IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS WEDNESDAY, THE 19TH DAY OF FEBRUARY 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/89/19
M/274/19
BETWEEN:

CHIEF A.O. SUCCESS.....CLAIMANT

AND

1. **HON. MINISTER OF FEDERAL CAPITAL TERRITORY ABUJA**
2. **FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)** } **DEFENDANTS**

RULING

By a motion on notice dated 21st October, 2019, the Claimant/Applicant seek for the following reliefs:

1. **An order of interlocutory injunction restraining the Defendants/Respondents either by themselves, agents, servants, officers, or any persons howsoever described from entering into, demolishing, reallocating, constructing or trespassing into the Claimant land known as Plots 159-165 in Wuye AMAC Area Council F.C.T Abuja pending the hearing and determination of the suit.**

2. **And for such further orders this Honourable Court may deem fit to make in the circumstances.**

The grounds of the application as contained on the motion paper are as follows:

1. **That the claimant acquired interest on Plot 159-165 in Wuye AMAC Area Council FCT Abuja since 1992 and as such the owner.**

2. **That the claimant who becomes (sic) the owner of Plot 159-165 since 1992 has been in possession till date.**

3. **That the Defendants are now trespassing in to the claimant Plot 159-165 and threaten the claimant with demolition quit notice.**

4. **That the order of this court is required to stop the Defendant from demolishing the Claimant property at Plot 159-165 pending the determination of the suit filed before the court.**

5. **That the balance of convenient (sic) is in favour of the grant of this application.**

6. **That the damage would not be adequately compensation for the Claimant.**

7. **That the claimant has made undertaken as to the payment of damages if this application turn out to be frivolous.**

8. **That the Defendant would not be prejudice in any way.**

9. **That it is in the interest of justice to grant this application.**

In support of the application is a nine(9) paragraphs affidavit with nine(9) annexures marked as **Exhibits A-H.** A written address was filed in compliance with the Rules of Court in which one issue was raised as arising for determination to wit:

"Whether the Claimant/Applicant is entitled to the relief sought and or whether this Court can grant the Claimant/Applicant application?

The address which forms part of the Records then dealt with the well known and settled principles governing the grant of injunction and it was contended that on the materials supplied by the Applicant, that he has met the required threshold of requirements to enable the court grant the orders sought.

The Defendants from the records were served with both the originating court processes, the extant application for injunction and hearing notice which they acknowledged receipt on 21st November, 2019. The proof of service filed by the bailiff of Court equally confirms service of these processes. The Defendants have so for not filed any process in opposition and have also not appeared in court.

At the hearing, Ogbaje Josiah Anas, Esq., of counsel relied on the paragraphs of the supporting affidavit and adopted the submission contained in the written address in urging the court to grant the application.

Now as stated earlier, the Defendants have so far not taken any steps in this matter or filed a counter-affidavit to the extant application. The clear implication of the failure of to react one way or the other to the application or to specifically file a counter-affidavit meant that the said affidavit in support of Applicants application stand uncontroverted and unchallenged. It is now trite principle of general application that where averments in an affidavit are neither challenged nor controverted, the court is under a duty to take the facts deposed therein, where cogent and credible, as established. See the cases of **B.O.N. Ltd vs. Aliyu (1999) 3 NWLR (pt 612) 622 and Okonkwo vs. Onovo (1999) 4 NWLR (pt. 597) 110.**

While in law, the above position on failure to file a counter affidavit cannot be faulted, it is equally important to state that the fact that an affidavit is unchallenged does not mean that the court will simply accept the contents of the affidavit; the court has a duty to look at the unchallenged affidavit to see if it is sufficient to determine the claim made by applicant. See **Martchem Industries Nig. Ltd. vs. MF Kent West Africa Ltd. (2005) 129 LRCN 1896 at 1899.**

Flowing from the above, the duty of the court is to examine the reliefs sought vis-à-vis the factors guiding the grant of the orders sought and then to see whether the applicant has made a good case for the exercise of the court's discretion in his favour.

