

**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/221/19

MOTION: M/924/19

BETWEEN:

CHIEF JEPHTHANIKAOKORO.....CLAIMANT/APPLICANT

VS

1. IFEOMA FRANCISCA OKORO

2. ODIRAEZE.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice with No/924/19 dated 13/11/19 and filed same day, brought pursuant to Order 43 Rule 1 (1) & (2) and Rule 3 (2) of FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Hon. Court, the Applicant prays the court for the following:-

- (1) An Order of Interlocutory Injunction restraining the Defendants, their relations, servants, agents and/or privies from further harassing, assaulting and threatening the life of the Claimant pending the determination of this Suit.
- (2) An Order of Interlocutory Injunction restraining the Defendants, agents, servants or privies however and howsoever described

from any acts of intimidation to wit: use of any law enforcement agency or instituting the detention or doing any act to the prejudice of the Claimant/Applicant in relation or connected to this matter pending the determination of this case.

(3) The Omnibus relief.

In support of the Motion is a 30 Paragraph affidavit sworn to by Applicant himself with two (2) Exhibits annexed and marked "JO1" and "JO2". Also filed a Written Address in support and adopts the said Address in urging the court to grant the application.

The Defendants were served with the Motion on 20/11/19 and upon being served, 1st Defendant/Respondent in response filed a counter-affidavit of 52 paragraph on 10/12/19 sworn to by 1st Defendant herself with seven (7) Exhibits annexed and marked "R1 – R7". Relies on all averments and Exhibits in opposition to the granting of the application. Also filed a Written Address in, support and adopts the Address, in urging the court to refuse the application.

2nd Defendant, on the other hand, did not file any counter-affidavit or response to the Motion.

First, on the issue raised by Applicant that counter-affidavit of 1st Defendant is improper as it contravenes provision of Order 43 Rule 1 (3) of Rules of Court because it was filed outside the 7 days period prescribed by the Rules in response to Applicant's Motion. I have looked and records of court and find that indeed 1st Defendant filed her counter-affidavit in

response to Applicant's Motion outside the 7 days prescribed because she was served with the Motion on 20/11/19 but filed her counter-affidavit on 10/12/19 and by computation is 20 days from date of service. However, this non-compliance with the requirement of the Rules by 1st Defendant does not render the counter-affidavit incompetent or improper as canvassed by Applicant by virtue of Order 5 of Rules of Court which provides that such non-compliance shall be treated as mere irregularity. Therefore the fact that the counter-affidavit was filed outside the 7 days prescribed does not mean it should not be considered by court. Now to the application proper.

In the Written submission of Applicant settled by Chinedum Ike-Okafor of counsel, a sole issue is formulated for determination and that is;

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

And submit that a look at the depositions in the affidavit in support of this application will reveal that the Applicant has satisfied the conditions or guidelines set out for the consideration by court of an application of the nature. Referred the court to the locus classicus case of *Katoye Vs CBN* (1989) 1 NWLR PT. 98 419 at 441, *Morning Star Cooperative Society Vs Express Newspaper Ltd* 1979 FSR 113, *ACB Vs Awogboro* (1991) 2 NWLR PT. 176 711 at 719; in urging the court to grant the application. Submit that the underlying purpose of granting Interlocutory Injunction is to preserve the res being the life, reputation and peace of mind of Applicant in this instant which is in imminent danger of being lost forever if the court

fails to restrain Defendants. That its necessary to grant the application to preserve the res while Applicant pursues his grievance before court. Commend the court to Abaloka Vs Ministry of Health (2006) 7 NWLR PT 978 17 at 30 Gov of Lagos State Vs Ojukwu (1986) 1 NWLR PT 18, 621 at 634.

In the written submission of Respondent Counsel for Respondent Tolu Babaleye also raised a sole issue for determination and that is;

“Whether the Applicant has satisfied the court to warrant the grant of his application for Injunction”.

And submits that the Applicant has not been able to satisfy the court to warrant the grant of his application because he has not fulfilled the condition or met the laid down requirements which must be satisfied for the grant, referred the court to case of Buhari & Ors Vs Obasanjo & Ors (2003) LPELR – 813, the locus classicus case of Katoye Vs CBN (Supra), Colito (Nig) Ltd & Anor Vs Daibu & Ors (2009) LPELR – 81216 (CA). Submits that the Applicant in his affidavit failed to disclose materials that birthed the application and this being so, the court ought not to grant the application. Refer to UTB Ltd & Ors Vs Dolmetsch Pharmacy (Nig) Ltd (2007) LPELR – 3413 (SC). Urge the court to refuse the application.

