

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA.**

**BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.  
HON. JUDGE HIGH COURT NO. 13  
COURT CLERKS –T.P. SALLAH & ORS  
DATE: 23/06/2020  
FCT/HC/CV/154/18**

**BETWEEN:**

**THE REGISTERED TRUSTEES OF MAIDUGURI  
CLOSE AREA 3 ABUJA RESIDENTS ASSOCIATION ..... CLAIMANT/  
APPLICANT**

**AND**

**1. HONOURABLE MINISTER OF FEDERAL CAPITAL  
TERRITORY  
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY  
3. NKOLE NDUKWE  
4. CELESTINA EHIOMONE OMOKHODION  
5. AISHA UMAR KABIR** } **DEFENDANTS/  
RESPONDENTS**

**RULING**

This suit was commenced by the Claimant vide a writ of summons and a Statement of Claim filed on 8<sup>th</sup> November, 2018 against the Defendants claiming *inter alia* declaratory reliefs, injunctive orders and damages in respect of trespass to land. The Claimant also filed two applications, one *ex-parte* and the other on notice, praying for interim and interlocutory orders of injunction restraining the Defendants. Upon hearing the motion *ex-parte*, this Honourable Court granted an interim order of injunction on 26<sup>th</sup> November, 2018 restraining the Defendants in respect of the land the subject matter of the substantive suit pending the determination of the motion on notice for interlocutory injunction.

By the instant Motion on Notice No. M/340/18 dated and filed on 8<sup>th</sup> November, 2018, brought pursuant to Order 42 Rules 4 & 8, Order 43 Rules 1(1) & (2) of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, the Claimant is praying for the following reliefs:-

1. An order of interlocutory injunction restraining the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents, their heirs, privies, representatives, assigns, agents officials, staff, workmen, foremen or by whatever name called, from taking possession of, developing, erecting, constructing or building any structure on, changing the topography of or in any way disturbing, dealing, interfering or tampering with or continuing any of the above actions on the alleged or purported Plots 2050 and 2051, Cad Zone A01, Garki, Abuja, the Common Recreational Green Area or any such portion(s) of land, within or adjoining Plot 1736, Cadastral Zone A01, Garki, Abuja, pending determination of the substantive suit.
2. An order interlocutory injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from redesigning, allocating, re-allocating or in any way whatsoever dealing adversely with the alleged or purported Plots 2050 and 2051, Cad Zone A01, Garki, Abuja, the Common Recreational Green Area or any such portion(s) of land, within or adjoining Plot 1736, Cadastral Zone A01, Garki, Abuja, pending determination of the substantive suit.
3. And for such further or other order(s) as the Honourable Court may deem fit to make in the circumstance.

In support of the application, the Claimant/Applicant filed an Affidavit of 39 paragraphs (along with Exhibits M1 – M11) as well as his Counsel's Written Address dated 8<sup>th</sup> November, 2018. The Claimant/Applicant also filed a Further Affidavit of 19 paragraphs, a 29-paragraphs Further and Better Affidavit and its Counsel's Reply on Points of Law.

Opposing the application, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents jointly filed their Counter Affidavit of 13 main paragraphs with Exhibits A – D and their Counsel's written address.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents did not file any process in opposition to the application. At the hearing of the application, their Counsel however did align himself with the submissions of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

Learned Counsel to the Claimant/Applicant formulated a sole issue for the determination of the instant application to wit:-

*"Whether the Applicant has met the requisite conditions for the grant of the reliefs sought in this application."*

The issue for determination of the application as formulated by the 3<sup>rd</sup> and 4<sup>th</sup> Defendant's Counsel in his address reads thus:-

*"Whether the Claimant/Applicant is entitled to the relief sought against the Defendants/Respondents especially the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents."*

The issues distilled by both Counsel are practically the same. I shall adopt the issue as distilled by the Claimant/Applicant's Counsel.

