

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI  
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I BANJOKO-JUDGE  
DELIVERED ON THE ..... DAY OF MAY2020  
SUIT NO. FCT/HC/CV/2632/2018  
M/8365/2019**

**BETWEEN:**

**1. MOHANNAD JIHAD GHRAIZI  
2. THE ADMINISTRATORS OF THE ESTATE  
OF LATE JIHAD MOHAMMAD GHRAIZI** } **CLAIMANTS  
/APPLICANTS**

**AND**

**1. NASAF DEVELOPMENT CO. LTD  
2. MADENI CONSTRUCTION LIMITED  
3. SAMI SALEM ABOU HASSAN  
4. ABDULMAGID MOHAMMED GHRAIZI** } **DEFENDANTS  
/RESPONDENTS**

- **SULEIMAN YAKUBU ESQ. FOR THE CLAIMANTS**
- **OLUSEGUN OGUNBODE ESQ. FOR THE 1<sup>ST</sup> AND  
3<sup>RD</sup>DEFENDANTS**
- **PIUS OFULUE ESQ. FOR THE 2<sup>ND</sup> AND 4<sup>TH</sup> DEFENDANTS**

**RULING**

By way of a Motion on Notice dated and filed the 19<sup>th</sup> of August 2019, brought pursuant to **Order 42, Rule 2, 4 (1)** and **Order 43 (1) of the High Court (Civil Procedure) Rules, 2018**, the Claimants are praying the Court for the following Orders: -

1. An Order of Interlocutory Injunction restraining the Defendants/Respondents jointly and severally either by themselves, their Agents, Servants, Privies or any other Person (s) howsoever called and in whatever capacity from tampering or further tampering or further tampering, selling or further selling, alienating, assigning and/or transferring the title/ownership of the Subject Matter in this Suit, the landed property granted in the name of the 2<sup>nd</sup> Defendant/Respondent which is lying and situate at Plot 2025 Dalaba Street, Wuse Zone 5, Abuja, pending the hearing and determination of the substantive suit.
2. An Order of Interlocutory Injunction compelling the Defendants/Respondents to submit to the Honorable Court the Original Certificate of Occupancy in respect of the landed property, which is the Subject Matter of this Suit, granted in the name of the 2<sup>nd</sup> Defendant/Respondent and which is lying and situate at Plot 2025 Dalaba Street, Wuse Zone 5, Abuja for the purpose of detaining and preserving same pending the hearing and determination of the Substantive Suit
3. An Order of Interlocutory Injunction compelling the parties herein to maintain status quo antem belum pending the hearing and determination of the substantive suit.

The Application is supported by a Thirty-Three (33) Paragraph Affidavit, several Exhibits and a Written Submission of Counsel.

In Opposition, the 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed a Counter Affidavit via a Motion on Notice dated and filed on the 28<sup>th</sup> of October 2019 and annexed several Documents and a Written Address

The 2<sup>nd</sup> and 4<sup>th</sup> Defendant also filed a Counter Affidavit in opposition via a Motion on Notice dated and filed on the 7<sup>th</sup> of November 2019 and a Written Address.

According to the Claimants, the crux of the matter is regarding the 60% Shares in the 2<sup>nd</sup> Defendant Company they claim belongs to their Late Father via Power of Attorney executed between their Late Father and the 4<sup>th</sup> Defendant, their Uncle.

It is their claim that they have first gone before the Federal High Court in regard to the Ownership of the Shares and lost, and subsequently went on Appeal, with **Appeal No CA/A/44/2011**, filed on the **24<sup>th</sup> of June 2010**.

Part of the Reliefs sought before the Federal High Court incorporated a Perpetual Injunction against the 4<sup>th</sup> Defendant restraining him from selling a Property situated at Plot 2025 Dalaba Street, Wuse Zone 5, belonging to the 2<sup>nd</sup> Defendant Company.

Whilst the Appeal was pending, Directors of the 2<sup>nd</sup> Defendant commenced an action before the FCT High Court before Hon. J Belgore in 2011 to recover possession of the above property from the Father of the Claimant. The Suit was dismissed and the Learned Trial Judge held that they must await the outcome of the Appeal.

In 2013, the father of the Claimants died whilst the Appeals were still pending, and the Claimants were substituted in place of their father as the Appellants.

In 2015, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed another Suit as Directors of the 2<sup>nd</sup> Defendant before Hon. J Kawu of the FCT High Court to recover the same Property from the Claimants. Once again the Suit

was dismissed and they were ordered to await the decision of the Court of Appeal.

