

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 30 GUDU - ABUJA
DELIVERED THURSDAY THE 28TH DAY OF MAY 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE .R. OSHO-ADEBIYI

SUIT NO. FCT/HC/CV/1328/2017

BETWEEN

- 1. MRS ADEJUMOKE IVBURIE (*suing as* =====PLAINTIFF
*Administrator of Estate of (Mr.
Lawson Ericson Ivburie)***
- 2. MR. WINSTON IGBOECEHEONWU**
- 3. MR. BOLAJI OWOLOWO =====PLAINTIFFS**

AND

- 1. BROADFIELDS INTERMEDIARIES LTD**
- 2. UNITY HILLS GARDEN ESTATE (NIG) LTD**
- 3. SAHARA HOMES NIG. LIMITED=====DEFENDANTS**

RULING

Learned Counsel for the 1st Plaintiff filed a motion on notice with motion number M/854/2019 dated the 4th day of November 2019, brought pursuant to Order 43 of the FCT High Court Civil Procedure Rules 2018 and under the inherent jurisdiction of this Court. It is seeking an Order:

1. Restraining the Defendants, either by themselves, or through their agents, cronies, servant, assigns, privies, or anybody however called, from interfering, obstructing and disturbing the 1st plaintiff from erecting a fence around the house at (Plot) A-11 Plot 8 Cadastral Zone C08, Dakwo District, Abuja; subject matter of this suit.

2. And for such Orders as this Honourable Court may deem fit to make in the circumstances of the application.

The grounds for bringing this application are as follows:-

- a. The Defendants/Respondents have at different times employed the use of the Police and thugs in preventing the 1st Plaintiff/Applicant from erecting a fence around her house (subject matter of this suit) in order to protect herself and children from harm.
- b. The continued act of the Defendants/Respondents in preventing her from putting up a fence has kept her and her children in perpetual fear of danger including the possibility of getting robbed.

It is supported by a 17 paragraph affidavit deposed to by the Applicant herself and attached are 5 exhibits, which are pictures of a residential building with no fence and pictures of building blocks left unused. Also attached to the application is a written address.

Learned Counsel on behalf of the 2nd and 3rd Plaintiffs also filed a motion on Notice with motion number M/862/2019 dated the 7th day of November, 2019, seeking for the following orders:-

1. An order of Interlocutory Injunction restraining the Defendants/Respondents their privies, servants and/or agents from further acts of trespass and encroachment on the 2nd and 3rd Plaintiffs' properties, lying and situate at Plot 8 Cadastral Zone C08, Block (Plot) B-11 Dakwo District Abuja FCT and Plot 8 Cadastral Zone co 8 House (plot) 84 respectively, being the subject matter of this suit pending the determination of the substantive suit by this Honourable Court.
2. An Order restraining the Defendants/Respondents from further acts of assaults, battery, harassment, intimidation and restriction of movement against the 2nd and 3rd Plaintiffs/Applicants pending the determination of the substantive suit.

In support is a 25-paragraph affidavit deposed to by Mr. Jibrin Mohamed, a litigation Clerk in the firm of 2nd and 3rd Plaintiffs' Counsel. Attached are 5 Exhibits; A, B, C, D1 and D2. Also attached is a written address.

I will take both motions in this ruling. In respect of Motion no. M/854/2019 dated 4th November 2019; the 1st Plaintiff is seeking for an order restraining the Defendants from interfering or obstructing the 1st Plaintiff from erecting a fence around the House, subject matter of this suit.

The 2nd and 3rd Defendants filed a 31-paragraph counter affidavit dated the 27th day of November 2019 and attached Exhibits A to Q and a written address. The 1st Defendant also filed a Counter affidavit dated 24/02/2020.

The 1st Plaintiff filed a 21-paragraph reply affidavit dated the 25th of February 2020 to the 2nd and 3rd Defendants' counter affidavit.