To resolve the issue for determination, I have gone through the Claimant/Applicant's statement of claim. I have also carefully perused the affidavits in support of the instant application, the counter affidavit against same and addresses of the respective Counsel. Parties to this application have engaged in long drawn argument over facts and legal implications of same in this case. Most of these are however facts pleaded in pleadings on issues which go to the crux of the substantive suit. These are facts and issues which this Honourable Court would have to consider at trial. This Court cannot make findings on these facts and

substantive issues at this stage. I shall thus be wary and extremely circumspect in considering facts alleged and arguments of Counsel in the instant application to avoid determining substantive issues at an interlocutory stage. See the cases of **NDABA (NIG.) LTD. V. UBN PLC. (2007) 9 NWLR (PT. 1040) P. 439 and P.D.P V. ABUBAKAR (2007) 3 NWLR (PT. 1022) P. 515.** I shall limit myself to only facts alleged and arguments of Counsel in the instant application that are absolutely necessary for a consideration of the instant application for interlocutory injunction.

Counsel to the Claimant/Applicant relied on the provisions of Order 42 of the 2018 Rules of this Court. Counsel further cited the case of **KOTOYE V. CENTRAL BANK OF NIGERIA (1989) 2 SC (PT. 1) P. 17** on the conditions for interlocutory injunction. He submitted that the Claimant/Applicant has a strong *prima facie* case which has raised serious questions to be resolved at the hearing of the substantive matter. He identified questions which he submitted can only be determined at the hearing of the substantive matter. He posited that unless restrained by the order of this Court, the Defendants/Respondents will continue to engage and aggravate their actions and trespass which may render nugatory the Court's order or decision in the substantive suit. Counsel submitted that on balance of convenience that more justice will result in granting the instant application than in refusing it. He said the Defendants/Respondents have nothing to lose by awaiting the outcome of this suit. He argued that the balance of convenience is in favour of the Claimant/Applicant and, assuming it is not, then the Court should preserve the *status quo*. On the condition of damages as adequate compensation, Counsel submitted that if the Claimant/Applicant's interest is not protected by this Honourable Court, it would be exposed to great inevitable but avoidable danger and harm. That the topography and use/purpose of the land may be changed permanently. He contended that the Defendants/Respondents' activities would make the Claimant/Applicant's quarters inhabitable and it

(Claimant/Applicant) cannot be adequately compensated as the situation may result in the loss of lives of residents. He submitted that the Claimant/Applicant has met the requisite conditions for the grant of the interlocutory injunction and urged this Court to grant same.

Arguing on the other hand, Counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents submitted that the Claimant/Applicant failed to exhibit any title document before this Court to show title over the land the subject matter of the substantive suit. He submitted therefore that the Claimant/Applicant has not established any legal right capable of being protected. Counsel contended that it is settled that a prohibitive or restrictive order of injunction can only be issued to protect or stop an act which is about to happen or occur and not for an already existing or completed act. He relied on a plethora of decided cases for this position. It is his contention that the Claimant/Applicant's remedy cannot hold. He argued that the Claimant/Applicant has not set out any cognizable legal right over the subject matter and there is no serious question to be tried. Counsel posited that the balance of convenience is not in favour of the Claimant/Applicant but rather in favour of the 4<sup>th</sup> Defendant/Respondent who holds good title to the land subject matter of the substantive suit. He argued that the Claimant/Applicant ought to have taken steps to challenge the 4<sup>th</sup> Defendant/Respondent's title and not wait until after several years of possession. Counsel finally urged this Court to refuse the instant application with substantial cost of N10,000,000 against the Claimant/Applicant.

Replying on points of law, the Claimant/Applicant's Counsel submitted that the Respondents' contention that the act complained of has been completed is incorrect. He argued that the acts constituting the injury is continuous and subsisting. Counsel submitted that even where the balance of convenience is equal, the Court should preserve the *status quo*. He

contended that the necessity to grant the application far outweighs that for its refusal. He posited that the Defendants/Respondents have failed to show why this Honourable Court should not grant the injunction sought by the Claimant/Applicant.

Now having considered the affidavit evidence of both parties and their respective written address, it is beyond dispute that this Honourable Court has power under **Order 42 Rule 2 of the High Court of the FCT, Abuja (Civil Procedure) Rules 2018** to grant an application for order of injunction pending the trial of a matter. The decision whether to grant or refuse to grant an order of interlocutory injunction lies in the discretion of the Court which must be exercised judicially and judiciously. – see the cases of ***ALCATEL KABELMETAL (NIG.) PLC. V. OJUEGBELE (2003) 2 NWLR (PT. 805) P. 429.***

The following are the principles guiding the grant or refusal of an application for interlocutory injunction:-

1. the existence of a legal right in the applicant;
2. the presence of a triable issue in the matter;
3. that the balance of convenience in the suit tilts in favour of the applicant;
4. that damages will not adequately compensate the applicant if the injury sought to be restrained occurs;
5. the existence of other social or economic factors which makes it necessary for the application to be granted.

