

**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/1237/2020**

**BETWEEN:**

- 1. VILLAS AND TOWERS LIMITED**
- 2. NNPC MULTIPURPOSE COOPERATIVE  
SOCIETY LTD.....CLAIMANTS/APPLICANTS**

**VS**

- 1. KONDUGA TRAVELS LTD**
- 2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY**
- 3. THE HON. MINISTER, FEDERAL CAPITAL  
TERRITORY, ABUJA.....DEFENDANTS/RESPONDENTS**

**RULING**

By Motion on Notice with No.M/5838/2020 dated 26/2/2020 but filed on 27/2/2020 brought pursuant to Order 42 Rules 1, 4 and 8 of the High Court of the FCT (Civil Procedure) Rules 2018 And under the inherent jurisdiction of the Hon. Court, the Applicants prays the court for the following Orders;

- (1) An Order of Interlocutory Injunction restraining the 1<sup>st</sup> Defendant/Respondent, whether by herself, agents, servant, privies and representative or howsoever called from carrying out any construction or continuing with the construction

currently on Plot 54, Cadastral Zone CO5, Kafe District Abuja pending the determination of the substantive Suit.

- (2) An Order of Interlocutory Injunction restraining the Defendants/Respondents, whether by themselves, agents, servants, privies and representatives or howsoever called, from interfering in any way with the Claimants/Applicants' right of ownership over Plot 54, Cadastral Zone CO5 Kafe District Abuja pending the determination of the substantive Suit.
- (3) And for such other Orders or further orders as this Hon. Court may deem fit to make in the circumstances.

### **GROUND FOR THE APPLICATION**

- (i) By virtue of a Letter of Allocation under the Accelerated Development Programme of the Federal Capital Territory, the Claimant was allocated Plot 54, Cadastral Zone CO5 of Kafe District, Abuja measuring approximately Twenty (20) Hectares.
- (ii) However, the accompanying Survey Plan and Data for the allocated plot 54 generated by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants pursuant to the Letter of Allocation covered 12.35 Hectares out of the allocated Twenty (20) Hectares leaving a remainder of 7.65 Hectares.
- (iii) Upon the discovery of this anomaly, the 1<sup>st</sup> Claimant lodged a complaint to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants expressing her

dissatisfaction with the Survey Plan and Data but the 1<sup>st</sup> Claimant was encourage to go ahead with development of the 12.35 Hectares already captured in the Survey Plan and that thereafter, the remainder of 7.65 would be availed to her for development.

- (iv) The 1<sup>st</sup> Claimant took the advice of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and developed the 12.35 Hectares as captured by the Survey Plan and data and thereafter, approached the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants by way of application for Plot extension and merger and paid a non-refundable processing fee of Five Hundred Thousand Naira (₦500,000.00) Only for the remainder of 7.65 Hectares of the allotted Twenty (20 Hectares.
- (v) Regrettably and to the dismay of the 1<sup>st</sup> Claimant, the Claimant discovered that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants instead of fulfilling their promise and undertaking to the 1<sup>st</sup> Claimant allocated the said remainder of 7.65 Hectares to the 1<sup>st</sup> Defendant.
- (vi) The 1<sup>st</sup> Defendant/Respondent who is now riding on the purported allocated has began speedy construction day and night on the remaining 7.65 Hectares of Plot 54, Cadastral Zone CO5 of Kafe District, Abuja, hence the need for this application.

- (vii) That there is need for the intervention of the Hon. Court by way of an Order of Interlocutory Injunction in order to protect the res that is under imminent threat from the 1<sup>st</sup> Defendant and for parties to maintain status quo pending the determination of the substantive Suit.
- (viii) That it is in the interest of justice that the Defendants be restrained.

In support of this application is a 13 Paragraph affidavit sworn to by Precious Okoh with Exhibits annexed and marked as "A1" – "A11", relies on all the averments particularly Para 4 and the Exhibits. Also filed a Written Address and adopts the said Address. Also filed a Reply on point of law dated 18/5/2020 and adopts the said process in urging the court to discountenance the averments of 1<sup>st</sup> Defendant. In response of 1<sup>st</sup> Defendant further Written Address, filed a response dated 27/5/2020 but deemed properly filed/served on 29/5/2020 and adopts the said process.

The Motion was duly served on the Defendants/Respondents and in response 1<sup>st</sup> Defendant filed a counter-affidavit of 20 Paragraphs deposed to by Mohammed Mukhtar Mahamud with three (3) Exhibits attached and marked "K1" – "K3". Also filed a Written Address in support. Also filed a further Written Address dated 18/5/2020 and deemed properly filed/served on 29/5/2020, adopts the Written Address, in urging the court to discountenance this application for injunction.

2<sup>nd</sup>/3<sup>rd</sup> Defendant, on the other hand, filed a counter-affidavit of 12 Paragraph on 29/5/2020 deposed to by Saidu Badamasi Abdulkadir with

Exhibit "A" attached, relies on all the averments in vehement opposition. Also filed a Written Address and adopts the said Address and Exhibit, in urging the court to refuse this application.