The Court of Appeal delivered its Judgment on the 9<sup>th</sup> of December 2016, in favor of the Claimants, granting them ownership of the 60% Shares in the Company, and restrained the 4<sup>th</sup> Defendant from disposing off the Property.

Notwithstanding the Judgment of the Court of Appeal, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants sold the Property to the 1<sup>st</sup> Defendant, who then brought an action before the Magistrate Court of the FCT to recover the property from the Claimants, and Judgment was obtained in their Favor.

The Execution Unit of the FCT High Court evicted the Claimants from the Property, and some of their Properties were carted away by hoodlums.

At the time this present Suit was filed, some of the valuables of the Claimants were still locked up in the Store on the Property.

The Defendants despite submitting to the jurisdiction of this Court by entering appearance, broke into the store and removed the remaining properties of the Claimants under the supervision of the Police. The Truck carrying these valuables was off-loaded at a Second Hands Market in Jabi, Abuja popularly known as 'pan-taker'.

Also, the Mercedes Car belonging to the Claimants' Late Father is still parked on the property and the 4<sup>th</sup> Defendant has been showing it to prospective buyers for sale. The property in Plot 2025 Dalaba Street, Wuse Zone 5, is in the same situation, as the 4<sup>th</sup> Defendant has plans to sell it and leave the Country for good.

It is the Claimants posit that this Property is the only Property belonging to the Company, and if this Application is not granted, the Defendants will succeed in dissipating the Property, since Two Ruling of the High Court and a Decision of the Court of Appeal did not stop them.

According to the Claimants, no amount of Damages can compensate or assuage their suffering should the Defendants succeed and they seek the protection of their legal rights.

In response, the **2<sup>nd</sup> and 4<sup>th</sup> Defendants** claimed that the Applicants brought an Action on the 29<sup>th</sup> of August 2018 before the Court to set aside the Judgment of the Magistrate Court sitting at Wuse Zone 2 on the Grounds of Fraud, which caused them to be evicted from the Property, and in consequence are seeking monetary reliefs as well as restoration to the Property. The Claimants also filed this Application seeking injunctive reliefs against any sale of the property to a third party on the **19<sup>th</sup> of August 2019**.

Despite all these Applications, the Claimant is a Party to the Appeal filed before the Supreme Court on this Matter in **Suit No SC/247/2017**, which has been adjourned to the **21<sup>st</sup> of February 2021** for hearing.

As a matter of fact, the Writ of Attachment and Sale of Goods of the Judgment of the Magistrate Court sought to be set aside, was signed on the **22<sup>nd</sup> of June 2018**, and the Judgment was executed on that date.

According to them, the Claimants went to sleep and only just woke up with this Application. They believe the dominant issue and cause

of action before this Court is the eviction of the Claimants from the Property. The Claimants in their reliefs sought Twenty-Two Billion Naira and Two Million Naira as Damages and Compensation, but they failed to disclose their source of livelihood, and their ability to compensate the Defendants, should the Relief be found to be misplaced.

In regard to the Mercedes Benz Car parked on the Property, they claim it belongs to the 4<sup>th</sup> Defendant, and they denied ever breaking into any Store on the premises, or carting away any goods to the Second-Hand's Dealers Market, or bring any buyers to the Property.

In their view, the triable issue before this Court is in regard to the eviction of the Claimants from the Property with Compensation as the only remedy, and they prayed the Court to refuse the Application.

On the Part of the **1<sup>st</sup> and 3<sup>rd</sup> Defendants**, they deny any collusion with anyone to initiate the Recovery Action, or any participation in the dispute regarding the 60% ownership of the Shares in the 2<sup>nd</sup> Defendant Company. According to them, the 2<sup>nd</sup> Defendant was no longer a Party to the Proceedings before the Court as at the **15<sup>th</sup> of March 2015 when they acquired Title in the Property at Plot 2025 Wuse Zone 5 Abuja**. This, according to them, was before the Court of Appeal delivered their Judgment. Ever since, the 1<sup>st</sup> Defendant has been responsible for the Land Charges of the Property, but the 2<sup>nd</sup> and 4<sup>th</sup> Defendants failed to yield up possession despite several promises to do so, and this necessitated the action to recover the premises. Having taking over, the 1<sup>st</sup> Defendant has already begun renovation works on the Property.

They denied employing the use of Thugs in the execution of the Judgment. They denied any knowledge of any Rulings of this Court or any other Court in regard to the Property. They claim that they did not conceal any facts before the Court, such as to mislead the Court that the Judgment obtained in **CV/61/17** was not obtained by Fraud.

