

**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/PET/164/18

BETWEEN:

HENRY FOLARANMI.....PETITIONER/RESPONDENT

VS

TOYIN FOLARANMI.....RESPONDENT/APPLICANT

RULING

By a Motion on Notice dated 14/5/2019 and filed same day, with Motion No. M/643/19 brought under the inherent jurisdiction of this Honourable Court; Respondent/Applicant seeks the following reliefs;

- (1) An Order of this Honourable Court restraining the Petitioner/Respondent from changing the name on the title document of all the properties listed below;
 - (a) The first house is at Jubilee Road by Bakau Street, comprised of three 1 bed room flat each and shops.
 - (b) The second house by Bakasi Street at the back of the first house, comprised of two units of 2 bedroom flat each and a single 1 bedroom flat.

- (c) Property located at Masaka – Zone 4, new site in front Beatitude School (Three Units of 3 bedrooms flat each and 1 room self-contain.
 - (d) Property located at Lagos – Alalise, Ibeju Lekki Green Estate consisting of 2 house in the same compound which includes a 2 bedroom flat and 1 room apartment as well as four – self contain apartment each.
 - (e) Property at Karu Extension II located at 32 Dominik Omokundo Street comprised of a four bedroom bungalow flat and five self contain each.
 - (f) Property at Nasarawa – John Co. Street, behind Commissioner house, comprised of a five unit of a room self – contain each to any other name then they bear presently pending the determination of this Petition.
- (2) An Order of this Honourable Court restraining the Petitioner/Respondent from ejecting the Respondent/Applicant from the house at Plot 315A, Karu Extension 11 FCT, Abuja where the Respondent/Applicant presently resides with their children presently.
 - (3) An Order of this Honourable Court restraining the Petitioner/ Respondent from disallowing Respondent/Applicant to continue to collect rent from the tenants occupying the property situate at from (Sic) which rent collection the Respondent/Applicant

has been securing little periodic income which she feeds their children with.

- (4) An Order mandating the Petitioner to assume responsibility for the upkeep, school fees, feeding medical bills of the children of the marriage as well as that of the Respondent pending the determination of this suit.
- (5) And the omnibus relief.

In support of the application is a 29 Paragraph affidavit deposed by the Applicant also filed a Written Address and adopt same as oral argument in support of the application. On receipt of Petitioner/Respondent counter-affidavit, Respondent/Applicant filed a further and better affidavit with Exhibits attached on 26/6/19.

Responding, Petitioner/Respondent filed a 33 Paragraph counter-affidavit with two (2) Exhibits attached and a Written Address in compliance with the Rules of Court.

In the written submission of Applicant, J.K Kolawole Esq for the Applicant formulated a sole issue for determination, that is;

“Whether having regard to the entire circumstances of this Motion, this Honourable Court should not exercise its discretion in favour of the Applicant by granting the prayer of Interlocutory Injunction sought”

Applicant’s Counsel urge court to grant the relief sought by the Applicant in the interest of justice having satisfied the conditions for the grant of the

application as stated in the case of *Obeya Memorial Hospital Vs A.G Federation* (1987) 3 NWLR (PT. 60) 325, also refer to Section 6(6) (a) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) *Adewale Vs Governor of Ekiti State* (2007) 2 NWLR (PT. 1019) 634 @ 652 Paras C – D, *Sulu Gabari Vs Bukola* (2004) 1 NWLR (PT. 853) 122 @ 135 *Dekit Const Co. Ltd Vs Adegbayo* (2010) 15 NWLR (PT. 1217) 590 @ 606, *Christlies Plc Vs Madekodunmi* (2008) 16 NWLR (PT. 1113) 324 @ 352. *Leasing Co. (Nig) Ltd Vs Tiger Ind Ltd* (2007) 14 NWLR (PT. 1054) 346 @ 374 Paras C – H, *Military Governor, Lagos State & Ors Vs Chief Emeka Odumegwu Ojukwu* (1986) All NLR 233 – 245 and *Peter Obi Vs INEC & Ors* (2007) 11 NWLR (PT. 1046) 565 @ 694 Paras D – F.

In the same vein Petitioner/Respondent's Counsel formulated a sole issue for determination in their Written Address which is;

“Whether the application is competent and Respondent/Applicant is entitled to the grant of the reliefs sought?”

