

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 22**  
**CASE NUMBER : SUIT NO: CV/124/2019**  
**DATE: : MONDAY 21<sup>ST</sup> SEPTEMBER, 2020**

**BETWEEN:**

**BINA CONSULT AND INTEGRATED SERVICES LIMITED** } **CLAIMANT/  
APPLICANT**

**AND**

**1. THE ATTORNEY GENERAL OF ZAMFARA STATE** } **DEFENDANTS/  
RESPONDENTS**  
**2. ZAMFARA STATE GOVERNMENT** }  
**3. SECRETARY TO THE ZAMFARA STATE GOVERNMENT** }

# **RULING**

Plaintiff/Applicant filed Motion No. M/9604/2020 dated the 9<sup>th</sup> of September, 2020 and filed same date, praying this court for an Order of mandatory injunction compelling the Defendants/Respondents to forthwith restore the Claimant/Applicant to possession over all the property known and better described as Storehedge Hotel situated at 104/Kur Mohammed Avenue, Street Abuja, Central Business District, Abuja pending the hearing and determination of the substantive suit and an Order of punitive damages in the sum of N48,200,000.00 (Forty Eight Million, Two Hundred Thousand Naira) against the Defendants/Respondents and directing the immediate payment of the said sum before Defendants/Respondents are allowed to take any

major steps in the proceedings, and for such order or further orders.

An affidavit of 16 paragraphs was filed in support of the application and written address, which was adopted by Applicant's Counsel.

I have considered the relevant paragraphs of the affidavit which was duly deposed to by one AminuAunam, the manager of the Plaintiff/Applicant, whereof the Deponent stated that a team of armed policemen in several police vehicles invaded the premises of the Applicant which is a hotel and ordered everybody including staff, hotel guests, security to vacate the premises and that leader of the team of policemen threatened to shoot anybody who resists their order to which the leader said was that of the Inspector General of Police. Guests and staff of

the Applicant were asked to leave the hotel by the Deponent after Police took over the hotel.

It is further the deposition of the Applicant that upon invitation by police to the Force Headquarters pursuant to a petition to the Inspector General of Police by the Defendants/Respondents, he informed the police that the matter was civil and in court.

Applicant listed loss of daily income from the business calculated on a basis of the least daily earning which is N2,000,000.00 (Two Million Naira) from 18<sup>th</sup> August, 2020 to the 9<sup>th</sup> September, 2020 which amounts to N46,000,000.00 (Forty Six Million Naira). Cost of refunds to guests which stood at N1.4,000.000.00 (One Hundred and Four Million Naira).

Cost of prepared meals, foodstuffs, and other ingredients which had to be abandoned stood at N800,000.00 (Eight Hundred Thousand Naira).

Plaintiff/Applicant stated that Defendants/Respondents procured the police to help them take over the premises in flagrant disregard to the fact that the case is pending before this court which had made an Order for Interlocutory Injunction.

Learned counsel, Onoja, the cited case of ***IFANYI & ORS VS GOVERNOR IMO STATE (2014) LPELR 2282*** which is on all force with the present matter touching on self help and where Abba Aji, JCA (as he then was) now JSC made serious comments on self help.

Onoja, of counsel, drew the attention of the court to the fact that Respondents who were duly served the application, failed and or ignored to file any counter affidavit. Learned counsel then urged the court to deem all facts therein contained in the affidavit in support of the application as admitted and grant the application which shall serve as deterrent to others.

**Court:-**for starters, I wish to observe that Defendants/Respondents were served the said application on the 10<sup>th</sup> September, 2020, but failed or and ignored to file counter affidavit.

The function of counter affidavit cannot be over emphasized.

The law is settled peradventure on failure to file counter affidavit.

Where no counter affidavit is filed to controvert material depositions in the affidavit in support of an application, the facts therein are deemed admitted and conceded by the party who had all the opportunity to so do. In the instant case, Defendants/Respondents who were served Plaintiff/Applicants Motion on notice have failed, ignored and or refused to join issues with the Applicant by filing counter affidavit, debunking the averments contained therefore.

I am left with no other option other than to accept the averments as the correct position of the affairs between the parties... I rely on ***CHAIRMAN EFCC & ANOR VS LITTLE CHILD & ANOR (2015) LPELR 25199 (CA)***.