The 1<sup>st</sup> and 3<sup>rd</sup> Defendants maintain that the Sale of the Property to them is valid and the instrument of sale, which is a Power of Attorney was validly executed. Therefore, the Claimants are not entitled to any Injunctive Orders. The Pleading having been settled over 10 months ago should be heard expeditiously in the interest of Justice.

In the Applicants' Written Address. Learned Counsel did not formulate any Issues for Determination but listed out Eight Principles that guide the grant of an Application for Interlocutory Injunction, and they are that: -

- a) There must be a Substantive Suit;
- b) The Subsisting Action must clearly denote a legal right which the Applicant must protect;
- c) The Applicant must show there is serious question to be tried;
- d) The Status quo must be maintained pending the determination of the Substantive Suit;
- e) The Applicant must show that the balance of convenience is in favor of the grant of the Application;
- f) The Applicant must show that there was no delay on his part in bringing the Application;

- g) The Application must show that damage cannot be adequate compensation for the injury; and
- h) The Applicant must make an undertaking to pay damages in the event of wrongful exercise of the courts discretion in granting the injunction.

Learned Counsel to the Applicants submitted that all the Conditions have been fulfilled, and the Applicants are entitled to the Reliefs sought.

He stated that the Applicants have filed a Substantive Action, which before the Court, with a Legal Right they are seeking to protect, and he placed reliance on the Case of **SARAKI VS KOTOYE (1989) 1 NWLR (PT 98) P419**. He further relied on the Supreme Court's Decision in the Case of **AG LAGOS STATE VS AG OF FEDERATION (2004) 18 NWLR (PT 904) PG 1 @ 126**, that the existence of a Legal Right is not dependent on whether the Action will succeed, but whether the Action denotes such a right, by reference to the law in respect of the commencement of the action. Therefore, since the Claimants have shown a right worthy of protection, the Court cannot deny them the right of access to seek to stop any act capable of injuring or endangering their rights or interests. Further reference was made to the Case of **OWODUNMI VS REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 2 WRN 36 @ PG. 66-67, PARAS 15-5**.

It was counsel's submission that the Court in exercising its discretion in favor of the Claimant, is to be guided by the Supreme Court's decision in the following Cases; **BUHARI VS OBASANJO (2003) 17 NWLR (PT 850) 587 @ 648-649; KOTOYE VS CBN (1989) 1 NWLR (PT 98) 419; OBEYA MEMORIAL HOSPITAL VS**

**AG FED (1987) 3 NWLR (PT 60) 325; WOLUCHEM VS WOKOMA (1974) 1 ALL NLR (PT 1) @ 605.**

He stated further that the Issues brought by the Claimants are triable issues in regard to the Right to own a Property and the need to protect the sanctity of Judicial Pronouncement. The purpose of this Application is for status quo to be maintained.

According to learned counsel, the status quo required is for the Applicants to be restored back to the Property. He made reference to the Case of **AKAPO VS HAKEEM (1992) 6 NWLR (PT 247) 226 @ 303 PER NNAEMEKA AGU JSC** and stated that the Defendants are bristling with illegal acts that have continued even after submitting to the jurisdiction of the Court, and he placed further reliance on the Case of **MILITARY GOVERNOR OF LAGOS STATE VS OJUKWU (1996) 1 NWLR (PT 18) 621 PARAS B-C, PARAS F-H PG 637 PER OBASEKI JSC.**

He further submitted that the Law is settled that a Subject Matter of an Action must not change during the pendency of a Suit. Therefore, the Respondents attempt to sell the Property is illegal and unlawful, and an attempt to put the Claimants in a state of helplessness should their Claim succeed, and he urged the Court to so hold. Reference was then made to the Case of **ST MICHAELS PHARMACEUTICALS LTD VS ASSOCIATES LTD (2015) ALL FWLR (PT 812) 1550 AT 1583 PARAS D-H and DE-JESE (NIG) LTD VS WEMA SECURITIES AND FINANCE PLC (2014) ALL FWLR (PT 710) 1408 AT 1419, PARAS A-B** on the Doctrine of lis pendens.

Learned Counsel submitted that an Order of Interlocutory Injunction should be issued on this Case. Moreso, as **Exhibits 3, 6 and 7** attached to the Application restrained the Respondents from

tampering with the Subject Matter of this Suit. Also, that the balance of convenience is in favor of the Applicants, and he place reliance on the Case of **ACB VS AWOGBORO (1991) 2 NWLR (PT 176) 711 @ 719 PER TOBI JCA (AS HE THEN WAS)**. The Applicant are not guilty of any delay in bringing this Application, because they filed it as soon as they became aware of the intentions of the Respondents.