See the cases of ***ADESINA V. AROWOLO (2004) 6 NWLR (PT. 870) P. 601, ONYESOH V. NNEBEDUN (1992) 3 NWLR (PT. 229) P. 315, C.G.C. (NIG.) LTD. V. BABA (2004) 10 NWLR (PT. 882) P. 652 and KOTOYE V. CBN (1989) 1 NWLR (PT. 98) P. 419.***

**A. The existence of a legal right and the presence of a triable issue:**

It is trite that an applicant for interlocutory injunction must show that he has a legal right which is threatened and ought to be protected. See **COBHAM V. DUKE (2004) 2 NWLR (PT. 856) P. 150**. The applicant's case must also raise a 'triable issue' which has been described as an issue which cannot be dismissed with a wave of hand – see the case of **INTERCITY BANK PLC. V. ALI (2002) 7 NWLR (PT.766) P. 420**. In other words, the applicant must show that there is a serious question to be tried at trial, i.e. that the applicant has a real possibility of success at the trial and his claims are not vexatious or frivolous – see the cases of **AKINPELU V. ADEGBORE (2008) 10 NWLR (PT.1096) P. 531** and **KASUNMU V. SHITTA-BEY (2006) 17 NWLR (PT.1008) P. 372**.

I have looked at the claim of the Claimant/Applicant before this Court. I have considered its affidavits in support of the instant application. It is the Claimant/Applicant's allegation that it consists of residents of an area designated as Plot 1736 Cad Zone A01, Garki which includes a green area reserved as recreational area for the Claimant/Applicant. That the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents however started parading themselves as interest holders of this green areas which were purportedly designated as Plots 20150 and 2051. Pursuant to the Claimant/Applicant's complaint to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents, the 2<sup>nd</sup> Defendant/Respondent cancelled the conveyance of the green area to the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents. The 4<sup>th</sup> Defendant/Respondent involved the 3<sup>rd</sup> Defendant/Respondent but the position of the authorities remained the same. The 3<sup>rd</sup> Defendant/Respondent however broke into the said common recreation area on 27<sup>th</sup> July, 2018 with dangerous persons and bulldozer and forcefully pulled down the Claimant/Applicant's perimeter fence.

The Claimant/Applicant's further allegation is that the land upon which the Defendants/Respondents are allegedly trespassing is part of the land to which it is entitled. Thus it is my humble view that the Claimant/Applicant has averred to facts showing sufficient interest in the land the subject matter of the instant suit as to establish legal right to approach this Court for the orders of injunction sought. The question of proof of title to the land by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/ Respondents is required at trial as it goes to substantive issues and not at this stage. An interlocutory injunction is granted to protect the *res* in dispute, *at a time when the true owner is yet to be ascertained*, pending the determination of the dispute between the parties. See the case of **MUBECO PETROLEUM CO LTD V. FIRST BANK & ORS (2015) LPELR-40385(CA)**. I am also of the view that triable issues arise in the instant case such as whether the alleged acts of the Defendants/Respondents' in respect of the land subject matter of the substantive suit are not unlawful in the circumstances.

**B. *The balance of convenience and inadequacy of damages as compensation:***

In the case of **AKINPELU V. ADEGBORE (supra)** Tobi JSC held that an applicant for interlocutory injunction must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it. The learned jurist also held that the applicant must show that damages cannot be an adequate compensation for his damage or injury, if he succeeds at the end of the day.

