

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/1106/2018

BETWEEN:

HEALTH CARE BUSINESS SUPPORT SYSTEM LTD.....CLAIMANT/APPLICANT

VS

SHALSHIGA PROPERTIES LTD.....DEFENDANT/RESPONDENT

RULING

By a Motion on Notice dated 27/4/2018 with Motion No. M/3418/18 filed on 27/4/18 brought pursuant to Section 6(6) & 36 of the 1999 Constitution, Order 27 and Order 42 Rules (1) & (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, the Applicant herein prays for the following Orders;

- (1) An Order of this Honourable Court ordering the Defendant/Respondent to re-connect the electricity supply it disconnected in the premises being occupied by the Claimant/Applicant, pending the hearing and final determination of the substantive suit.

- (2) An Order of Interlocutory Injunction restraining the Defendant/Respondent either by itself, agent, surrogates or any other persons whatsoever from further disconnecting or tampering with the Claimant/Applicant's Electricity supply pending the hearing and final determination of the substantive suit.
- (3) An Order of Interlocutory Injunction restraining the Defendant/Respondent either by itself, agents, privies, surrogate or any other persons whatsoever from harassing, intimidating and or disrupting the business activities of the Claimant/Applicant pending the hearing and final determination of the substantive suit.

The grounds for the application as stated in the Motion paper are;

- (i) The Claimant/Applicant entered into a tenancy Agreement with a Limited Liability Company known as Chebar Real Estate Ltd for a one year period that commenced from 1st February 2017 to 31st January 2018.
- (ii) The Plaintiff was in peaceful occupation of the property until sometime in January 2018 when the Defendant/Respondent disconnected its electricity supply.
- (iii) The Claimant/Applicant has no contractual whatsoever with the Defendant/Respondent.

- (iv) All efforts made by the Claimant/Applicant for the Defendant/Respondent to re-connect its electricity supply had proved abortive.
- (v) An Order of this Honourable Court is required by the Claimant/Applicant to mandate the Defendant/Respondent to re-connect the electricity supply and to also restrain it from any continuous act of tampering with the electricity supply, thereby disrupting the business activities of the Claimant/Applicant and to further restrain it from carrying out its threat of locking up the Plaintiff/Applicant's place of business.

In support of the application is a 6 Paragraph affidavit deposed to by one Philip Chinedu Nkpanu Esq a Legal Practitioner in the law firm of Applicant's Counsel, also filed in compliance with the Rules is a Written Address in support of the application and adopts same as oral argument.

The processes were served on the Respondent along with Hearing Notice. Respondent filed her counter – affidavit on 25/6/18, but failed to be in court to adopt the said response to the application. The implication of the failure of the Respondent to be in court is that the processes filed and deemed abandoned and the application remains unchallenged. The court is however empowered to consider its record.

In their Written Address, Ashi Michael Ashi Esq for Applicant formulated a sole issue for determination that is;

“Whether the court can exercise its discretion in favour of the Plaintiff/Applicant by granting the reliefs sought”.

Submits that the grant or otherwise of this application is at the discretion of court, refer to Saraki Vs Kotoye (2001) 48 WRN @ 7 Ratio 6, Obeye Memorial Hospital Vs A.G of the Federation (2000) 44 WRN 138 @ 141 Ratios 1,4 and 6, that the application fulfills the conditions required for the grant of injunction contained in the above cited authorities.

Submits further that by their affidavit pleadings, Applicant have established a substantial issue to be tried, to warrant the grant of the application. Refer to the cases of Kufeji Vs Kogge (1961) 1 All NLR 113 @ 114 and Obeya Vs A.G. He urge court to grant the application.

I have carefully considered the affidavit evidence of the Claimant/Applicant, the written submission as well as the judicial authorities cited and I find that there is only one (1) issue for determination;

“Whether or not the Applicant has placed before the court sufficient facts for the grant or otherwise of the reliefs sought”

First, the consequence of the Respondent not challenging the application is that the depositions of the Claimant/Applicant is deemed admitted and must be taken as true. See Gane Vs F.R.N (2012) All FWLR (PT. 617) 793 @ 800 Paras A – F, I shall therefore deem it as true and correct, the facts contained in the Applicant’s affidavit.