Also, that the Applicants have undertook in their Affidavit to compensate in the event of wrongful exercise of the Court's Discretion at their instance.

Finally, he urged the Court to grant the Application as the Applicants have come with clean hands.

On the part of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents Written Address, Learned Counsel representing the 1<sup>st</sup> and 3<sup>rd</sup> Respondents formulated a Sole Issue for determination, namely: -

1. Whether a grant of an Order of Interlocutory Injunction is appropriate in the circumstance of this Matter as it presently stands.

Learned Counsel submitted that an Interlocutory Injunction is granted in cases of urgency, which aimed at attacking or tackling a threatening, continuing or adverse act or conduct, and he cited the Case of **IHEANACHO EKPAHURU IDEOZO & ORS VS CHIEF FRANK OKPO OCHOMA (2006) 2 SC (PT 11) 114 AT 132 TOBI JSC**.

However, there are no threats or adverse acts to warrant an Interlocutory Injunction, and he urged the Court to so hold.

According to Learned Counsel, Parties have exchanged Pleading for over 10 Months and the Case is ripe for hearing, for the Court to

entertain this Application is to consume scarce judicial time. He then placed reliance on the Case of **AJEWOLE VS ADETIMO (1990) 2 NWLR (PT 431) 391**,

It is Learned Counsel position that the Act sought to be restrained is a “Completed Act”. He pointed out from the 1<sup>st</sup> and 3<sup>rd</sup> Respondents Counter Affidavit they had acquired the Property in **2015**, and have been in possession since **August 2018**, and he cited the Case of **IDEOZO VS OCHOMA (2006) 2 SC (PT 2) PG 113 AT PAGE 132**.

Further, all the Exhibits attached to the Applicants Motion indicate that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were not parties to the various suits, and facts of the Suits are not to their Knowledge.

He also submitted that the Applicant is guilty of delay as this Application was filed one year after the commencement of the Suit, indicating that there was no urgency, and that this Application is a Ploy to delay the hearing of the substantive suit.

As regards the Factors justifying the grant of this Application, Learned Counsel contended that the Applicants have not established that they are Shareholders in the 2<sup>nd</sup> Defendant Company or that the Title Deed is in their Name, in reference to their Legal Right. The Applicant has not satisfactorily established their presence on the property, and have not shown that they have a prima facie case before the Court. If the Reliefs being sought are granted to the Applicants, the rights and interest of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants will be harmed, especially since they are in possession of the property. He placed reliance on the Case of **BUHARI VS OBASANJO (2003) NWLR P859, SC**, that the balance of convenience is a basic determinant factor in an Application for Interlocutory Injunction.

According to Learned Counsel, Damages will be adequate compensation for the Claimants if they succeed in their claims in the substantive suit, as they were squatters on the 2<sup>nd</sup> Defendant's Property.

Finally, he urged the Court to dismiss the Application for lacking in merit and being frivolous with substantial cost.

On the part of the 2<sup>nd</sup> and 4<sup>th</sup> Respondents Written Address, Learned Counsel representing the 2<sup>nd</sup> and 4<sup>th</sup> Respondent formulated a Sole Issue for Determination, namely: -

1. Whether the Claimants/Applicants are entitled to what the Injunctive Reliefs sought in their Motion dated the 19<sup>th</sup> day of August 2019.

Learned Counsel to the 2<sup>nd</sup> and 4<sup>th</sup> Respondents cited the Case of **CGC (NIG) LTD VS ALHAJI HASSAN BABA (2003) 23 WRN PG 44 P 50** and His Lordship Niki Tobi's (JSC) (now RTD) Book, *The Law of Interim Injunction in Nigeria* at Page 61, and listed out the Principle Factors that guide the grant of an Interlocutory Injunction, and emphasized on the preservation of the res.

He submitted that perhaps the Claimant has existing triable issues as regards their eviction, but that it is triable does not mean the Applicant has a Legal Right. A Legal Right for the Purpose of this Application is derivable from the cause of action emanating from a statutory provision or factual situation.

According to Learned Counsel, this Action arose from the Eviction of the Claimants and not as a result of an issue of title of the Property, and no matter how well facts are sugarcoated a Court cannot grant

an Injunctive Relief to an action that has been completed, and he placed reliance on the Case of **OYEDIRAN VS OLOYEDE (2008) VOL 6 WRN 67 AT PG 70**. This Injunctive Relief can only emanate from the Claimants Principal Claim, which is their Eviction.

