

**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/3090/2018

MOTION: M/9711/18

BETWEEN:

THE LACE HOSPITALITY CONCERN LTD.....CLAIMANT/APPLICANT

VS

ENGR GEORGE ADINNU.....DEFENDANT/RESPONDENT

RULING

By a Motion on Notice with No. M/9711/18 dated 22/10/2018 and filed 22/10/2018, brought pursuant to Order 42 Rule 4 (1) of the FCT High (Civil procedure) Rules 2018 (hereinafter called the Rules) and under the inherent jurisdiction of this court, the Applicant prays for the following reliefs:-

- (a) An Order of Interlocutory Injunction restraining the Defendant whether by himself, servants, privies , agents or any person whosoever acting for through or under him from entering, altering the structure, developing, building on, disposing of, or otherwise, trespassing into, or interfering with the Claimants' possession and/or interests over the piece of land the subject matter of this Suit to wit: the open space being the portion of

land situate at opposite the Redeemed Christian Church of God, Ajegunle Road, Mpape Village, FCT Abuja, otherwise known as Plot 14 Cadastral Zone 08 – 06 Mpape District, Abuja covered by a Certificate of Occupancy No: FCT/ABU/MISC: 11497 issued by the Honourable Minister of the Federal Capital Territory to and in the name of the Claimant, pending the hearing and determination of the substantive Suit.

- (b) And for such further or other orders as this Hon. Court may deem fit to make in the circumstance.

The Respondent was duly served with the processes in this Suit, along with Hearing Notice vide by pasting pursuant to the Order of this Court granted on 30/4/2019, and 10/1/2020 yet failed to react to the application.

Upon application of the Applicant Counsel to move the said Motion and the court being satisfied that the Applicant has acted in full compliance with the Rules and the Order of Court, and in the absence of any explanation for the absence of the Respondent, the court called upon Applicant Counsel to proceed.

In support of the application is 21 Paragraph affidavit deposed to by Pastor Nino Abokhai attached are Six (6) Exhibits marked as Exhibit "A", "F". Also filed is a Written Address dated 22/10/18, which counsel adopts as their oral submission, in urging the court to adopt.

The facts of the affidavit are as contained in Paragraph 4 – 17, in summary is that the Applicant is the owner of the property in dispute, as evidenced

in Exhibits "A1"- "A3", granting the Applicant Legal Right of possession of the said land. And that the Defendants presence on the land constitutes trespass on the land.

In the Written Address of the Applicant, settled by Chibuike Ezeokwora Esq, formulated one (1) issue for determination, which is;

"Whether the Applicant has made out a case for the grant of the reliefs sought".

And submits that the grant of this application is at the discretion of the court, which must be done judicially and judiciously taken into cognizance of facts placed before it. Submits that by the affidavit in support, the Applicant has sufficiently demonstrated in line with guideline set out for the consideration by the court of such an application, that they have satisfied those conditions. Referred to case of Kotoye Vs CBN (1989) 1 NWLR (PT. 98) 419; Obeya Memorial Hospital Vs A.G. Fed (1987) 3 NWLR (P. 60) 325 @ 340. In urging the court to grant the reliefs sought. Further submits that in this instance, the Respondent who was duly served with the Motion, failed to respond to the application.

Having carefully consider the affidavit evidence, the attached Exhibits, submission of Counsel, including the judicial authorities cited, the court finds that there is only one (1) issue that calls for determination, that is;

"Whether or not the Applicant has placed sufficient facts to sway this court to consider the grant of the reliefs sought".

And Order of Interlocutory Injunction is an equitable remedy granted by the Court before the substantive issue in the case is finally determined. Its object is to keep the matter in status quo, while the case is pending for purpose of preventing injury to the Applicant, prior to the time the court will be in a position to either grant or deny relief on the merit. See Yusuf Vs I.I.T.A. (2009) 5 NWLR (PT. 1133) Pg 39 Para A – B.

In an application for Interlocutory Injunction, it is not necessary that an Applicant must make out a case as he would on the merit, it is sufficient that he should establish that there is substantive issue to be tried. It is unnecessary to determine the legal right to a claim at this stage, as there can be no determination, because the case has not been tried on the merit. Consequently, for an Applicant to be entitled to the grant of an application of this nature, the affidavit evidence must disclose cogent facts. On the nature of the grant of this kind of application, the court in the case of Mohammed Vs Umar (2005)(ALL FWLR (PT. 267) Pg 1510 @ 1523- 1524 Para A - D Court stated;

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

The principles guiding the courts in consideration of the grant of an application for An Order of Interlocutory Injunction, has been stated in Pletorial of judicial authorities; see Akinpelu Vs Adegbore (2008) ALL FWLR (PT.429) Pg 413 @ 420.

On whether there are triable issues at the main trial, the law is that, all the courts need to consider, is whether the claim is not frivolous or vexatious. From facts stated in Paras 4 – 18 and Exhibits "A" – "F", clearly shown 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 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, 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 base on facts and guided by the laid or equitable decision of what is just and proper in the circumstance. In this instance application, the Applicant contends that they would suffer irreparable injury if the application is not granted. Though it is not for court to determine the merit of the case at this stage, it is the courts view that the Applicant have by their affidavit Paras 13 – 19, Exhibits "C", "D", "E", - "F", shown clearly that they would suffer more injury if the application is not granted.

In all of these, the Defendant/Respondent who was duly served with the processes did not react to the Motion. The Court having earlier stated the Position of the law, shall accept the facts which remained unchallenged and uncontroverted, as true and correct. This position of the law was restated in the case of the Nigerian Army Vs Yakubu (2013) LPELR-2008, where Fabiyi JSC stated thus;

“It is basic that unchallenged evidence stands. The court should accept same and act on it”.

In conclusion and having considered the unchallenged and uncontroverted evidence and the law, the court finds that the application has merit and should be allowed. The application succeeds and it is hereby ordered as follows:-

- (1) An Order of Interlocutory restraining the Defendant whether by himself, servants, privies, agents or any person whatsoever acting for, through or under him from entering, altering the structure, developing, building on, disposing of , or otherwise trespass into, or interfering with the Claimant’s possession and/or interest over the piece of land the subject matter of this Suit to wit: The open space being the portion of land situate at opposite the Redeemed Christian Church of God, Ajegunle Road, Mpape Village, FCT Abuja otherwise known as Plot No. 14 Cadastral Zone 08 – 06 Mpape District, Abuja covered by a Certificate of Occupancy No. FCT/ABU/MISC: 112497 issued by the Hon. Minister of the Federal Capital Territory to and in the name of the Claimant pending the hearing and determination of the substantive Suit.

HON JUSTICE O.C AGBAZA

Judge

8/5/2020

C.E. EZEKWUORA ESQ FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR THE DEFENDANT/RESPONDENT