is only to value the worth of the building materials which they claimed was destroyed by the Respondents' occupation of the Res. That does not mean that the quest for an Estate Valuer means that the monetary compensation will be adequate as the Respondents wants this Court to believe.

Again the undertaken to pay damages which the Applicants made sealed the deal in this application. Since the Applicants are ready to pay damages to Respondents if the Application or the Suit in the main turns out to be frivolous, it is a welcome development.

That damages to be paid for the present construction or restructure carried out by the Respondents so far. It is not in doubt that it would be easier to compensate the Respondents for the part of the Res so far occupied at this stage than allowing than allowing the whole Res to be restructured, defaced and grossly altered before the final determination of the issue in the main Suit.

Granting this application at this stage will not in any way affect the determination of the issues in dispute as contained in the face of the Writ.

Granting of the Reliefs sought in this application will not “Kill” the substantive Suit prematurely. Infact, granting the Order as sought will enable both Parties state before the Court their respective stance in the Suit. Then and only then will the Court be able to fully and finally consider and determine the issue in dispute in this case and come out with its final decision.

Without more this application is meritorious.

It will be in the best interest of justice at this stage to grant same since the Plaintiffs have with the Affidavit and documents attached and the argument in the Written Address establish that there is dire need to preserve the Res, pending the final determination of the Issues in the Substantive Suit after giving both Parties time to state their respective cases.

The said application is meritorious and the Court hereby grant the Order to wit:

The said reliefs 1 & 2 are granted

Since the Motion on Notice has been moved and granted by the Court, there is no point granting the Order sought in the Motion Exparte as the same Reliefs are subsumed into the Reliefs in the Motion on Notice on which this Court has granted the Reliefs as sought.

On appointment of an Estate Valuer for the evaluation of the cost of the Building materials which the Defendants alleged were vandalized by Respondents and their agents and privies, the Court hereby order that:

Tim Anago & Co is hereby appointed as the independent Estate Valuer for that purpose.

This is the Ruling of this Court.

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

K.N. OGBONNAYA
HON. JUDGE