If the Claimants contend that the Scope of their Application goes beyond the eviction, then it will amount to an abuse of Court Process, as the facts deposed to certain Paragraphs are issues and facts subject of Appeal at the Supreme Court in **Suit No. SC/247/2017**. As this Court is incompetent to grant an Injunctive Relief on facts on Appeal before the Supreme Court.

By virtue of the fact that the Applicants cannot protect a right that has been extinguished by the Authority in **OYEDIRAN VS OLOYEDE(SUPRA)** there is no res to grant an Order on.

Further, since the Claimants are praying this Court for Compensatory Damages, if this Court is to award them their Claim of Eviction, it will be compensation that is adequate to the extent of being surplus, contrary to the settled Principle of Law that an Injunction will not be granted where Compensation will be adequate. The Claimants have already claimed enormous damages, and so Learned Counsel urged the Court to accept their prayer as an acceptance on their own part, that the best they are entitled to are damages for any purported wrong they have suffered.

Finally, he urged the Court to dismiss the Application for lacking in merit and being frivolous, and he demanded Cost of Three Hundred Thousand Naira (N300, 000.00) against the Applicants as Primitive Cost.

**After a careful consideration**, the Court finds a Sole Issue for determination, namely: -

1. Whether this Application filed by the Claimants/Applicants seeking Injunctive Reliefs is meritorious.

It is trite Law that the Power to Grant an Injunction is exercisable under the Inherent Jurisdiction of the High Court, which it to preserve the Subject-Matter of Litigation. The Application for such an Injunction can also be considered as an Original Motion that the Court can entertain notwithstanding the Dismissal of the Suit relating to the Application for Injunction. See the Case of **ABIEGBE VS UGBODIME 1973 1 SC 133**.

For the Court to grant such an Application, certain Factors are to be brought into considerations, as held in the Case of **EZEBILO VS CHIWUBA (1997) 7 NWLR PT. 511 PAGE 108 AT 123-129** Per **NIKI TOBI (JCA) (as He then was)**, and they are the following: -

1. There must be a Legal Right;
2. The Right must be Threatened or Abused;
3. The Applicant must show Sufficient Interest in the Relief sought; and
4. The Court must have Jurisdiction to hear the Matter.

There must be serious Issues of Law to be tried with Probability of Success at the Trial for the Applicant. There also should be a Balance of Convenience of both parties, and effect of the Injunction is that Status quo be maintained pending the determination of substantive Triable Issues. Such an Injunction ought not to transfer any Right, whether from the Defendant to the Plaintiff, or vice versa. See

further the Case of **QUEEN VS ADAROH (1999) 1 NWLR PT 586 PAGE 330.**

Where Damages will be adequate Compensation if the Writ claims Pecuniary Damage alone, the Application shall not be granted. See also the Case of **ONWUEGBU VS IBRAHIM (1997) 3 NWLR PT. 491 PAGE 110.**

Where a Court lacks jurisdiction to hear the Substantive Suit, it would also lack Jurisdiction to make an Order of Interlocutory Injunction. See the Case of **UZONDU VS UZONDU (1997) 9 NWLR PT 521 PAGE 480** and **SADIKWU VS DALORI (1996) 5 NWLR PT 447 PAGE 151.**

It is trite Law that an Injunction cannot be directed at a Completed Act. The 'res' must be properly identified and identifiable. In Cases of Land Dispute, a Survey Plan is imperative, and important that the boundaries are sufficiently described. See the Case of **ICHU VS IBEZUE (1999) 2 NWLR PT. 591 PAGE 437 AT 447** and **ANABARONYE VS NWAKAIHE (1997) PT. 482 PAGE 374.**

**Now**, it is clear from the Principles regarding the Grant of an Interlocutory Application, that first there must be a Substantive Suit and a Legal Right to be protected, and there must be a serious question to be determined. Injunctive Reliefs would be granted where Damages will not adequately compensate for the Injury caused the Applicant if he is denied his Reliefs.

It is very important to set out the Sequence of Events by Dates and by Parties. This is more so because of the contention of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants that they were not Parties to the Case at the Federal High Court on the issue of Share Ownership in the 2<sup>nd</sup> Defendant's Company. The issue before the Federal High Court, the Court of

Appeal and now the Supreme Court, has to do with the ownership of 60% shares in the 2<sup>nd</sup> Defendant's Company, Madeni Construction Limited. The final determination of this issue, will determine FOR ALL TIMES, the legal ownership of the Company and all its assets. In other words, the Rights, Title and the ability to deal with any Asset of Madeni Construction lies now with the Supreme Court.

