

**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: 10**

**SUIT NO: FCT/HC/CV/866/2020**

**MOTION NO: 4439/20**

**BETWEEN:**

**BABANGIDA BABAJI ABDUALLAHI.....CLAIMANT/APPLICANT**

**VS**

**JULNANCYPAUL NIG LTD.....DEFENDANT/RESPONDENT**

**RULING**

By a Motion on Notice dated 21/1/2020 and filed same day, with No. M/4439/2020 and brought pursuant to Order 8 Rule 1 &2 of the FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Hon. Court, the Claimant/Applicant prays for the following reliefs:-

1. And Order of Interlocutory Injunction restraining the Defendant, its agents, officials, privies, assigns, staffs, workmen, Foremen or by whatever name called from taking possession of; trespassing into, developing, changing the topography of or in any way disturbing or interfering with the land situate at Plot No. MF 2321 Cadastral Zone 07 – 07 Sabon Lugbe East Extension Layout FCT – Abuja measuring about 1.8

hectares pending the final determination of the substantive suit.

2. An Order of Interlocutory Injunction restraining the Defendant/Respondent, its Agents, Privies, Workmen or person(s) claiming through or in trust for them building, using any form of earth moving machine, bulldozers, tractors, developing, improving, defacing, excavating or in any way infringing on the Plaintiff's right of possession to Plot No. MF 2321 Cadastral Zone 07 – 07 Sabon Lugbe East Extension Layout FCT – Abuja measuring about 1.8. hectares pending the final determination of the substantive suit.
3. An Order of Interlocutory Injunction restraining the Defendant, its agents, privies, workmen or person(s) claiming through or in trust for it/them from further harassing, beating, intimidating the employees of the Plaintiff especially the security guards at the land in dispute pending the final determination of this Suit.
4. 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 is a 27 Paragraph affidavit deposed to by Babangida Babaji Abdullahi with Exhibits marked "A – F" and also filed is a Written Address, in urging the court to grant the reliefs sought.

The Defendant was served on 17/2/2020 of the Originating Process and the Motion on Notice, but failed to react within time permitted by the Rules of court. It is must be noted that when the matter came up for mention on

26/2/2020, one Nzewi Arinze appeared for the Defendant and asked for an adjournment to enable settle out of court, this application was granted and at the next adjourn date, 9/3/2020, the said defence counsel failed to appear in court to report settlement, upon his failing the court granted the application of the Claimant Counsel to proceed with their Motion on Notice. The implication of all of these is that the application is unchallenged. It is trite that the court can act on such unchallenged evidence, as true and correct once found credible. See *Afriland Nig. Ltd Vs Moslad Ent. Ltd* (2008) ALL FWLR (PT.421) 879 @ 894.

Before, proceeding, it must be mentioned that the Applicant Counsel brought under Order 8 Rules 1, 2 of the Rules of Court, a careful perusal of the Rules shows that this application brought under this Order is inappropriate and ordinarily this court should refuse this application, however, in the interest of justice and the principle that a Litigant should not be punished for the sins of his counsel, this court will proceed with the application, more so it is also brought under the inherent jurisdiction of this court.

The case of the Claimant/Applicant in summary is that the Applicant's legal interest in the property Plot No. MF 2321 Cadastral Zone 07 – 07, Sabon Lugbe East Extension layout, FCT – Abuja measuring about 1.8. hectares, by virtue of grant of an Offer of Terms of Grant/Conveyance of Approval dated 11/3/19998 from the Abuja Municipal Area Council under the hand of the Zonal Manager, for the Hon. Minister, FCT and by virtue of a irrevocable Power of Attorney and Deed of Assessment granted by Danzaria Travel and having taken steps to regularize with FCDA, pursuant

to the directives of FCDA and payment due made, the Defendant has infringed upon the said property by entering into the said Plot, disturbing the quiet enjoyment of the property.