Having given an insightful consideration to the affidavit evidence, the annexed Exhibits, submission of both counsel and the judicial authorities cited, the court finds thatthere is only (1) issue that calls for determination which is;

“Whether or not the Applicant has placed before the court sufficient and cogent facts to warrant the grant of the reliefs sought”.

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by court before the substantive issue in the case is finally determined. Its object is to preserve or keep the matter in status quo where 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 refuse the application on the merit. See the case of Yusuf Vs IITA (2009) 5 NWLR PT 1133 at 39 Para A – B. In doing so, the court is invited to exercise its discretion which must be done judicially and judiciously taking into account the facts placed before it. See the case of Anachebe Vs Ijeoma (2014) 14 NWLR PT 1426 168 at 184 Para D – F. Therefore to be entitled to the relief sought, the Applicant must disclose all the material facts.

On the nature of the grant of an injunction, the court in Mohammed Vs Umar (2005) ALL FWLR PT. 267, 1610 at 1523 Para H – D stated;

“Interlocutory Injunction is not granted as 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 courts in consideration of the grant of an application for an order of Interlocutory Injunction has been stated in Plethora of judicial authorities. In the case of Akinpelu Vs Adegboire (2008) ALL FWLR PT. 429 413 at 420, Kotoye Vs CBN (Supra) at 419, it was stated as follows:-

- (1) Whether there are triable issues at the trial of the substantive Suit.
- (2) Whether the balance of convenience is on the side of the Applicant.
- (3) Whether the Applicant have a right to be protected.
- (4) Whether the Applicant shall suffer irreparable damage if the order of Interlocutory is not granted pending the determination of the main Suit. See also *Owerri Municipal Council Vs Onuoha* (2010) ALL FWLR PT 538 896 at 898.

The question that would of necessity come to mind at this stage for determination is whether the Applicant has satisfied these conditions or requirements mentioned above for consideration of the grant of this application.

On whether there are triable issues at the main trial, the position of the law is that all the court need to establish is that the claim is not frivolous or vexatious. From the facts stated in Paragraphs 8 – 23 of the supporting affidavit of the Applicant and the attached Exhibit "JO1" and "JO2" and by paragraphs 5 – 18, 27 – 40 of the counter-affidavit of the Respondent and the annexed Exhibits all clearly, in my view, shows 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 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, this 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 be based on facts and guided by law or equitable decision of what is just and proper in the circumstance. In this instance application the Applicant stated that his life is under threat and would suffer irreparable damage if the application is not granted and that balance of convenience is in his favour. Though it is not for court to determine the merit of the case at this stage, it is the view of court that Applicant have by his paragraphs 8 – 24 of the supporting affidavit and the Exhibit "JO1" and "JO2" shown that he would suffer more injury if the application is not granted.

On the issue whether the Applicant have right to be protected. The Applicant by paragraphs 21 – 24 of the supporting affidavit stated his life is under threat, a life clearly guaranteed and protected by Section 33 of the 1999 Constitution (As Amended) hence seeking the intervention of court for protection of this right. The Respondent, on the other hand, by paragraphs 34, 39 of the counter-affidavit contend that the Applicant's life was never threatened. I have earlier stated that it is not the duty of court to determine the merit of the case at this stage and therefore these are matters for the main trial.

In conclusion having carefully considered the affidavit evidence of the parties and the submission of both counsel, the court finds that the Applicant's case has merit and should be allowed in the interest of justice. Accordingly, the application succeeds and it is hereby ordered as follows:-

- (1) An Order of Interlocutory Injunction restraining the Defendants, their relatives, servants, agents and/or privies from further harassing, assaulting and threatening the life of the Claimant pending the determination of this Suit.
- (2) An Order of Interlocutory Injunction restraining the Defendants, agents, servants or privies however and howsoever described from any acts of intimidation to wit: use of any Law Enforcement Agency or instituting the detention or doing any act to the prejudice of the Claimant/Applicant in relation or connected to this matter pending the determination of this case.
- (3) This Order shall be served on the Defendants/Respondents.
- (4) The Return date is fixed for 24/11/2020 for hearing.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

23/9/2020

SAMUEL O. ZIBIRI (SAN) WITH C.G. IKE-OKAFOR – FOR THE CLAIMANT/APPLICANT

TOLU BABALEYE ESQ – FOR THE DEFENDANTS/RESPONDENTS