I have here carefully read the processes filed by the claimant and the submissions made and in the course of this ruling and where necessary, I will refer to specific submissions. The issue to be resolved by this application falls within a very narrow legal compass with very well defined principles. The facts and justice of each matter dictates whether the order(s) sought will be granted or not. It must also be borne in mind that at this stage, there is no trial on the merits. Let me perhaps state the principles in greater detail.

Now the grant or otherwise of an interlocutory injunction involves the exercise of the court's undoubted discretion which discretion must be exercise judiciously and judicially. The basis for the grant of an injunction is the need to protect the applicant by preserving the circumstances that are found to exist at the time of the application until the rights of the parties can be finally established. This need is weighed against the corresponding need of the respondents to be protected against any injury resulting from having been prevented from exercising their legal rights for which they could not be adequately compensated in damages if in the end the substantive case is decided in their favour. See **Odutan V General Oil Ltd (1995) 4 NWLR (pt.387) 1 at 12 H – 13 A**. The essence of the injunctive relief is the preservation of the status-quo. The order is given in the light of the threat, actual or perceived, to the applicant's rights. The order is put in place to forestall irreparable injury of the applicant's legal or equitable rights. See **Madubuike V Madubuike (2001) 9 NWLR (pt.719) 698 at 708 A-C.**

In exercising its discretion, the court considers the existence or otherwise of the following factors amongst others to wit:

I. Existence of legal right or interest in the subject of litigation.

II. Threat to or violation of the right or interest.

III. Balance of convenience.

IV. Adequacy of damages.

V. Conduct of the parties.

VI. Undertaking as to damages

See **Akapo V Hakeem Habeeb (1992) 6 NWLR (pt 277) 289; Kotoye V Central Bank of Nigeria (1989) 1 NWLR (pt 98) 419; Oduntan V General Oil (Supra).**

Now on the issue of existence of a legal right in the subject of litigation, the court's attention has been drawn to the averments in support of the affidavit and the annexures. I have here carefully examined the affidavit but there is here absolutely no synergy between the paragraphs and the attached annexures. The annexures were clearly haphazardly arranged. Put another way, the exhibits were not arranged in any particular chronological order. Some were not even marked. In some cases, there is no discernable nexus between the annexure mentioned with the paragraph of the affidavit on which it is predicated. In cases, the paragraph refers to an annexure and the particular annexure is not attached at all or refers to a different matter entirely. It is difficult to situate how a court is expected to exercise its discretion judicially and judiciously in such unclear, cavalier or perfunctory manner that the extant application was represented. Whether this will impact on the application, we shall soon see as I seek to decipher and situate the basis of the extant application.

Again, the point must be underscored even at the risk of prolixity that the failure of Defendants to file a counter-affidavit does not obviate the need for the applicant to present credible materials of value to allow for the grant of the application.

Now the subject matter of dispute and which situates the substantive claim of claimant is in respect of ownership of **Plots 159-165 at Wuye Abuja**. The claimant claims he is the owner. In paragraphs 3(b) and (c), of his affidavit, Claimant avers that a committee was set up by 1st Defendant in 2002 to screen lands allocated in FCT and he was invited and that during the screening exercise, his original title documents including those of Plot 159-165 were collected by the committee and that they acknowledged receipt of this title documents vide **Exhibit B.** I have carefully gone through the entire haphazardly arranged exhibits and the document marked as **Exhibit "B"** is a letter from the then Minister F.C.T to the Executive Chairman EFCC and there is absolutely nothing in the letter acknowledging receipt or collection of the title document of Plot 159-165 from claimant. In paragraph 3(d), claimant stated that the committee completed their work and submitted a report which did not indict him. The report of the committee was referred to as **Exhibit C** but there is no annexure marked as **Exhibit C** and

indeed reading the entire annexures attached, there is no such report of any committee exonerating claimant over any matter.