Below is a recap of the facts from the processes filed by both learned Counsel as regards Motion no: M/854/2019 dated 4th November 2019:-

The 1st Plaintiff is the widow/administrator to the estate of Mr. Lawson Ivburie (deceased). That after the death of her husband, she employed workers to erect a fence around her house (subject matter of this suit) in order to protect her and her children as the area where the property is situated is largely undeveloped and incidents of strangers and stray dogs sitting at her entrance at odd times of the day and night abounds, hence 1st plaintiff purchased building blocks in order to erect a fence but Defendants resisted by hiring thugs who drove away her workers from site (Attached and marked as Exhibit A are pictures of the unused blocks).

The 2nd and 3rd Defendants in opposition filed a 31 paragraph counter affidavit and stated that upon the demise of late Mr. Lawson Ericson Irburie, 1st Plaintiff who is the administrator of the estate, served the 2nd and 3rd Defendants a motion preventing the 2nd and 3rd Defendants from interfering with the erection of a fence around her property. That prior to the institution

of this suit in 2017, the deceased made part payment for a building in the estate of the 2nd and 3rd Defendants. That the deceased's estate is yet to offset various liabilities as regards her deceased husband property contrary to the agreement executed between both parties, as a result, a lot of levies were left unpaid by the 1st Plaintiff contrary to the agreement between the parties. That in response to letters of demand written by the 2nd and 3rd Defendants, 1st Plaintiff acknowledged her indebtedness in infrastructural levy and proffered alternate measures of paying up which was not agreeable with the 2nd and 3rd Defendants. That the deceased in 2014 had written a letter to the Estate (2nd and 3rd Defendants) applying for permission to fence his property but same was rejected on the grounds of his non-performance of virtually all the agreement guiding both parties but rather, the Defendants wrote to officially demand from the 1st Plaintiff all outstanding payment which is yet unpaid till date. That this has occasioned the Defendants to file a counter claim against the 1st Plaintiff for breach of terms of their contract with the 2nd and 3rd Defendants and if 1st Plaintiff's prayer to fence her property is granted by this Court, it would occasion an irreparable damage to the 2nd and 3rd Defendants. That despite a stop work order pasted on the property of 1st Plaintiff, she proceeded in erecting her fence and 2nd and 3rd Defendants had to inform the Nigerian Police and a Police man was sent to enforce law and order on the premises as opposed to thugs. That the estate is fully secured with security guards guarding the estate, hence no harm can befall the 1st Plaintiff's family. The 1st Defendant also filed a 4 paragraph counter affidavit dated 24th February 2020 and stated that the allegations contained in the motion filed by the 1st Plaintiff are not against the 1st Defendant as 1st Defendant was not even aware that the 1st Plaintiff was erecting a fence or had the intention of erecting a fence.

I have read through processes and evaluated all exhibits and the issue for determination is :- ***“whether prayer of the Applicant can be granted at this preliminary stage?”*** Applicant in the substantive suit, filed for declaratory reliefs against the Defendants alleged restriction of Applicant’s movement within the estate, restriction of Applicant’s use of Applicants properties, that the presence of the 2nd Defendants’ agents and servants within the estate is illegal and a perpetual injunction restricting Defendants from stopping applicants from entering and exiting their property. Also, Applicants are seeking for an order of perpetual injunction restraining 2nd Defendant from parading himself as developer or joint developer of the estate. Defendants on the other hand along with their statement of Defence also filed a counter claim and paragraph 27 of the counter claim states:-

“ On the 24th of September, 2010 the 2nd Defendant/Counter Claimant wrote a letter to the 1st Plaintiff titled *“Request for payment of infrastructural fee and other outstanding balances”* not yet paid by them”

Paragraph 29 of the Counter Claim states:-

“On the 12/12/2014, the 1st Plaintiff wrote to the 2nd Defendant/Counter Claimant requesting/demanding for fencing the property A011-Unity Hills Garden Estate”

Paragraph 30 of the Counter Claim states:-

“The 1st Plaintiff’s letter of 12-12-2014 was replied by the 2nd Defendant/Counter Claimant on the 19th of December, 2014, stating categorically the conditions for the approval of his application which he did not comply with”

Prayer 4(i) of the counter claim declaration states:-

“An order directing the 1st Plaintiff to pay to the 2nd Defendant/Counter claimant the sum of N6,579,700.00 (six million, five hundred and seventy nine thousand, seven hundred Naira) only, being his total outstanding debt for the allocation offer of House unit No.A11 granted to him in Plot 8, Cadastral Zone C08, Dakwo District, Abuja.”