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue of the case is finally

determined. Its object is to keep the matter in status quo, where the case is pending for the purpose of preventing injury to the Applicant prior to the time the court will be in a position to either grant or refuse the application. In doing so, the court is invited to exercise its discretion and which must be done judicially and judiciously. This discretion is exercised in relation to the facts and circumstances of the case before the court; hence to be entitled to the reliefs sought, the Applicant must disclose all material facts.

On the nature of the grant of an Injunction relief, the court in the case of Mohammed Vs Umar (2009) All FWLR (PT.267) 1510 @ 1525 – 1524 Paras H – D stated thus;

“Interlocutory Injunction is not granted as a matter of grace, routine or course on the contrary, the Order of Injunction is granted only in deserving cases based on the hard law and facts”

In the exercise of that discretion, the court is guided by the principles stated in a plethora of judicial authorities, that is;

- (1) Whether there are triable issues at the trial of the substantive suit.
- (2) Whether the balance of convenience is on the side of the Applicant.
- (3) Whether the Applicant have a right to be protected.
- (4) Whether the Applicant shall suffer irreparable damage if the Order of Interlocutory is not granted pending the determination of the main Suit. See the case of Kotoye Vs CBN (1989) (PT. 98)

149, see also *Akinpelu Vs Adebore* (2008) All FWLR (PT. 429) 413 420 Ratio 7.

In the instant application, the evidence of the Applicant in support of the application for injunctive reliefs is that, the Defendant/Respondent disconnected her electricity supply while being in possession of property, subject matter of Exhibit "A". The Defendant/Respondent with whom Applicant had no contractual relationship with had written to the Applicant on 17/1/18 offering her a lease on the same property currently being occupied by the Applicant. It is also the evidence of the Applicant that the Defendant/Respondent informed Applicant of increment of the rent payable on the property, the said increment had been done without prior discussion with the Applicant. After the Defendant/Respondent's letter to the Applicant dated 17/1/2018, Defendant/Respondent started disrupting Claimant/Applicant's business activities in the property by disconnecting the electricity to it. Claimant/Applicant complained to one Mr. Dauda Kwaji, Managing Director, of Defendant/Respondent, who admitted that he ordered the disconnection of electricity supply to the property occupied by the Claimant/Applicant and since her business was shot down, Claimant/Applicant has been incurring a daily loss of the sum of ₦550,000 (Five Hundred and Fifty Thousand Naira only). All efforts made by the Applicant to made Defendant/Respondent re-connect her electricity supply had proved abortive, hence this action.

In the determination of this application the court must take a look at its record particularly the Statement of Claim of the Applicant and this the court is empowered to do, see the case of *Agbareh Vs Mimra* (2008) All

FWLR (PT. 409) 559, this is necessary to enable the court effectively determine whether or not the Suit establishes a triable issue.

I have considered the case of the Claimant/Applicant as made out in her Statement of Claim vis-à-vis the facts deposed to in the affidavit in support of this application and I find that the grant or otherwise of this application may necessitate the court to touch on the substantive issues to be triable in this interlocutory application. And this the court has been called upon to refrain from so doing. In the case of Adeyemi Vs Oladapo (2003) All FWLR (PT. 155) 575 @ 787 the court held that;

“In an application for Interlocutory Injunction pending the determination of the substantive suit, the court should refrain from resolving the very issues in the substantive suit. To do so would amount to prejudging the substantive matter in respect of which evidence was yet to be led”

Also in the case of Okomo Vs Umoetuk (2005) All FWLR (PT. 248) 1741 @ 1760 Paras F – G the court stated;

“Where from the circumstances of the case, it is inappropriate to grant an Order of Interlocutory Injunction the judge may make an order for accelerated hearing of the case so as to dispose of the matter straight away”

From all of these and having found that the grant or otherwise of this application may necessitate the court to delve into the substantive issue of the case, this court hereby holds that it is inappropriate to grant this

application and accordingly makes an order for accelerated hearing of the case.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

14/1/2020

APPEARANCE:

ASHI MICHAEL ASHI FOR THE CLAIMANT/APPLICANT

DEFENDANT/RESPONDENT NOT REPRESENTED