The Claimant also in paragraphs (3e-f) of his affidavit talked about a petition written by 1st Defendant vide **Exhibit D** to EFCC which led to his arrest and seizure of his land and bank related documents. That during the investigations, he listed all the plots allocated to him including Plot 159-165 and that the Defendants confirmed this list of plots vide **Exhibit E.** What is interesting here is that the document referred to now as **Exhibit D,** the petition of 1st Defendant is the same document already used or referred to as **Exhibit B.** Further, there is no document marked as **Exhibit E** in the annexures and indeed there is nothing denoting where EFCC asked claimant to list the plots allocated to him by Defendants and where Defendants confirmed the allocation as asserted by claimant.

Now what is strange is that in paragraph 3(h), the narrative of seizure of title documents changes and the claimant stated that the case went to the Federal High Court from EFCC where the court ordered that **"all (his) properties including title documents, cars, be released to me, which they did comply even though they could not account for some of them but the release of the survey plans and the acknowledgment with other documents by EFCC vindicated me of allegations."** There was nothing attached to show that EFCC filed any case at the Federal High Court or that there was any order for release of anything by the Federal High Court.

However by **Exhibit F,** there was a court order by the **High Court F.C.T** for the release of the documents allegedly seized by Defendants. The claimant said there was no full compliance but sadly he did not indicate or streamline clearly and positively the documents released to him and those that allegedly could not be found. The court cannot obviously speculate or such important matters.

In paragraphs 3(1), the claimant referred to certain **Exhibits G1-G2** which he said cleared him of any wrong doing but there are no annexures attached to the affidavit as **Exhibits G1-G2** and there is indeed no document from Defendants clearing the claimant of any alleged wrong doing.

I have at length gone through the affidavit and annexures to properly and precisely situate the prima facie legal or property right of claimant in the property in dispute and even at this early stage, it was not an easy task on the materials supplied. There is nothing to show at this point any statutory allocation to any precise plot or

plots of land. At the risk of sounding prolix, none of the annexures denotes a precise allocation to plots 159-165, Wuye by AMAC Area Council FCT.

The certificate of judgment of the F.C.T High Court earlier referred to and attached vide **Exhibit F** refers generally to certain title documents which it ordered should be released to the claimant. The claimant himself averred that the order was complied with though not fully without stating which of the title documents were released to him and when and those that were not released to him. It must be noted that this is a 2012 judgment and it is therefore surprising that assuming some of the title documents were not released, why has the claimant not taken steps(s) since then, a period of about seven years now, to ensure compliance with the orders of court. I leave the matter at that but the failure to attach these title documents denoting allocation to the disputed plots has undermined a fundamental pivot or pillar on which grant of injunction is predicated. I also note that some unmarked title deed plans to Plot 164, 163, 159 and 165 were attached to the affidavit. These plans were not marked or stamped by the Commissioner of Oaths. There competence is therefore of doubtful validity and cannot be considered in the circumstances. Even if the court was minded to look at them, these plans bear different names and none has the name of applicant and most importantly a Title Plan Deed is not a statutory allocation of right of occupancy to any land in the F.C.T

The point to underscore is that the proposition that a cognizable legal right must be disclosed in the subject of dispute cannot be a matter of guess work or speculation. To avoid any confusion, I must therefore reiterate the principle that at this stage, it is not necessary to determine the legal right to a claim since at this stage there cannot be such determination because the case has not been heard on the merit. See **Obeya Memorial Specialist Hospital V. A.G Fed (1987)3 N.W.L.R (pt.60)235**. It is however equally correct that an order of injunction inures only to restrain a threatened wrong to a legal right recognizable by the court. See **Akibu V. Oduntan (1992)2 N.W.L.R (pt.171)1; Akapo V. Hakeem (1992)7 S.C.N.J 119; DYK Trade V. Omnia (2000)7 S.C (pt.1)56; Gouriet V. Union of Post Officers Workers (1977)3 AII ER. 70.** Indeed the Supreme Court in **Akapo V. Hakeem (supra)** stated that:

"Inconvenience without a property right in the subject matter of the complaint is not enough to entitle an applicant to an order of injunction."