From Defendants’ counter claim, it is alleging that 1st Plaintiff is yet to complete payment of the allocation offer of House Unit No.A11, subject matter of this suit. This is contrary to 1st Plaintiff’s claim in the statement of claim accompanying the substantive suit, particularly paragraph 10 where Plaintiffs stated that **“they made payments to the 2nd and 3rd defendants on the strength of the allocation letters and the authorization to move to site and have gone on to complete the purchase price as agreed”**.

From the above, it is obvious there is an issue regarding payment of the subject matter property of the 1st Plaintiff left unsettled. Parties have thereby joined issues; hence granting the prayers of the 1st Plaintiff by allowing Plaintiff erect a fence is tantamount to acquiescing 1st Plaintiff’s right over the property fully paid for. Parties have joined issues; evidence must be led on issues raised in the substantive suit and counter claim.

Hence, for the Court to determine and grant prayers of the 1st plaintiff at this preliminary stage is tantamount to the Court determining issues raised in the substantive suit and counter-claim at an interlocutory stage. The Apex Court has warned several times that where the Court cannot decide a preliminary objection without evidence being led, it ceases to be a preliminary objection. In the case of *ELEBANJO VS. DAWODU* (2006) 15 NWLR (PT.1001) 76 @ 137 Para E-F, where *OGBUAGU JSC*, held that once issues cannot be determined in the pleadings then the Court ought to proceed to a full trial of the case and decide the point afterwards. A preliminary point cease to be one strictly

speaking once the point could not be decided without evidence being led. In such a case, the point becomes a defence to the action.

A trial Court must be cautious when deciding preliminary issues raised in a suit in order to avoid taking a decision on the substantive issues, hence, if issues raised in 1st Plaintiff's motion is considered at this interlocutory stage, the Court will appear to prejudge or pre-empt the main issues raised in the substantive suit and the counter claim, which relates to the application under consideration. See *EGBE VS., ONOGUN* (1972) 1 ALL NLR 95; *JIMOH VS. OLAWOYE* (2003) 10 NWLR (PT.828) 307.

From the evidence and processes before me, granting the prayers of the 1st Plaintiff to erect a fence on the subject matter property is akin to prejudging the substantive suit and counter-claim at an interlocutory stage; to do otherwise is to prejudice the matter in respect of which evidence is yet to be led, else, trial of the substantive suit and particularly the counter claim would be an academic exercise in futility, a situation which would bring the Court to mockery and foist a situation of fiat accompli on the Court.

I therefore hold that the prayers of the 1st Plaintiff in motion no. M/854/2019 is hereby struck out and the substantive suit plus the counter claim is hereby set down for accelerated hearing taking into consideration the safety of the 1st Plaintiff.

Taking into consideration the peculiar nature of this suit, IT IS HEREBY ORDERED THAT STATUS QUO BE MAINTAINED AS REGARDS 1st Plaintiff's Property situate at Plot A-11 Plot 8, Cadastral Zone CO8 Dakwo District, Abuja, subject matter of this suit pending the final determination of the substantive suit. IT IS FURTHER ORDERED THAT both parties should maintain peace and none of the parties should disturb the other's peaceful existence pending the determination of this suit.

In respect of Motion no.862/2019 dated 7th November, 2019, 2nd and 3rd Plaintiffs are by this motion, praying the Court for an order of Interlocutory Injunction restraining the Defendants/Respondents their privies, servants and/or agents from further acts of trespass and encroachment on the 2nd and 3rd Plaintiffs' properties, lying and situate at Plot 8 Cadastral Zone C08, Block (Plot) B-11 Dakwo District Abuja FCT and Plot 8 Cadastral Zone C08 House (plot) 84 respectively, being the subject matter of this suit pending the determination of the substantive suit by this Honourable Court and an Order restraining the Defendants/Respondents from further acts of assaults, battery, harassment, intimidation and restriction of movement against the 2nd and 3rd Plaintiffs/Applicants pending the determination of the substantive suit by this Honourable Court.