It is clear from the current situation that the Court of Appeal in the Lead Judgment delivered by **Akomolafe-Wilson JCA**, on the **9<sup>th</sup> of December 2016**, held that “ *There was no scintilla of evidence before the Learned Trial Judge to have warranted his reasoning and belief that the Corporate Affairs Commission, acted on **Section 118 of the Evidence Act** in expunging the Power of Attorney from the Madeni Construction Company's File, which reversed or cancelled the 60% Share Holding of the Appellant in the Company. In my view, on a calm consideration of the established fact before the Court, the Appellant, on the balance of probabilities, proved his Case before the Lower Court.*

*Therefore, this Appeal is Meritorious. It succeeds, and is hereby allowed. The Judgment of the Court Below delivered on the 10<sup>th</sup> of June 2010 is hereby set aside. Consequently, Reliefs 1, 2, 3 and 4 sought by the Appellants in the Originating Summons filed before the Lower Court are hereby granted. ”*

Now, the question is, what was granted in Reliefs 1, 2, 3 and 4?

**Relief One** granted a Declaration that the 2<sup>nd</sup> Plaintiff before the Federal High Court, that is the Applicants here, owns 60% shares of Madeni Construction Limited.

**Relief Two** granted a Declaration that the 1<sup>st</sup> Defendant (the 4<sup>th</sup> Defendant in this present action) divested himself of his 60% shares

and also other interest in the Madeni Construction Limited by virtue of the Power of Attorney he donated to the Plaintiff on the 27<sup>th</sup> day of December 1999.

**Relief Three** granted an Order of Perpetual Injunction restraining the 1<sup>st</sup> Defendant from parading himself as the owner of 60% Shares of Madeni Construction Limited and the managing Director of Madeni Construction Limited.

**Relief Four** granted a Perpetual Injunction restraining the 1<sup>st</sup> Defendant, either by himself, his agents, servants, privies, assigns or any other person, howsoever described, in whatever capacity from interfering with the Plaintiffs Possession and Ownership of his 60% Shares and or from tampering, selling or disposing any of the Company's Properties, including the Landed Property in issue.

This Judgment is extant and remains valid until set aside by the Supreme Court, which is the Final Court.

To determine whether this Case has disclosed a Legal Right is to delve into issues already before the Supreme Court, and therefore this Court cannot make any such Pronouncements. However, as of today, the **Legal Right to that Property lies with the Applicants based on the Decision of the Court of Appeal**, which is as of today, extant and **MUST** be obeyed by the Parties.

What is unique in this Case, is the manner in which the Original Parties injected "Third Parties" into the Mix.

There are **Three Separate Streams of Cases and Decisions** before the Court that dealt with the Subject Matter of this Action.

**The 1<sup>st</sup> Stream** is that which originated at the Federal High Court and it involved all the Parties with the exception of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. This Stream, from the Federal High Court bothered on the Issue of Ownership of Shares in the 2<sup>nd</sup> Defendant Company. The case had moved from the Federal High Court, up to the Court of Appeal, and now it is before the Supreme Court, awaiting the Final Resolution of the Issue.

**The 2<sup>nd</sup> Stream**, originated at the FCT High Court, before **Belgore J.** Where the 2<sup>nd</sup> Defendant sought to recover Possession of the Property at Plot 2025, Wuse Zone 5, from the Late Father of the Claimants/Applicants. **Belgore J** in his Ruling held “...*the Plaintiff’s Counsel has made so much fuss about the Issue here being Recovery of Premises. Yes it is, but Recovery of which Premises? The Premises is Plot 2025 Dalaba Street, Wuse Zone 5, Abuja. That Premises is already one of the Company’s Property (including of course shares) that is on Appeal. They cannot do so. It is my view that they have to wait until the outcome of the Appeal in the Court of Appeal. There is no need to rush or be in haste...*” This Ruling delivered **in 2011**, was made **BEFORE** the 2<sup>nd</sup> Defendant sold the Property to the 1<sup>st</sup> Defendant.