Guided by these principles, I must state clearly again that I am not determining finally as between the parties, the legal right, the violation of which is the subject

matter of the claim in the originating process. Far from it. However as opined by the learned author **Fidelis Nwadialo (SAN)** of blessed memory in his book **Civil Procedure in Nigeria (2nd ed.) at Page 589,** the facts averred in the affidavit must be such as can establish the existence of such right.

The bottom line and the authorities are clear on the minimum threshold which is that an applicant seeking an order of injunction must show a cognisable legal right. If that is the position and we are *adidem* here, how then can this cognisable right be disclosed or shown. In my opinion this can only meaningfully be done on the materials supplied in support of the application. Perhaps I need refer to some other decisions of our revered superior courts on this point. In **Adenuga & Ors V. Odumeru & Ors (supra)1 at 13-14** *Uwaifor J.S.C* stated as follows and I will quote him *in-extenso* thus:

"In an application for an interlocutory injunction, the plaintiff must show an existence of his right which needs to be protected in the interim. He must at the same time satisfy the court that there is a real question to be tried in the substantive suit. See Egbe V. Onogun (1972)1 AII N.L.R 95 at 98; (2001)5 SCM 188 at 189. This does not require the court to determine the merit of the plaintiff's entitlement to the claim. But it places on the plaintiff an initial burden. It is the burden of showing that there is a serious question to be tried upon the affidavit evidence (as well with averments in the statement of claim, if any has been filed): see Obeya Memorial Hospital V. Attorney-General of the Federation (1987)3 N.W.L.R (pt.60)325; (2003) 1 S.C.M, 191.

It is necessary to emphasise that it is of vital importance for a plaintiff seeking an interlocutory injunction to adduce sufficiently precise factual affidavit evidence to satisfy the court that his claim for a permanent injunction at the trial is not frivolous; or at any rate, based on the substantive claim, to produce affidavit evidence to satisfy the court in justification of his application for an interlocutory injunction to maintain the status quo. It is only when this has been done that it will become necessary for the court to proceed further with the application to consider the balance of convenience. Otherwise the application ought to be refused at the point the court is not so satisfied."

The respected retired C.J.N, Belgore J.S.C (as he then was) in his contribution stated at page 15 as follows:

"Thus an existence of a right legally capable of being defended must be manifested in the affidavit so as to attract court's discretion to grant an

interlocutory injunction. The affidavit in support of such application must clearly and not superficially indicate the clear interest of the applicant and real possibility of that interest being under threat of either being vitiated or extinguished if the injunction is not granted."

In **Lafferi Nig Ltd V Nal Merchant Bank Plc (2002)1 N.W.L.R (pt 748)333 at 338,** the Court of Appeal stated instructively as follows:

> ***"The essence of the grant of injunction is to protect the existing or recognisable right of a person from unlawful invasion by another. In other words, the claim for an injunction is won and lost on the basis of the existence of competing legal rights. Thus the court has no power to grant injunction where the application has not established a recognisable right''.***

See also **American Cyanamid Co Ltd V. Ethicon Ltd (1975)1 AII ER 50 at 510; Oyeyemi V. Irewole Local Govt. Ikire (1993)1 N.W.L.R (pt. 270)461; Onyesoh V. Nebedun (1992)3 N.W.L.R (pt.229)315.**

All the above authorities emphasise the key element of cognisable legal right; this is necessarily so because the grant of an order of injunction certainly involves the delicate balancing of competing rights of parties.

