

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 11 JABI, FCT – ABUJA**

BEFORE: HON. JUSTICE O.C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/240/2019

MOTION NO: M/777/19

BETWEEN:

SUPER STRUCTURES LIMITED.....CLAIMANT

AND

1. ASHER INFORMATION SERVICES LTD

2. PRINCE ISAAC OMOLUWA

3. UNKNOWN PERSONS.....DEFENDANTS

RULING

By a Motion on Notice dated 3/11/2019 and filed same day with Motion Number M/777/19, brought pursuant to Order 43 Rules 1 (1) 42 (8) of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Hon. Court, praying for the follows:-.

- (1) **AN ORDER** of Interlocutory Injunction restraining the Defendants/Respondents, their agents, servants or privies however described or anybody else acting on their behalf from unlawfully trespassing continuing and/or erecting any structure on **Plots 1405 and 1406 Sabon Lugbe East Layout, Abuja** pending the hearing and determination of this Suit.

(2) And for such further order(s) or Orders as this Hon. Court may deem fit to make in the circumstances.

The Motion is supported by a 19 (Nineteen) paragraphs affidavit with Exhibits A& B attached and deposed to by Awolaran Sunkanmi Bayo Property Manager of the Claimant/Applicant. Also filed a Written Address and adopts same as oral submission.

The processes were served personally on the 1st and 2nd Defendants on 12/11/2019 while the 3rd Defendant was served on 19/11/2019 by substituted means to wit: by pasting on the wall/gate of Plots 1406 Sabon Lugbe East Layout, Abuja.

The 1st/2nd Defendants were represented by I.E. Kalu Esq who confirmed receipt of service of the court process and informed court that 1st/2nd Defendants/Respondents are not objecting to the application.

3rd Respondent was not in court and was not represented by counsel and did not file any response to the application served on them.

The implication of the 3rd Respondent not filing any response is that the application before court stands unchallenged and uncontroverted. In *Gana Vs FRN* (2012) ALL FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

“Where an affidavit does not attract a counter=-affidavit, the facts deposed to therein have been admitted and must be taken as true and correct”.

See also the case of *CBN Vs Igwilo*(2007) 15 NWLR (PT. 1054) @ 406.

In the Written Address of the Applicant, Iyaji Patrick Esq of counsel formulated a sole issue for determination, that is;

“Whether by the facts and circumstances of this case the Plaintiff has disclosed sufficient facts to warrant the grant of the interlocutory injunction pending hearing and determination of this case?”

In summary the submission of Claimant/Applicant is that the claim of seeking an Order of Injunction is to protect an existing legal right with the object of keeping matters in status quo. It is geared towards protecting the Res and peace pending the hearing and determination of the substantive suit. Refer to Ita Vs Nyong (1994) 1 NWLR (PT. 318) 56; Ogunro Vs Duke (2006) 7 NWLR (PT. 978) 130 @ 1342 Ratio 1 and by the affidavit in support of the application, Claimant/Applicant have disclosed an existing legal right which is being threatened by the Defendants. Urge court to exercise its discretion judicially and judiciously in the grant or refusal of the application, refer to Obeya Memorial Specialist Hospital Ltd Vs Attorney General of the Federation & Anors (1987) 7 SC 52 and Nat Merchant Bank Plc (2002) 1 NWLR (PT.748) 333.

Submits further that the order sought is pending the determination of the Suit before the court. Refer to Obeya Memorial Hospital Vs A.G. Federation (Supra), Ojukwu Vs Governor of Lagos State (1986) 3 NWLR (PT.26) 39 & Kotoye Vs CBN (1989) 1 NWLR (PT. 98) 419. Urge court to consider the guiding principles in the grant of the injunction stated in the case of Uket Vs Ikpa (2006) 8 NWLR (PT 983) 464 @ 466 Ratio 1 and grant the application

Having carefully considered the affidavit evidence of the application, which remained unchallenged and uncontroverted the attached Exhibits, the submission of counsel as well as the judicial authorities cited, the court finds that there is only one (1) issue that calls for determination which is;

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

An Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is fully determined. The object 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 IITA (2009) 5 NWLR (PT.11330 39 Paras A – B.

In an application for Interlocutory Injunction, it is not necessary that Applicant must make out 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 the 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 this 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 damage if the order of Interlocutory Injunction is not granted pending the determination of the main suit.

See also Yusuf Vs IITA (Supra) and Owerri Municipal Council Vs Onuoha (2919) ALL FWLR (PT.539) 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 vexations.

From the facts stated in the affidavit of the Applicant particularly in paragraphs 4, 5, 6, 7,9, 11 and 14 clearly shows that there are issues to be tried. The success or otherwise of it is not the function of the court to resolve at this stage but for the main suit.

On the issue of whether the Applicant will suffer irreparable injury if the application is not granted or whether the balance of convenience is in favour of the Applicant, this is an area where the discretion of the court comes to play. Judicial discretion is not a one way traffic, it takes into consideration the competing rights of the parties to justice. It must be based on facts and guided by the law or the equitable decision of what is just and proper under the circumstance. In this instant application, the Applicant here by her

affidavit shown that she would suffer irreparable injury if the application is not granted. See Paragraph 15 and 17 of the supporting affidavit. Though it is not for the court to determine the merit of the case at this stage. It is the view of the court that the Applicant have by her affidavit evidence shown clearly that she would suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to the protected, from Paragraph 2, 4 and 5 of the supporting affidavit and Exhibit "A" and "B" and the claim before this court, the Applicant have stated his legal rights and in the court's view they are rights worthy of protection by this court.

In all of these the Defendants/Respondents who were duly served with the process of court did not react to the Motion. The 1st/2nd Defendants/Respondent's counsel I.U. Kalu who was in court informed court that they are not opposed to the Motion. The implication of this is that the facts contained in the affidavit evidence before this court are deemed true and the court can act on it. They stand unchallenged and uncontroverted. It is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See the Nigeria Army Vs Warrant Officer Bunmi Yakubu 2013 LPELR 20085 – SC – Fabiyi (JSC) stated;

"It is basic that unchallenged evidence stands. The court should accept same and act on it. Per Fabiyi (JSC) @ Pg 11 Para D – F.

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law, the court finds that the Claimant/Applicant have succeeded in making a case deserving of the grant

of the reliefs sought. The application succeeds. It is hereby ordered as follows:-

(1) AN ORDER of Interlocutory Injunction restraining the Defendants/Respondents, their agents, servants or privies however described or anybody else acting on their behalf from unlawfully trespassing continuing and/or erecting any structure on **Plots 1405 and 1406 Sabon Lugbe East Layout, Abuja** pending the hearing and determination of this Suit.

This is the Ruling of this court.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

21/1/2020

S.T. GBAA FOR CLAIMANT/APPLICANT

I.U. KALU– FOR 1ST/2ND DEFENDANTS/RESPONDENTS

NO REPRESENTATION FOR 3RD DEFENDANT/RESPONDENT