The following is a recap of the facts stated in processes filed in respect of this motion:-

That the 3rd Plaintiff who is currently in physical and peaceful possession of the property known as House (Plot 84) 8 Cadastral Zone C08 Dakwo District, Abuja FCT is the owner of the said plot and acquired same from the 2nd Defendant after completing full payment. That as at the time of instituting this suit, Defendants/Respondents and their agents prevented 3rd Plaintiff ingress from the main estate gate thereby disrupting his daily activities as he was confined to a deplorable alternative route in and out of his property. That during the pendency of this suit, Defendants did a turn around and gave his agents at the gate orders to start allowing the 3rd Plaintiff access through the main estate gate and plaintiffs have been enjoying same and plaintiffs are desirous of maintaining this state of things till the determination of this suit. That on 9th of August 2019 at 9pm, one Mr. Nafiu Uman Maje, the executive director of 2nd Defendant encroached on 3rd Plaintiff's property and

maliciously towed away his Nissan Tilda Saloon Car with registration number EST786CH and this necessitated 3rd Plaintiff reporting to the Police and the Federal Road Safety Corp. That 3rd Plaintiff was thereafter, brutally assaulted and battered by the 2nd Defendant and its agents. That Defendants have often threatened Plaintiffs, stating that Plaintiffs will not have any peace in the estate. That Defendants have on several occasions, entered into the Plaintiffs' property without permission, accompanied by strangers inspecting their properties against the wish and desire of the Plaintiff. That Defendants/Respondents have made several efforts and arrangements to forcefully take over the property of the Plaintiffs.

Learned Counsel to the 2nd and 3rd Defendants in reaction to Motion no: M/862/2019 filed a 25 paragraph counter affidavit dated 27/01/2020 deposed to by Lucy Francis, a litigation secretary in the law firm office of Counsel to the 2nd and 3rd defendants. In the said affidavit, 2nd and 3rd Defendants averred that at no time did they prevent 2nd and 3rd Plaintiffs' right of ingress and egress from the main entrance gate of the estate, that rather, 2nd and 3rd Plaintiffs are in the habit of using an unauthorized route contrary to the restriction order granted by an FCT Court as the said unauthorized route is a land that belongs to one Mr. Linus Ukachukwu. That 3rd Plaintiff's car was towed away by officials of the Federal Road Safety Corps after he parked in an unauthorized location in the estate. That 2nd and 3rd Defendants have never threatened 2nd and 3rd Plaintiffs nor had altercations with them nor has the 2nd and 3rd Defendants ever entered the 2nd and 3rd Plaintiffs' property nor threatened their peace. That 2nd and 3rd Defendants have never molested 2nd and 3rd Plaintiffs in any form. The 2nd and 3rd Plaintiffs' Counsel filed a reply on points of law dated 19th February 2020, which I have read and considered in this ruling.

The issue for determination is “**whether 2nd and 3rd Plaintiffs/Applicants are entitled to the order sought against the Defendants/Respondents**”.

From the processes and evidence before this Court, 2nd and 3rd Plaintiffs have alleged that 2nd and 3rd Defendants have at some time, resulted to harassment, assault, battery, intimidation, restriction of movement of the 2nd and 3rd Plaintiffs. That 2nd and 3rd Defendants have at some time, trespassed and encroached upon the property of 2nd and 3rd Plaintiffs. This was denied seriatim by the 2nd and 3rd Defendants. Exhibit D and D1 attached to the motion on notice proves that the said vehicle was towed away by officers of the Federal Road Safety Corps. On the whole, there is no proof that 2nd and 3rd Defendants committed acts or breach they are alleged to have perpetuated; nor is there proof of intimidation, harassment, assault and battery, but one thing is crystal clear and that is, there is no peace between parties. This Court will therefore invoke its powers under the omnibus prayer 3 of the motion on notice, as it is necessary for peace to reign between parties till this suit is determined. Consequently, IT IS HEREBY ORDERED THAT:-

1. Both parties should maintain peace, pending the determination of the substantive suit. IT IS FURTHER ORDERED THAT none of the parties disturb each other’s peaceful existence.

Parties: Parties are absent.

Appearances: Emelia Chukwuocha (Mrs.) for the 2nd and 3rd Defendants.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI

JUDGE

28TH MAY, 2020