The narrative in this case on the processes involves the right to possession and ownership in relation to the actions of the allocating authorities. Therefore in such circumstances and in my considered opinion, while an applicant for an order of injunction is no longer expected to establish an indefeasible right to the relief sought at this point, this should not be taken as meaning that the affidavit in support should not contain and condescend on credible facts and necessary documentation in support to sustain or support the reliefs sought. In the context of the present circumstances, bare unclear and convoluted averments without more would not suffice. **It has long been settled that a party must make out his case by the best available evidence**. It is a fundamental principle of our legal system in respect of facts averred that where they are weak, tenuous, insufficient or feeble, then it would amount to a case of failure of proof. A plaintiff whose affidavit does not prove the reliefs he seeks must fail. See **Attorney General of Anambra State v. Attorney General of the Federation (2005) All FWLR (pt 268) 1557 at 1611C; 1607G-H.**

In the light of this failure to cross the threshold of establishing a cognisable legal right, it would appear that this application is compromised. See **Adenuga & ors V Odumeru & ors (2003) 5 SCM 1; Oduntan V General Oil Ltd (supra) 13.**

One more point on the issue of the denotion of a cognizable legal right. As stated repeatedly in this ruling, the property subject of dispute is Plot 159-165 Wuye. Now the alleged threat or the Quit Notice attached vide **Exhibit H** shows it was issued in respect of **Plot 1164** at Wuye District. Paragraph 3(J) of the affidavit states that the Defendants are threatening to come and **"demolish my structure on Plot 159-165." Exhibit H** attached clearly refers to a different plot and not **plot 159-165**. There is nothing before me showing that **Plot 1164** is the same as plot **159-165** and this again shows lack of clarity with respect to the threatened cognizable legal right of claimant which needs to be protected pending the determination of the substantive action.

The only point to add as a word of caution to all parties is that it is now trite principle of general application that no party has the right to take matters into their hands once a matter is in court. A court is at all times the master of the situation. This is very sound principle on which the rule of law and indeed the integrity of the judicial process is predicated. It behoves on all parties therefore to ensure that they do not do anything that would have the effect of foisting on the court a difficult situation or a situation of complete helplessness or render nugatory any orders the court may make when the matter is finally determined.

The memorable words of **Corker J.S.C in Vaswani Trading Co. V. Savalaikh (1972)12 SC 77 at 82** while dealing with principles governing stay applications is relevant and bears repeating as follows:

"All rules governing stay of actions or proceedings, stay of executions of judgments or orders and the like, are but corollaries of this general principle and seek to establish no other criteria than that the court, and in particular the Court of Appeal, should at all times be master of the situation and that at no stage of the entire proceedings is one litigant allowed at the expense of the other or of the court to assume that role."

The above immortal words remain instructive years after they were uttered. The moral simply is that once a matter is subject to the comforting authority of a court of law, there is no more liberty in any one litigant to take steps that would derogate from the authority of the court. I won't say more.

On the whole, the extant application may have its merit but the applicant has here unfortunately not provided in his affidavit evidence sufficient, clear and precise facts to put the court in a commanding height to judicially and judiciously exercise its discretion in his favour.

In law, it is his duty to not only ask in clear terms the reliefs he seeks but to creditably establish same by evidence. These dual related responsibility is critical if a party is to succeed with respect to the reliefs he seeks. The guiding principle or rule is that a court must not grant a party what it has not asked for in clear terms and sufficiently proved. See **Joe Golday Co. Ltd V. Corporative Dev. Bank Ltd (2003)3 SCM 89 at 105.**

In the final analysis, the application on the basis of a clear dearth of credible and clear affidavit evidence unfortunately must fail and it is accordingly dismissed. In the overall interest of justice, I will grant an accelerated hearing of the substantive suit. I call on all counsel, particularly plaintiff's counsel to now act post-haste and ensure that this matter is determined expeditiously without any further delay.

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Hon. Justice A. I. Kutigi

Appearances:

1. Ogbaje Josiah Anas, Esq., for the Claimant/Applicant