In the written submission of the Applicant, only one (1) issue was distilled for determination, which is;

“Whether in the circumstances of this case, the Claimant/Applicant is entitled to the grant of this application”

And submits that it is settled law that an Applicant can apply to court to prevent the occurrence of activities against the interest of that party by an adversary. That the court in considering such application must give due regards as to whether the Applicant has satisfied the set guidelines and relying on the case *Kotoye Vs CBN (1989) 2 SC (PT.1) @ 1 @ 17*, submits that the Applicant has complied with the set guidelines stated in that case to warrant this court to grant the application. Submits that this the Applicant has done vide the paragraphs and Exhibit “A” – “F” of the affidavit and the judicial authorities cited in urging the court to grant the reliefs sought by the Applicant.

Having carefully considered the affidavit evidence, the attached Exhibits, the submission of counsel, including the judicial authorities cited, the Court finds that there is only one issue for determination;

**“Whether or not the Applicant has placed sufficient facts for the grant or otherwise of the reliefs sought”.**

An 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 the 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 Yusufu 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 a substantive issue to be tried. It is unnecessary to determine the legal rights to a claim at this stage, as there can be no determination, because the case has not been tried on the merit. Consequent, 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 at Para A – D stated thus:-

**“Interlocutory Injunction is not granted as a 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”**

The principles guiding the grant of an Order of Interlocutory Injunction has been stated in Pletorial of authorities. In the Akinpelu Vs Adegbore (2008) ALL FWLR (PT 429) Pg 413 @ 420, it was stated as follows:-

- (1) There is serious question to be tried, that is, the Applicant has a real possibility with probability of success at the trial notwithstanding the Defendant technical defence (if any).
- (2) The balance of convenience is on his side, that is, more justice will result in granting the application than in refusing it.
- (3) Damages cannot be adequate compensation for his damages or injury, if it succeeds at the end of the day.
- (4) His conduct is not reprehensible.
- (5) No Order for an Interlocutory Injunction should be made on Notice unless the Applicant gives a satisfactory undertaking as to damages save in recognized exceptions.....”

On whether there are triable issues at the main trial, the law is that, all the courts need to establish, or consider, is whether the claim is not frivolous or vexatious. From the facts stated in Paras 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and the attached Exhibits “A”,- “F” clearly 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 the issue of whether the Applicants 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 based

on facts and guided by the law 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 the court to determine the merit of the case at this stage, it is the court's view that the Applicant have by their affidavit evidence, shown clearly that they would suffer more injury if the application is not granted.

In all of these the Defendants/Respondents who were duly served with the processes but 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. The position of the law was restated in the case of *The Nigerian Army Warrant Officers Vs Bunmi Yakubu* (2013 LPELR – 2008 S.C., 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) And Order of Interlocutory Injunction restraining the Defendant, its agents, officials, privies, assigns, staffs, workmen, Foremen or by whatever name called from taking possession of, trespassing into, developing, changing the topography of or in any way disturbing or interfering with the

land situate at Plot No. MF 2321 Cadastral Zone 07 – 07 Sabon Lugbe East Extension Layout FCT – Abuja measuring about 1.8 hectares pending the final determination of the substantive suit.

- (2) An Order of Interlocutory Injunction restraining the Defendant/Respondent, its Agents, Privies, Workmen or person(s) claiming through or in trust for them from building, using any form of earth moving machine, bulldozers, tractors, developing, improving, defacing, evacuating or in any way infringing on the Plaintiff's right of possession to Plot No. MF 2321 Cadastral Zone 07 – 07 Sabon Lugbe East Extension Layout FCT – Abuja measuring about 1.8. hectares pending the final determination of the substantive suit.
- (3) An Order of Interlocutory Injunction restraining the Defendant, its agents, privies, workmen or person(s) claiming through or in trust for it/them from further harassing, beating, intimidating the employees of the Plaintiff especially the security guards at the land in dispute pending the final determination of this Suit.

This order shall be served on the Defendant/Respondent

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

6/7/2020

FRANK ACHILIKE FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR THE DEFENDANT/RESPONDENT