Submits that failure of the Applicant to state facts which are required to sway the mind of the court in granting the application renders the application incompetent and a mere academic exercise. Refer to *Kotoye Vs CBN* (1989)1 NWLR (PT. 98) 419 @ 422, *Hakeem Vs Habeeb* (1992) 6 NWLR (PT. 247) 266 @ 289 *Okechukwu Vs Okechukwu* (1989) 3 NWLR (PT. 108) 234.

Submits further that the reliefs being sought by the Applicant calls on the court to embark on a voyage of discovery to ascertain this Address and location of the properties, referred to *Oladejo vs Adeyemi* (2000) 3 NWLR

(PT. 647) 25. Asam Vs Okposin (2000) 10 NWLR (PT. 676) 659, Adelake Vs Lawal (2014) 3 NWLR (PT. 1393) 1 @ 6.

Submits that where an application of this nature is not certain about the location upon which the injunction is to be granted such an application should be refused. Refer to the case of Ideozu Vs Ochama (2006) Vol. 4 M.J.S.S 91 @ 96 – 97 Ratio 5, Okoya Vs Santili (1991) 7 NWLR (PT. 206) 753 @ 765 and Ladoke & Ors Vs Olubayo & Anor (1992) 8 NWLR (PT. 261) 605 @ 624. Urge court to dismiss the application.

Having carefully considered the affidavit evidence of the parties, the submission of both counsel as well as the judicial authorities cited the court finds that only one issue calls for determination that is;

“Whether or not a case has been made out by the Applicant to warrant the grant of this application”

The grant or otherwise of an application of this nature is at the discretion of court, and in the exercise of that discretion, the courts overtime is urged to do so judicially and judiciously taking into cognizance that facts before it. See Ajuwa Vs SPDC Nig Ltd (2012) All FWLR (PT. 615) 200 @ 219 Paras H – E; see also Tanko Vs State (2009) 4 NWLR (PT. 1131) 430.

An Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. The objects is to keep the matter in status quo while 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 deny permanent relief on the merit. See Yusuf Vs I.I.T.A (2009) 5 NWLR (PT. 1133) 39 Para A – B.

In an application for Interlocutory Injunction it is not necessary that Applicant must make a case as he would on the merit. It is sufficient that he should establish that there is a serious issue to be tried. It is unnecessary to determine that legal right to a claim since at that stage there can be no determination, because the case has not been tried on the merit. It is on this basis the court will consider the application.

In *Kotoye Vs CBN* (2001) All FWLR (PT. 49) 1567 @ 1576, the Supreme Court set out certain guidelines to be followed by the court in deciding whether or not to grant Interlocutory Injunction amongst these factors to be considered are;

- (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 damages if the Order of Interlocutory Injunction is not granted pending the determination of the main suit.

See also *Yusuf Vs I.I.T.A* (Supra) and *Owerri Municipal Council Vs Onuoha* (2010) All FWLR (PT. 538) 896 @ 898.

On whether there are triable issues at the main trial, the position of the law is that all the court need to establish, is that the claim is not frivolous or vexatious.

From the facts stated in Paragraph 19 and 20 of the Applicant's supporting affidavit, there are triable issues disclosed. However it is a fundamental principle of law that in the determination of an interlocutory application as in the instant the court should refrain from commenting on or determining any of the issue in dispute in the substantive case. See *Akinrimisi Vs Maersk Nig Ltd* (2014) All FWLR (PT. 713) @ 1933, *Adeleke Vs Lawal* (2014) All FWLR (PT. 710) 1220 @ 1228.

A cursory look at this instant Petition, Paragraphs, 24, 25 and the reliefs sought in the Respondent/Applicant's Cross-Petition shows that the reliefs sought in this application are encapsulated in those Paragraphs stated above and are therefore issues which will be determined in the substantive Petition. And as earlier stated, courts are enjoined to refrain from making pronouncement on matters before it which are subject for the main trial and in my view, this application is inviting the court to make a pronouncement on issues that are matters for the substantive case which the courts are urged to refrain from. It is on this basis I shall refuse this application. I so hold. Rather than seek these reliefs, the Applicant should press for accelerated hearing of this Petition.

In conclusion, this application is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

21/1/2020

J. O HORN ESQ FOR THE PETITIONER/RESPONDENT

A.M. SUMAILA ESQ FOR THE RESPONDENT/APPLICANT