

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON WEDNESDAY THE 6TH DAY OF FEBRUARY, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/1117/2019

1. OFILI INNOCENT ----- CLAIMANTS/RESPONDENTS
2. DAKAT OCHUKO

AND

1. RAINBOW WORK STATION
SERVICES LTD -----DEFENDANTS/APPLICANTS
2. REV. JOSHUA IBORO SAMSON

RULING

The Defendants/Applicants filed a motion on notice dated and filed 15th October, 2019 brought pursuant to Order 42 Rule 1, 4 & 8 and Order 43 Rules 1 and 3 of the High Court of F.C.T Abuja (Civil Procedure) Rules 2018, praying the Court for the following:

1. An Order of Interlocutory Injunction restraining the Claimants/Respondents (“the Claimants”), jointly and or severally, their servants, agents, privies or otherwise howsoever called from renting, leasing or selling the property known as and situate at **RWS/HOUSE 7A/DRIVE G AND RWS/MF30003/SMH/HOUSE 7B/DRIVE G, RAINBOW ESTATE, PYAKASA, Lugbe District, Federal Capital Territory, Abuja** pending the determination of the substantive suit.

2. And for such order or further orders as this Honourable Court may deem fit to make in the circumstance.

In support of the application is an 11 paragraph affidavit and a written address as argument in support of the application. The grounds for this application are as follows:

1. The property is lis pendens
2. The Claimants had made undertaking in their writ of Summons dated the 18th day of February, 2019 to maintain status quo.
3. The legal rights and liabilities of the parties over **RWS/HOUSE 7A/DRIVE G AND RWS/MF30003/SMH/HOUSE 7B/DRIVE G, RAINBOW ESTATE, PYAKASA, Lugbe District, Federal Capital Territory, Abuja** (“the property”) are already in issue before this Honourable Court.
4. The defendants had already joined issues with the Claimants on substantial issues raised before this Honourable Court and matter has graciously been adjourned by this Honourable Court for hearing.
5. Unfortunately, before the issues submitted before this Honourable Court could be adjudicated upon, the Claimants are making arrangement to lease or even sell the said property.
6. That if the Claimants are not restrained by this Honourable Court, the Claimants may dissipate the res, thereby foisting on this Honourable Court a fait accompli.
7. That an order of this Honourable Court restraining the Claimants has become necessary so that the Defendants are not made to suffer irreparable loss.

8. That the conduct of the Defendants is such that this Honourable Court could exercise its discretion in their favour.
9. That the balance of convenience is in favour of the Defendants and Claimants will not be prejudiced if the order is granted.
10. The Defendants have undertaken to pay damages should this application turn out to be frivolous.

Learned Counsel in the written address raised a sole issue for determination “whether in the circumstances of this case, an interlocutory injunction can be granted by this Honourable Court against the Claimants”

Counsel submitted that generally when an action is already pending before the court, the parties are to maintain status quo. He cited **Enekwe v. International Merchant Bank of Nigeria & ors (2006) 19 NWLR (Pt. 1013) p. 146**. Counsel submitted that status quo means “the position of things prevailing when the Defendant embarked upon the activities sought to be restrained” relying on the cases of **Fellows v. Fisher (1975) 2 All ER 843** and **Military Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621**. He submitted that it will be most unconscionable, for the Claimants to be contesting the terms of acquiring the said property, and at the same time, putting the property to use or even selling same. Counsel submitted that the Claimants are well aware of the implications of the above which is why they went ahead to make an undertaking to maintain status quo in their writ of summon dated 18th day of February, 2019 and that for a property that is *lis pendens* it is rather a disturbing trend that while the matter is still pending and yet to be determined on the merit, a party to the suit who had made an undertaking to maintain status quo is making efforts to either lease or sell the property. He cited

GTBank v. Garba (2015) LPELR-41656 (CA). Counsel further submitted that if Claimants are not restrained by this Honourable Court, the Claimants may dissipate the res, thereby foisting on this Honourable court a fait accompli and cited **ODEGBO & ORS V. MOFUNANYA & ORS (2016) LPELR – 42107 (CA)**. He also submitted that in addition to the inherent powers of this Honourable Court, the Court is permitted by **Order 42 of the Rules of this Honourable Court** to restrain a party from tampering with the Res, even in the pendency of a suit. Counsel submitted that the law is that he who comes to equity must come with clean hands, the Claimants lack the equitable justification to claim for perpetual injunction as in their reliefs sought, where they themselves are tampering with the res, cited **SEED VEST MICROFINANCE BANK PLC & ANOR V. OGUNSINA & ORS (2016) LPELR – 41346 (CA)**. Counsel submitted that the defendants have fulfilled the basic conditions that will enable this Honourable Court exercise its discretion in his favour and grant this application, he relied on **KOTOYE. C.B.N (1989) 1 NWLR (Pt. 98) 419**. Counsel further submitted that the Applicant has a legal right to be protected which is hinged on the rules of the estate which the Claimants have failed to comply with, he cited **Obeya Memorial Hospital v. A. G. Federation (1987) 3 (pt. 60) NWLR 325**. Counsel also submitted that the Defendants stands to lose more if the application is not granted, **MISSINI & ORS V. BALOGUN (1968) 1 All NLR 318** and that in paragraph 9 of the affidavit in support of this motion for Injunction the defendants has undertaken to pay damages should its defence to this suit turn out to be frivolous, he cited **ONYESOH V. NNEBEDUN & ORS (1992) 3 NWLR (Pt. 229) P. 315**. Counsel urged the Court to exercise discretion in their favour.