Likewise, the Court of Appeal held per Abdullahi JCA in the case of **ADEWALE V. GOV., EKITI STATE (2007) 2 NWLR (PT. 1019) P. 634 at P. 657 PARAS. C-Das follows:-**



*The objective of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The applicant also has to show that the balance of convenience is on his side, that is to say more justice will result than in refusing it.*

See also the cases of **ORJI V. ZARIA IND. LTD. (1992) 1 NWLR (PT. 216) P. 124** and **MODILE V. GOVERNOR OF LAGOS STATE (2004) 12 NWLR (PT. 887) P. 354 at P. 381 paragraphs. A-F.**

The Claimant/Applicant in its affidavits in support of the instant application averred to facts of activities of the Defendants/Respondents particularly the 3<sup>rd</sup> Defendant/Respondent in forcefully breaking into the land in dispute with thugs and bulldozer and pulling down the perimeter fence of the Claimant/Applicant's residential quarters thereby exposing the Claimant/Applicant (and its families of men, women and children) to danger and insecurity. That the 3<sup>rd</sup> Defendant/Respondent and his accomplices tampered with and vandalized public property by digging and erecting fence and digging foundation on the land in dispute towards building thereon. That the 3<sup>rd</sup> Defendant/Respondent has threatened further damages on the Claimant/Applicant's properties and also threatened to convert the Claimant/Applicant's access roads. That the 3<sup>rd</sup> Defendant/Respondent has continued to change the topography of the Claimant/Applicant's property by hastily developing the subject matter. That the 5<sup>th</sup> Defendant/Respondent has also threatened to carry out illegal activities in dealing with her alleged Plot 2051 which is illegally sited on the common recreational green area belonging to the Claimant/Applicant. That if the Claimant/Applicant's interest and lives are not protected, danger and harm will occur to the Claimant/Applicant's lives and properties. That the topography and purpose of the land may also change permanently if the

Defendants/Respondents are not restrained. Allowing the Defendants/Respondents to build on the subject matter would completely block off the Claimant/Applicant's residents from sunlight and air which would make their quarters inhabitable and highly unsuitable for human habitation. That it is also necessary to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents from redesigning, re-allocating or in any way dealing adversely with the subject matter pending determination of the substantive suit. That the irreparable loss to be suffered by the Claimant/Applicant cannot be compensated in damages and the Defendants/Respondents have nothing to lose.

In considering in whose favour the balance of convenience lies, the Court would always try to know whether it would hurt the applicant more to go without the injunction pending trial than it would hurt the respondent to suffer it. The onus is on the applicant to show how he would be disadvantaged by refusal of the application before the onus shifts to the respondent. – see the case of **MODILE V. GOVERNOR OF LAGOS STATE (supra)**. The Court must weigh the inconvenience and damage that will be suffered by the applicant against that of the respondent in deciding whether or not to grant the order of interlocutory injunction sought. – see the case of **COBHAM V. DUKE (supra) at P. 180 paragraphs A-B**.

The Claimant/Applicant has clearly shown the inconvenience and damage that it (its residents) will suffer if the Defendants/Respondents are not restrained vide the grant of the instant application. Unbearable living conditions, health hazards, possible loss of lives and property, permanent change in topography of the subject matter etc. Little or next to nothing is known of the inconvenience the Defendants/Respondents will suffer if they are restrained (or even if they will suffer any). The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Defendants/Respondents did not file any counter-affidavit deposing that they will suffer any

inconvenience if the instant application for injunction is granted.

The 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents, for their part, did file a counter affidavit. I have looked at the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents' Counter Affidavit in opposition to the instant application for interlocutory injunction. They have made a rather general denial of the allegations against them. It however appears that the strength of the counter-affidavit is concentrated on averments to the effect that they have a right over the subject matter and that the Claimant/Applicant has no right to stop them from developing the land subject matter of the substantive suit. I have however found earlier, on the issue of legal right that the Claimant/Applicant has established a legal right to approach this Court for the order of interlocutory injunction pending the determination of the substantive suit. The salient question is whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents will suffer more if the instant order of interlocutory injunction is granted. Nowhere in their counter-affidavit did the 3<sup>rd</sup> Defendant/Respondents aver as to what nature of inconvenience/injury they might suffer (or even that they will suffer any) if the interlocutory injunction sought vide the instant application is granted.

Thus, by the affidavit evidence of the Claimant/ Applicant, I hold the considered view that the balance of convenience weighs in favour of the Claimant/Applicant as the party who will suffer if the instant application for interlocutory injunction is not granted and the Defendants/Respondents are not restrained and I so hold. I must also hold that the nature of inconveniences/injury to be suffered by the Claimant/Applicant are not such as can be adequately compensated in damages if the acts complained of are not restrained pending the determination of the substantive suit and I so hold.

