

**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/CV/1830/2019

MOTION: M/5905/19

BETWEEN:

1. PRINCESS ESOM NWAFOR -ORIZU

(Doing Business in the Name and Style of
ERICA NIGERIA ENTERPRISES

**2. THE INCORPORATED TRUSTEES OF ROYAL
SPORTS CLUB INTERNATIONAL ABUJA.....APPLICANTS**

VS

1. THE HON. MINISTER OF THE F.C.T.

2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY (FCDA)

3. ABUJA METROPOLITAN MANAGEMENT COUNCIL.....RESPONDENTS

RULING

By a Motion on Notice dated 30/4/2019 and filed on 7/5/2019 with No. M/5905/19 and brought pursuant to Order 42 Rule 8, Order 43 Rules 1, 2, and 3 of the FCT High Court (Civil Procedure) Rules 2018 (hereinafter called the Rules) and under the inherent jurisdiction of this court, the Applicants prays for the followings Reliefs:-

- (1) An Order of Interlocutory Injunction restraining the Respondents, their agents, servants, privies or howsoever so

called and/or whosoever is claiming through them or acting under their instruction from trespassing, further trespassing, demolishing, putting down, changing the purpose, use and/or re-allocating Park No: 862D, BO3 Wuye Recreation Park, Wuye District, Abuja, to any other person, pending the hearing and determination of the substantive suit already filed before this court.

- (2) An Order of Interlocutory Injunction of this Hon. Court restraining the Respondents, their agents, servants, privies or however so called and/or whosoever is claiming through them or acting under their instruction from taking steps/actions in connection to Park No: 862D, BO3, Wuye Recreation Park, Wuye District Abuja, pending the hearing and determination of the substantive suit already filed.
- (3) The Omnibus Relief.

The grounds upon which the application is predicated are;

- (1) The Applicants are in possession of and are the owners of all that Park No. 862D, BO3 Wuye Recreation Park, Wuye District Abuja, having been allocated same by the Respondents.
- (2) That the Respondents have taken steps to change the purpose use for the said park and award title over same to unknown person despite the subsistence of the Applicants title.

- (3) Unless this Hon. Court intervenes by ordering the Respondents to stay further action as it effects the said property, until rights of parties are determined by this court, the Respondents may unlawfully evict the Applicants from the property.

In support of this application is a 31 paragraph affidavit deposed to by Emeka Obi, with Exhibits marked as "A" – "M" attached. In compliance with the Rules filed a Written Address, in urging the court to grant the reliefs sought.

The Respondent on receipt of the process, in opposition, filed on 30/4/19 a 19 Paragraph counter-affidavit deposed to by Asogwa Chidinma and a Written Address, in arguing the court to dismiss the application in the interest of justice.

In the Written Address of the Applicant; settled by Emeka Obegolu Esq, formulated only (1) issue for determination;

"Whether the Applicants are entitled to the grant of the Interlocutory Reliefs being sought by this application pending the hearing and determination of the substantive suit."

And submit relying on case law and statutory authority, that the Applicants has in line with these Provisions satisfied this court, by their affidavit in support the grounds an Applicant must show to warrant this court to grant the reliefs sought. Referred the court to the Locus Classicus case of Kotoye Vs CBN (1989) 1 NWLR PT 98. 419 which set out the conditions which a party seeking the courts intervention must prove. In proof of

these the Applicant, referred the court, copiously various paragraphs of their supporting affidavit, showing satisfactory of the conditions set out. In all commend the court to the following judicial authorities; Laddunni Vs Kukoyi (1972) 1 ALL NLR 133 Oyeyemi Vs Irewole Local Government Ikere 91993) 1 NWLR PT 270- 462, Order 42 Rule 8 and order 43 Rule 1 of the Rules; In urging the court to grant this application.

In the Written Address of the Respondent, settled by Dr. James E. Agbonhese Esq, only one (1) issue was formulated for determination;

“Whether in the circumstance of this case, this Hon. Court can and ought to grant Interlocutory Injunction in favour of the Claimants/Applicants without satisfying the laid down conditions”.

And submit that granted the court have powers to grant Interlocutory Injunction, but it is subject to the Applicant satisfying the laid down conditions. That in this instance, the Applicant has failed to satisfy each and every of the conditions laid down, in particular, failed to establish the existence of Legal Right amongst others. In all commend the court to the following judicial authorities; Akapo Vs Hakeem –Habeeb (1992) 6 NWLR (PT. 247) 266 @ 289, Passion Properties Ltd Vs First bank Nigeria Plc (2007) ALL FWLR (PT.392) 1954 @ 1967; Obeya Memorial Hospital Vs AG Fed (1987) Pg 56. Duwin Pharmaceutical & Chemical Co. Ltd Vs Beneks Pharmaceutical & Cosmetics Ltd & Ors (2008) 1 – 2 SC 68 @ 89 – 90; Lafferri Vs NMB Plc (2002) 1 NWLR ((PT.748) 333 amongst other. In all urging this court to dismissed this application.