The Claimants/Respondents in reply filed a 4 paragraph Counter Affidavit to this application on the 23/10/2019 and a written address annexed. Learned Counsel in the written address raised a sole issue for determination “whether the Defendants/Applicants application is meritorious and ought to be granted”.

In the written address learned counsel submitted that is an elementary principle of law that the grant of an application for injunction is a discretionary remedy and like all judicial discretions, it must be exercised judicially and judiciously, citing **OKOMU OIL PALM COMPANY & ANOR V. HASSAN TAJUDEEN & 3ORS (2016) NWLR (Pt. 1499) 284 at pp. 318 paras. G-H.** Counsel submitted that the defendants have failed to disclose any existing or recognizable right on the property on the motion paper or in the affidavit in support and having no legal or equitable right on the said property cannot seek to protect same, he relied on **S.P.D.C.N. LTD V. C.I.N.R. LTD (2016) 9 NWLR (Pt. 1517) 300 at 339 paras D-F.** Counsel submitted that the facts and circumstances of this case does not avail the Applicant of the exceptions as provided under section 44 of the Constitution. Counsel also submitted that the grant of this application instead of protecting the Claimants as supposedly envisage by the law, would result in serious and aggravated injury on the Claimants. Counsel further submitted that stopping the Claimants from exercising his right to his property as envisage by this application is most respectfully, ultra vires the powers of this Honourable Court. Counsel cited the cases of **CHIEF UJILE D. NGERE & ANOR V. CHIEF JOB WILLIAM OKURUKET ‘XIV’ (2017) 5 NWLR (PT. 1559) 440 at p. 478 and EDILCON NIGERIA LTD V.**

UNITED BANK FOR AFRICA PLC (2017) 18 NWLR (PT. 1596) 74 at p. 102. Counsel submitted that the property situate at RWS/HOUSE 7A/DRIVE G AND RWS/MF30003/SMH/HOUSE 7B/DRIVE G, RAINBOW ESTATE, PYAKASA, Lugbe District, Federal Capital Territory, Abuja is the bonafide property of the Claimants/Respondents, that the said property is not a subject of litigation before this honourable and that the Claimants/Respondents are constitutionally vested with the inalienable right to deal with the said property in any manner permissible by law as he deems fit as same is not lis pendens. Counsel urged the court to refuse and dismiss same with substantial cost as it is unmeritorious and an attempt to use the instrument of the law to perpetuate an illegality.

One of the main purposes of granting an interlocutory injunction is to protect the Applicant against injury by the Respondent who is violating or about to violate those rights, which violation cannot be adequately compensated by damages even if the Applicant succeeds in the main action. **See Obeya v Memorial Specialist Hospital Ltd v Attorney-General of the Federation & Anr (1987) 2 NSCC p. 961; Agbogu v Okoye (2008) All FWLR (pt. 414) p.1494 at pp. 1524 – 1525 paras G-B.**

The power of the court to grant an injunction where it is just and convenient so to do is a discretionary remedy. Being based on discretion, there are no hard and fast rules as to the exercise of the discretion, and every case is resolved on its own peculiar facts.

Claimants/Respondents had attacked this issue head-on in the Writ of Summons by stating and I reproduce;

“TAKE FURTHER NOTICE that parties shall maintain status quo”.

This I interpret to mean a commitment by the Claimant to maintain status quo. The status quo to be maintained is the state of affairs before hostility began.

An interlocutory injunction will be granted to maintain the status quo pending the determination of the Applicant's right in the substantive suit. **See Madubuike v Madubuike (2000) FWLR (pt. 30) p.2611 at 2620.**

Without further ado, I hereby order as follows:-

I hereby grant an Order of interlocutory injunction restraining the Claimants/Respondents, jointly and or severally, their servants, agents, privies or otherwise howsoever called from renting, leasing or selling the property known as and situate at **RWS/HOUSE 7A/DRIVE G and RWS/MF30003/SMH/HOUSE 7B/DRIVE G, Rainbow Estate, Pyakasa, Lugbe District, Federal Capital Territory, Abuja**, pending the final determination of the substantive suit.

Parties: Absent

Appearances: A. F. Onyeugbo for the Claimant. Respondent is not represented.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

6TH JANUARY, 2020