

**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: UKONUKALU&GODSPOWЕРЕBAHOR

COURT NO: 10

SUIT NO: FCT/HC/CV/2828/19

BETWEEN:

ENGINEER ILIYA ADAMU.....CLAIMANT/APPLICANT

VS

- 1. AIR VICE MARSHAL NICHOLAS AYEBAEMI SPIFF (RTD)**
- 2. NIGERIAN AIRFORCE HOLDING COMPANY LTD.....DEFENDANTS**

RULING

By a Motion on Notice with No. M/8618/2019 dated 5/9/2019 but filed on 6/9/2018 brought pursuant to Order 42 Rules 1, 4 and 8 of FCT High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Court, the Claimant/Applicant pray the court for the following Orders:-

1. An Order of Interlocutory Injunction restraining the 1st Defendant/Respondent, whether by himself, agents, servants, privies and representatives howsoever called from in any way interfering with the Claimant/Applicant's exercise of acts of ownership and possession of Plot No: 0807 located at NAF VALLEY ESTATE, Asokoro Extension, Asokoro District, Abuja pending the determination of the substantive Suit.

2. An Order of interlocutory Injunction restraining the 2nd

Defendant/Respondent, whether by itself, agents, servants and representatives howsoever called from issuing/effecting change of ownership or perfecting/registering Deed of Conveyance in favour of any other person in respect of Plot No: 0807 located at NAF VALLEY ESTATE, Asokoro Extension, Asokoro District, Abuja pending the determination of the substantive Suit.

3. AND for such other orders or further orders as this Honourable Court may deem fit to make in the circumstances.

The grounds for the application are:-

- i. By virtue of Deed of Assignment executed between the Claimant/Applicant and the 1st Defendant/Respondent on the 25th June, 2019, the 1st Respondent sold/assigned to the Applicant his title, interest and ownership of Plot No: 0807 located at NAF VALLEY ESTATE, Asokoro Extension, Asokoro District, Abuja for a consideration of ₦25,000,000.00 (Forty Five Million Naira) only.
- ii. Upon the conclusion of transaction between the Applicant and the 1st Respondent and the full payment of the said consideration to the 1st Respondent by the Applicant, the Applicant mobilized workers and building materials to the land. The Applicant thereafter exercised numerous acts of ownership on the land, among which are, the construction of perimeter fence round the land, commission of expert to do geophysical survey for the

purpose of sinking borehole and depositing about one thousand blocks on the land preparatory to commencing construction work on the land.

- iii. While the Applicant's exercise of acts of ownership was on going, the Respondent, without any justifiable reason whatsoever informed the Applicant that he has sold the land to another person, who, according to the Respondent, paid higher consideration for the land.
- iv. That as a result thereof, the 1st Respondent forcefully chased away the Applicant's workers from the land. The Respondent also threatened to use Military men to beat up the Applicant and his workers should they come close to the land.
- v. After the execution of the said Deed of Assignment and the vesting of the ownership of the land in the Applicant, the Applicant applied to the 2nd Respondent for issuance of document(s) of change of ownership of the land in his (Applicant) favour or in the alternative perfection/registration of Deed of Assignment in respect of the land.
- vi. The 2nd Respondent refused to accede to the Applicant's request on the ground that there is no privity of contract between them and the Applicant.

- vii. In an earlier telephone conversation between the Applicant and the Group Managing Director of the 2nd Respondent, the 2nd Respondent advise the Applicant to accept the refund of the consideration and allow the 1st Respondent to sell the land to another person for higher consideration.
- viii. That without the Interlocutory Order of Injunction pending the determination of the substantive suit, the 1st Respondent will interfere with the Applicant's exercise of acts of ownership on the land. Also the 2nd Respondent will effect change of ownership in respect of the land in favour of another person.

In support of the application is a 27 Paragraph affidavit sworn to by the Applicant himself with Exhibits attached and marked A – D. Also filed a Written Address and adopts the said Address, in urging the court to grant the reliefs sought.

Upon being served with the application and in response, the Respondents filed a counter-affidavit of 29 Paragraphs on 10/12/2009 sworn to by 1st Respondent with one (1) Exhibit annexed and marked "NAF A". Also filed a Written Address and adopts the said Address in opposition.

In the written submission of Applicant, Noah Abdul of counsel formulated a lone issue for determination and that is;

"Whether having regard to the circumstances of this case, the Applicant has made out a case to be entitled to the reliefs sought in this application".