Having given an insightful consideration to the affidavit evidence, the attached Exhibits, submission of both counsel and the judicial authorities cited, the court finds that there is only (1) issue that calls for determination which is;

“Whether or not the Applicant has placed before this court sufficient facts to warrant this court grant the reliefs sought”.

The grant of an order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case of finally determined. Its object is to keep the matter in status quo where 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 refuse the application. In doing so, the court is invited to exercise its discretion which must be done judicially and judiciously. This discretion must be exercised in relation to the fact and circumstances of the case, hence to be entitled to the relief sought the Applicant must disclose all the material facts.

On the nature of the grant of an Injunction , the court in the case of Mohammed Vs Umar (2009) ALL FWLR (PT.267) 1510 @ 1523 Para H – D. Stated;

“Interlocutory Injunction is not granted as matter of grace, routine or course, on the contrary, the order of Injunction is granted only in deserving cases based on the hard law and facts”.

In that exercise of that discretion, the court is guided by the principles stated in Pletoral of judicial authorities. In Akinpelu Vs Adegbore (2008)

ALL FWLR (PT.429) 413, Kotoye Vs CBN (1989 1 NWLR (PT. 98) @ 419 as follows;

- (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 of the Order of Interlocutory is not granted pending the determination of the main Suit. See also Owerri Municipal Council Vs Onuoha (2010) ALL FWLR (PT.538) 896 @ 898.

The question that would of necessity come to mind at this stage for determination is whether the Applicants has satisfied these conditions mentioned above for consideration of the grant of this application.

On, whether there are triable issues at the main trial, it is the position of the law that all the courts need to establish, is that the claim is not frivolous or vexatious. By Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 of the supporting affidavit of the Applicants, and by Paragraphs 5,6,7,8,9,10,12,13,14 and 15 of the counter-affidavit of the Respondents all clearly in my view 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 trial.

On 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 into 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 the Applicant have by their affidavit in support, paragraphs 13, 16, 18, 19, 23 and 24, stated that they would suffer irreparable damages if the application is not granted and that the balance of convenience enures in their favour. On the other hand, the Respondents by Paragraphs 16 of their counter-affidavit in line with their submission contend that the balance of convince does not enure in favour of the Applicant, and further that any undertaking for damages from the Applicant should the application is granted, cannot assuage their loss. I have earlier stated that it is not for the court to determine the merit of the case at this stage, it is the court's view from all of these, that it is the Applicant who will suffer more injury if the application is not granted.

On the issue of whether the Applicant have right to be protected, from the Applicant's paragraphs 9, 10, 11, 12, 13 and 14 of their supporting affidavit have stated that their proprietary interest in the property, subject matter in the Suit, is at the verge of being tampered with by the Respondents, hence seeking the intervention of the court, for protection of these rights. On the other hand the Respondents by Paragraphs 5, 6, 8, 8, 9, 11 and 12 of their counter-affidavit, contend that the Applicant have no legal right in property, therefore not entitled to any protection, further, the Respondent

counsel in submission, posited that the application cannot be granted, where the act complained of is a completed act. This facts was never stated in the affidavit of the Respondents in the lengthy and breadth of it. It is trite that no matter how brilliant submission of counsel may be, it cannot take the place of evidence. Further, this court has stated that there are matters for the main trial.

In conclusion having carefully considered the affidavit evidence of both parties and the submission of both counsel, the court finds that the Applicants case has merit and should be allowed in the interest of justice. Accordingly, the application succeeds and it is hereby ordered as follows:-

- (i) An Order of Interlocutory Injunction restraining the Respondents, their agents, servants, privies or howsoever so called and/or whosoever is claiming through them or acting under their instruction from trespassing, further trespassing, demolishing, putting down, changing the purpose, use and/or re-allocating Park No: 862D, BO3 Wuye Recreation Park, Wuye District, Abuja, to any other person, pending the hearing and determination of the substantive suit already filed before this court.
- (ii) An Order of Interlocutory Injunction, restraining the Respondents, their agents, servants, privies or however so called and/or whosoever is claiming through them or acting under their instruction from taking steps/actions in connection to Park No: 862D, BO3, Wuye Recreation Park, Wuye District

Abuja, pending the hearing and determination of the substantive suit already filed.

This is the Ruling of the court.

HON. JUSTICE O.C. AGBAZA

Judge

3/6/2020

APPEARANCES:

ONIIYINYE PRINCESS JAMES ESQ WITH SUMMER OKIBE FOR– FOR CLAIMANTS, HOLDING BRIEF OF EMEKA OBEGBOLU

LIBERTY UDO WITH C.P. UZOKWE HOLDING BRIEF OF DR. JAMES AGBONHESE FOR THE FOR 1ST – 3RD DEFENDANTS