In **2015**, the 2<sup>nd</sup> Defendant who had instituted the Case before **Belgore J.** of the FCT High Court, and who was a Party to the Proceedings at the Federal High Court before **Soba J.**, stubbornly instituted yet another Action for Possession at the FCT High Court again before **Kawu J.** This Suit was again dismissed pending the decision of the Court of Appeal, and **Kawu J.** held “*that although the Subject Matter of the Disputes are not the same, the Parties are still the same, and it was on that basis that Justice Belgore dismissed the Matter before Him, and said until the matter before the Court of Appeal is over. Counsel to the Respondent submitted that the Parties*

*before Justice Belgore were MADENI CONSTRUCTION COMPANY LIMITED VS JIHAD MOHAMMED GHRAIZI, whilst the Parties before the Court of Appeal is MADENI CONSTRUCTION COMPANY VS ABDULMAJID MOHAMMED GHRAIZI AND AKINTOLA AFOLABI, still is the same Parties. And even if it is not the same Parties, this Court cannot set aside a Judgment of a similar High Court.”*

This Court notes based on the Irrevocable Power of Attorney dated the **31<sup>st</sup> of March 2015**, annexed to the Counter Affidavit filed by the 1<sup>st</sup> and 3<sup>rd</sup> Defendant as Proof of their Ownership to Plot 2025, Wuse Zone 5, Abuja, that the Property was sold **AFTER** the Ruling of **Belgore J.** It is apparent that whilst still bound by the Decision of **Belgore J.**, the 2<sup>nd</sup> Defendant sold the Property to a Third Party, that is the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

The Biggest Question here is whether this Sale was Legal. In that, *you cannot give what you do not have*, especially as there was the pendency of an existing Appeal.

**NO PARTY** can deal with the Property unless and until a **FINAL RESOLUTION** of the Matter is arrived at. At the time of the Sale, going by the Date of the Ruling of **Belgore J.** the 2<sup>nd</sup> Defendant was **estopped** from dealing with the Property. Even before **Kawu J.**, the Parties were told to await the decision of the Court of Appeal, as the Subject Matter was *subjudice*.

It is pertinent to note that Party Representation before the Court had changed slightly in order that the New Party later injected would NOT be bound by the Decisions of the Appellate. This is however futile, because as long as the Root and Source of Title is under Scrutiny by the Appellate, **NO RIGHT** can be conferred or passed on. As long as the Party who sold the Property was a Party

firstly at the Federal High Court, secondly at the Court of Appeal, and then thirdly at the FCT High Court, he remained bound by the respective Decisions therefrom, and certainly could not pass Title of the Subject Matter of this Suit.

**The 3<sup>rd</sup> and Final Stream** of the Case is that of the **“Reported New Owners”**, who filed an Action before the Magistrate Court to Recover Possession.

It is pertinent to note that the Defendants who are relying on this Specific Proceedings before the Magistrate Court as their Defence, did not: -1) Attach or annex as an Exhibit their Processes filed at the Magistrate Court, 2) disclose who the Parties before the Court were, or even 3) Furnish the Judgment of the Magistrate Court, for which they obtained Execution for.

This would have enabled this Court to understand whether the Full Facts and Total Picture was presented before the Magistrate Court. None of that is known, except that the Magistrate Court granted Possession, seemingly in vacuo.

Learned Counsel to the 1<sup>st</sup> and 3<sup>rd</sup> Defendant also argued that the Applicants have filed an Application to Set Aside the Writ of Attachment of the Magistrate Court on Grounds of Fraud, but that Application is not before this Court.

What this Court is concerned with is the **Timing** in order to determine Legal Rights and from the above Analysis and the Documents before the Court, it can be seen that: -

1. From the Suit No of the Originating Summons first filed before the **Federal High Court in FHC/ABJ/CS/165/09**, as stated in the Judgment of the Court of Appeal, attached to the

Application, that the Case **FIRST** instituted before the Federal High Court commenced in **2009**. The **Judgment, of Soba J** was **delivered on the 10<sup>th</sup> of June 2010** in favour of the 2<sup>nd</sup> Defendant.

2. Being dissatisfied with the Judgment of the Federal High Court, the Applicants filed a **Notice of Appeal on the 24<sup>th</sup> of June 2010** at the **Court of Appeal in Appeal No CA/A/44/2011**.
3. Then, from the Ruling of **Belgore J.** of the **FCT High Court** attached to the Application, the 2<sup>nd</sup> Defendant filed an Action to Recover Possession of the Property from the Applicant in **2010**, at the **FCT High Court**. Although, the date the Substantive Action was filed is not stated, the Preliminary Objection filed challenging the Action is dated the **22<sup>nd</sup> of November 2010**. The **Ruling dismissing** the Suit was delivered on the **10<sup>th</sup> of March 2011**.
4. During the pendency of the Appeal, in **2013** the Father of the Claimants died, whilst the Appeals were still pending, and the Claimants were **Substituted** in place of their father as the Appellants.
5. The 2<sup>nd</sup> Defendant then filed yet another Suit at the FCT High Court, before **Kawu J.** in **Suit No FCT/CV/2083/2015** on the **10<sup>th</sup> of June 2015** to Recover Possession of the Property from the Applicants. The Ruling again dismissing the Suit pending the determination of the Subject Matter on Appeal was delivered on the **12<sup>th</sup> of November 2015**.