And relying on Order 42 Rules 1, 4 and 8 of Rules of Court and several judicial authorities cited submit this court has the power to grant an Order of Interlocutory Injunction pending the determination of the substantive Suit. Submit that the determination of an application of this nature calls for the exercise of the discretion of the court which in all cases is required to be done judicially and judiciously taking into account the facts as furnished by Applicant which facts must be cogent and credible to enable the court properly exercise that discretion. That in the instant case, Applicant has furnished cogent and credible facts to deserve favourable exercise of the discretion of court. Further submits the conditions upon which the court determines an application for Interlocutory Injunction in the course of pending proceedings or before Judgment at the trial court guidelines have been set out by the Apex Court. That in the instant case, the Applicant has satisfied the conditions as laid down in consideration of an application of this nature. In all commended the court to several judicial authorities; Clev Josh Ltd Vs Tokimi (2008) 13 NWLR PT 1104 at 438, Ise-Oluwa Nig Ltd Vs Nigeria Distillers Ltd (2001) 6 NWLR PT 709 427 at 433, Aviation Services Ltd Vs Capt Paul M Thahal (2006) 6 MJSC 120 at 127, Obeya Memorial Specialist Hospital Vs A.G., Federation (1987) 3 NWLR PT 60, 325, Ojukwu Vs Government, Lagos State (1986) 3 NWLR PT 18, 621, Kotoye Vs CBN (1989) 1 NWLR PT 144 at 177, Ahmadu Vs AG, Rivers State (1996) 7 NWLR PT 459 236 at 256, Akapo Vs Hakeem Habeeb (1992) 6 NWLR PT 247 266 at 302.

In the written submission of the Respondents Ike Nzekwe, Respondent's counsel raised only one (1) issue for determination and that is;

“Whether on the facts contained in the affidavit in support of this Motion and counter-affidavit the application for Injunction can be granted”.

And submit that in deciding whether or not to grant an application for Interlocutory Injunction, the courts are guided by the conditions set out by court and refer the court to case of John Holt Nig Ltd Vs Holts African Workers Union of Nigeria and Cameroons (1963) 1 ANLR, 379. Submits that the Applicant from the facts has not satisfied the conditions as laid down in consideration of an application of this nature or shown enough reason why the court should grant this application and urge the court to dismiss same.

I have given an insightful consideration to the affidavit evidence, the annexed Exhibits, the submission of both counsel as well as the judicial authorities cited and find that only one (1) issue calls for determination which is;

“Whether or not the Applicant has placed before this court sufficient 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 objects 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 YusufVsI.I.T.A (2009) 5 NWLR PT 1133 at 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 substantive issue to be tried. It is unnecessary to determine the legal right to a claim at this stage, as there can be no determination because the case has not been tried on the merit. Consequently, 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 MohammedVs Umar (2005) ALL FWLR PT 267 1510 at 1623 – 1524 Para A – D stated;

“InterlocutoryInjunction 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 courts in consideration of the grant of an application for an Order of Interlocutory Injunction has been stated in Plethora of judicial authorities. In AkinpeluVsAdegbore (2008) ALL FWLR PT 429 413 at 420, KotoyeVsCBN (1989) 1 NWLR PT 98 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 Injunction 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 law is that all the court need to establish or consider is that the claim is not frivolous or vexatious. From the facts contained in paragraphs 7- 20 of the supporting affidavit of Applicant and those as stated in paragraphs 8 – 27 of the counter-affidavit of the Respondents 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 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 the equitable decision of what is just and proper under the circumstance. In this instant, the Applicant by paragraph 21, 22 of his supporting affidavit stated that he would suffer irreparable damage if the application is not

granted and that the balance of convenience tilt in his favour. On the other hand, the Respondents in line with their submission contend that the balance of convenience is in favour of refusal of the application. I have earlier stated that it is not for the court to determine the merit of the case at this stage. However, it is the view of court that it is Applicant who will suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to be protected, Applicant by Paragraphs 16, 19, 20 of the supporting affidavit stated their proprietary interest in the land, subject matter of this suit, and that same is at the verge of being tampered with by the Respondents, hence seeking the intervention of the court for protection of his rights. On the other hand, the Respondents by Paragraphs 25, 27 of their counter-affidavit contend that the Applicant have no legal right in the land, therefore not entitled to any protection. I have earlier stated that 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 case of Applicant has merit and should be allowed for the interest of justice.

Accordingly, this application succeeds and it is hereby ordered as follows:-

1. An Order of Interlocutory Injunction restraining the 1st Defendant/Respondent, whether by himself, agents, servants, privies and representatives howsoever called from in any way interfering with the Claimant/Applicant's exercise of acts of ownership and possession of Plot No: 0807 located at NAF VALLEY

ESTATE, Asokoro Extension, Asokoro District, Abuja pending the determination of the substantive Suit.

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3. This order shall be served on the Defendants/Respondents.

This is the Ruling of the Court.

HONOURABLE JUSTICE O.C. AGBAZA

(Presiding Judge)

29/9/2020

NOAH ABDUL ESQ – FOR CLAIMANT/APPLICANT

IKE NZEKWEESQ – FOR DEFENDANTS/RESPONDENTS