It is also relevant to note that the Claimant/Applicant undertook to indemnify the Defendants/Respondents to the extent of damages in the event that it is found that the order of injunction sought ought not to have been granted and this undertaking spices the terms of the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

Now Counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents has suggested that the acts which the Claimant/Applicant seeks to restrain by the instant application are completed acts. It is trite that an order of interlocutory injunction is not a proper remedy for a completed act. – see the case of ***SULU-GAMBARI V. BUKOLA (2004) 1 NWLR (PT. 853) P. 122.***

The totality of facts alleged by the Claimant/Applicant in its affidavit in support of the instant application for injunction reveals that the Defendants/Respondents' acts which are being complained of still persist and are on-going. They are continuous. In fact, in its further affidavits, the Claimant/Applicant averred that the 3<sup>rd</sup> Defendant/Respondent continued his activities on the subject matter despite the interim order of injunction granted by this Honourable Court on 26<sup>th</sup> November, 2018 restraining the Defendants/Respondents. Pictures of the development and activities on the subject matter by the 3<sup>rd</sup> Defendant/Respondent are annexed to the Claimant/Applicant's affidavits in support. I cannot therefore readily come to the conclusion from the facts before this Court that the Defendants/Respondents' acts sought to be restrained by the order of this Court have already been completed.

Counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents also posited that the Claimant/Applicant has been indolent in its conduct.

Now the conduct of parties has quite often been held to be a relevant factor in the consideration of whether or not to grant an application for interlocutory injunction. – see the case of

**LEASING CO. NIG. LTD. V. TIGER IND. LTD (2007) 14 NWLR (PT. 1054) P. 346.**

The facts as presented by the Claimant/Applicant in its affidavits is that it immediately complained to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents when the 4<sup>th</sup> and 5<sup>th</sup> Defendants/Respondents paraded themselves as interest holders over the subject matter in 2015. That when the 3<sup>rd</sup> Defendant/Respondent allegedly invaded the subject matter in 2018, it reported the matter to the Police. The substantive suit and the instant application for injunction were filed in 2018. I do not agree that the facts show the Claimant/Applicant as being indolent or of negligible conduct such that equity ought not to avail him or come to its aid. Rather, I think it is the 3<sup>rd</sup> Defendant/Respondent's conduct of persisting with developments and activities on the subject matter despite the interim order of injunction made on 26<sup>th</sup> November, 2018 by this Honourable Court that is *mala fide* and reprehensible. And I must warn of the dire consequences of such action.

Consequently, Counsel to the 3<sup>rd</sup> and 4<sup>th</sup> Defendant/Respondents' submissions on completed acts and indolent conduct cannot avail the Defendants/Respondents. Such submissions ought to be discountenanced and it is accordingly discountenanced.

In sum, the Claimant/Applicant has been able to establish a case for the grant of the instant application for orders of interlocutory injunction. The issue for determination ought therefore to be resolved in favour of the Claimant/Applicant and against the Defendants/Respondents.

In the circumstances, I find that it would be judicious and judicial exercise of the discretion of this Court to grant the orders of interlocutory injunction to restrain the Defendants/Respondents as sought in the instant application. It would be in the interest of justice to so do. The

Claimant/Applicant is thus entitled to the grant of the orders of interlocutory injunction sought via the instant application. Accordingly, reliefs I and 2 of the instant application is hereby granted as prayed.

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**HON. JUSTICE D. Z. SENCHI**  
**(PRESIDING JUDGE)**  
**23/06/2020**

Parties:- Claimant/Applicant absent.

3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents present.

OnyekaIkenta:- For the Claimant/Applicant.

J.A Abah:-For the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents.

ChristableAyuk:-For the 5<sup>th</sup> Defendant/Respondent.

Onyeka:- We thank the Court for the ruling

Court:- Case adjourned to 30<sup>th</sup> September, 2020 for hearing/defence.  
No adjournment would be granted at the instant of the either party in this suit.

**Sign**  
**Judge**  
**23/06/2020**