6. The **Court of Appeal** delivered its Judgment on the **9<sup>th</sup> of December 2016**, in favor of the Claimants, granting them Ownership of the 60% Shares in the Company, and restrained the 4<sup>th</sup> Defendant from disposing off the Property.
7. The Records show that 2<sup>nd</sup> and 4<sup>th</sup> Defendants sold the Property to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants, who then brought an action before the Magistrate Court of the FCT to recover the property from the Claimants, and Judgment was obtained in their Favor. The Date of Sale as seen from the Power Of Attorney was stated as **31<sup>st</sup> of March 2015**.
8. In **CV/61/2017**, the Suit before the Magistrate, the 1<sup>st</sup> and 3<sup>rd</sup> obtained Judgment in favour of their Possession and the Execution Unit of the FCT High Court on the **22<sup>nd</sup> of June 2018**, evicted the Claimants from the Property.
9. The Appeal against the Decision of the Court of Appeal at the Supreme Court in **SC/247/ 2017** is scheduled for hearing on the **21<sup>st</sup> of February 2021**.

This Court is not so concerned with the Proceedings at the Magistrate Court, the Eviction or the Execution of the Judgment. What this Court is looking to for guidance is the pronouncement of the Legal Right by the Supreme Court. There is nothing this Court can do in respect of this Case to bestow any Legal Right over that Property, as the Matter is subjudice. This Court must respect the Decision of the Appellate and Apex Court.

This Court will also not concern itself with the question of whether it was a Tenancy, or whether there was an Eviction.

As regards the question of whether the Sale of the Property between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is a Completed Act, it is trite that what must amount to be a Completed Act must be a Valid Completed Legal Act in line with the Law. It is irrelevant whether the 1<sup>st</sup> and 3<sup>rd</sup> Defendants were Parties to the Action at the Federal High Court or at the Court of Appeal.

The 1<sup>st</sup> and 3<sup>rd</sup> Respondents confirmed that the Property was indeed sold to them by the 2<sup>nd</sup> Defendant in **2015**, but they bought it before Judgment was delivered at the Court of Appeal.

It is pertinent to note that the Appeal was instituted in **2011**, clearly showing that an Appeal against the Judgment of the Federal High Court given in favor of the Defendants, was pending before the Court of Appeal.

To this end, all Parties including the Applicants and the Respondents are ordered to Stay Action on the Property situated at Plot 2025 Dalaba Street, Wuse Zone 5, Abuja. They must respect the Apex Court and stay all actions. **No Court** and **No Party** has the Right to disregard a Judgment of a Superior Court of Record as it amounts to a Contempt of Court in the disobedience of Court Orders.

There must be no sale, there must be no alienating, there must be no assigning and/or transferring of the title/ownership to anyone. There must be a complete halt of all activities and actions over the Land pending the decision of the Apex Court.

It is only when the Supreme Court has made its Pronouncement on the Matter that this Court can begin to consider the Issues before it, but as it stands now, this Court is bound by the decision of the Court of Appeal.

To this end, it is in the interest of justice for **ALL Parties** to be bound by the Injunctive Prayers. The Parties are ordered to maintain Status Quo pending the hearing and determination of the Suit before the Supreme Court. The Operative Order here is **STOP ALL ACTIONS.**

Application succeeds and at the same time binds the Applicants holding the Parties from further actions in regard to the Property.

The Suit is considered Premature and considering the fact that the Suit at the Appellate Court is on Title emanating from the decision of the Federal High Court, it is only proper for the enforcement of the Judgment of the Supreme Court to be enforced by the Federal High Court.

Before this Court, the substance of the Suit is in regard to the decision emanating from the Magistrates Court and to that extent, is premature and is accordingly Struck Out pending the final pronouncement on the True Legal Owner by the Supreme Court.

Dismissed without Merits.

**HON. JUSTICE A.A.I. BANJOKO**

**JUDGE**