It is on record that Plaintiff/Applicant filed an action before this court in suit number **FCT/HC/CV/124/19** against the Defendants/Respondents.

It is also on record that pursuant to the existence of the suit, an order of interlocutory injunction against the Defendants/Respondents was pending stopping the Respondents from taking any such steps to take over the subject matter of litigation until the determination of the matter before the court.

Contrary to the Order of this court, policemen have taken over the subject matter of litigation chasing guests and staff of the hotel at the instance of the Defendants/Respondents.

Every court guards its powers jealously and will not allow matter pending before it to be unilaterally taken away by any of the parties before it to be settled its own way, extra judicially.

I dare say here that even where self help is available it is not a course to be encouraged by court.



In my view, the right to the Defendants/Respondents to resort to self help, if it would ordinarily have been available to them, was lost the moment Plaintiff/Applicant turned the issues over to the court for adjudication. Indeed it would have been usurpation of judicial power vested in courts by Section 6(6)(b) of the 1999 Constitution of the Federal Republic of Nigeria, as amended.

Plaintiff/Applicant has run back to the same court to seek protection by filing for mandatory injunction.

A mandatory injunction is sometimes classified as an interlocutory order of injunction is that it may be granted upon all interlocutory application. It is a different type of injunction with its own features, requiring a condition of its own distinct features.

It is instructive to note that mandatory injunction is targeted upon a complete act and the order there may be made, to undue that has been unlawfully and disrespectfully done or carried in disobedience to valid court order. See ***KWANKWASO VS KANO STATE (2007) ALL FWLR (Pt. 363)179 @ 198 Paras D – F (CA), A.G ANAMBRA STATE VS OKAFOR (1992) NWLR (Pt. 224) 396.***

The principles relating to the grant of mandatory injunction are as follows:-

1. Where the injury done to the Plaintiff cannot be estimated and sufficiently compensated for it damages.
2. Where the injury to the Plaintiff is so serious and material that the restoration of things to their

former condition is the only method whereby justice can be adequately done. Or

3. Where the injury complained of is in breach of an express agreement.
4. Where the Defendant attempts to steal a mark on the Plaintiff.

Clearly, from what has played out, Defendants/Respondents have shown utter contempt, disrespect and insult not just to the Order of this court but on the institution of the judiciary as whole.

The action of the Respondents is one that has the capability of not just ridiculing the judiciary but sending a dangerous signal to other branches of the Executive that self help is the order of the day and the way. God forbid.

Defendants/Respondents have made the work of this court very easy by refusing to join issues with the Plaintiff/Applicant on its application.

What could Respondents have said any way..!!

The Order of this court is not a black market Order and I will resist any attempt by anybody who decides to flaunt my Order, as done by the Respondents in this case.

This is one instance that granting an Order reversing what Defendants have done become very necessary and exceedingly important if the imbued respect for the judiciary is to be maintained.

Application for mandatory injunction succeeds. Having chased out guests and staff of the Applicant by using Policemen, I hereby Order Defendants/Respondents to restore Plaintiff/Applicant

immediately into possession over the property described as Stonehedge Hotel situated at 104/Kur Mohammed Avenue Street, Abuja Central Business District pending the hearing and determination of this substantive suit.

Next is punitive damages of N48,200,000.00 (Forty Eight Million, Two Hundred Thousand Naira Only).

The conduct of the Respondents is sufficiently outrageous to merit pronouncement as same discloses clear disrespect and disobedience to the Order and Constitutional authority of the judiciary.

I have no difficulty awarding the sum of N48,200,000.00(Forty Eight Million, Two Hundred Thousand Naira) againstthe

Defendants/Respondents for using the Police to forcefully take over the said Hotel which is subject

matter of litigation and regardless of the subsisting Order of interlocutory injunction.

I also further Order the Inspector General of Police (IGP) to withdraw men of the Nigerian Police from the said Stonehedge Hotel as the matter is already before a court of law.

I hope the said punitive damages would serve as deterrent to those who disregard Court Orders and resort to self help.

*Justice Y. Halilu*  
*Hon. Judge*  
*21<sup>st</sup> September, 2020*

***APPEARANCES***

F.R ONOJA with A.O OTORI and S.F PELE – for  
the Claimant/Applicant.

Defendants/Respondents not in court and not  
represented.