In the Written Address of the Applicant dated 26/2/2020 settled by George Ibrahim Esq; Applicants Counsel formulated one (1) issue for determination;

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

And submit that in the determination of an application for Interlocutory Injunction pending hearing and determination of the substantive Suit calls for exercise of the discretion of court which must be done judicially and judiciously taking into consideration the facts furnished by Applicant which facts must be cogent and credible to enable court properly exercise its discretion. Commend the court to *Clev Josh Ltd Vs Tokimi* (2008) 13 NWLR PT 1104 422 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. That in the instant case, Applicant has furnished cogent and credible facts deserving the favourable exercise of discretion of court. Submit the principles of law upon which court determines application for Interlocutory Injunction have been laid down by the Apex Court in *Obeya Memorial Specialist Hospital Vs Attorney General of the Federation* (1987) 3 NWLR PT. 60, 325. That in the instant,

Applicant has satisfied those principles and requirements as laid down and therefore deserved the reliefs sought.

On the requirement of Applicant to establish his legal right to the subject matter of the Suit and the violation or threatened violation of that right, submit for Applicant to succeed, a right capable of being defended must be shown in the affidavit to attract the court's discretion to grant the application, refer to *Ojukwu Vs Governor of Lagos State* (1986) 3 NWLR PT. 18, 621. That in the instant, Applicant has by its affidavit established the existence of its legal right in this Suit and refer court to Para 4 of the affidavit submits the right of Applicant and its violation by Respondents in relation to the land in dispute is worthy of protection by court by the grant of the application.

On the requirement of the establishment of substantial/serious question for determination in the substantive Suit, submit that having regard to cogent and credible facts in the affidavit, Applicant has satisfied the requirement for the grant of the reliefs sought and commend the court to *Kotoye Vs CBN* (1989) 1 NWLR PT 98 419 at 441. That in the instant Suit, there are substantial and real issues for determination by court.

On the requirement of establishing the balance of convenience which requires Applicant to establish that if the application is refused, he is the party that will suffer irreparable damage than Respondents, submit if the inconvenience to be suffered by the contending parties as disclosed in the respective affidavit if need be are analyzed on a comparative basis, then the pendulum tilts to side of Applicants before application of this nature

can be granted, refer to *Obeya Memorial Specialist Hospital & Anor Vs A.G. Federation (Supra)*, *Saraki Vs Kotoye (1990) 4 NWLR PT 144 at 156*. That it is apparent from the facts that Applicant will suffer the most if this application is refused. That Applicant has discharged the onus of establishing where the balance of convenience tilts, refer to *Ahmadu Vs A.G, River State (1996) 7 NWLR PT 459 236 at 256*.

On the requirement that damages cannot adequately compensate Applicants, submits Applicants has succeeded in establishing its legal right to the land in dispute and that there are serious questions to be determined in the substantive Suit. That its clear Applicants cannot be adequately compensated in damages for loss they would suffer as a result of 1<sup>st</sup> Respondent's unlawful interference with the Applicant's ownership of the land, refer court to *Adeleke Vs Lawal (2014) 3 NWLR PT 1393 at 31*, *Akapo Vs Hakeem Habeeb (1992) 6 NWLR PT 247 266 at 302*.

In the Written Address of 1<sup>st</sup> Defendant settled by Abdulkarim A. Ibrahim, the sole issue formulated for determination by Applicant was adopted as issue for determination to wit:

“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 submit that the Order of Interlocutory Injunction is not granted as a matter of course as Applicant seeking same must first discharge the burden of proving in his favour to the satisfaction of court, the existence of conditions precedent to the grant which include; existence of legal right,

substantial issue to be tried, balance of convenience, irreparable damage or injury, conduct of the parties, undertaking as to damages. Refer to Adeleke Vs Lawal (2004) 3 NWLR PT 1393, 1, Kotoye Vs CBN (Supra) and submit Applicant have totally failed in meeting with any of the conditions to warrant the court to exercise its discretion in their favour.

On legal right, submit Applicant have not disclose anywhere in the affidavit or the Exhibits annexed that they have legal right to be protected by Order of Court, refer court to Para 4 (a) – (j) of the affidavit and Exhibits "A3" – "A7" annexed. Submit Applicants have no legal right whatsoever in the subject matter of this Suit. Refer court to Jimoh Vs Aleshinloye (2014) 15 NWLR PT 1430 277 at 3109 and Para 4 – 19 of their counter-affidavit. On substantial issue to be tried, submit there is no substantial issue to be tried in this case to warrant the grant. That where Applicant has no legal right to protect in the subject matter, then no substantial issue to be tried and refer to Kotoyo Vs CBN (Supra). On balance of convenience, submit balance of convenience does not enure in favour Applicants. That its 1<sup>st</sup> Defendant interest who has been validly allotted the land, subject matter of this Suit, that is more at risk than the none existence interest of Applicant. Commend court to Wali Vs Amaefule (2014) 12 NWLR PT. 1421, 299, Aboseldehyde Laboratories Plc Vs Union Merchant Bank Ltd (2013) 13 NWLR PT1370, 91. On irreparable damages or injury, conduct of the parties and undertaking as to damages, submit Applicant have not shown the injury they would suffer which cannot be adequately taken care of by award of damages if injunction is not granted and refer to Akinsole Vs A.I.T Ltd (1961) NWLR 116 at 117, Adeleke Vs Lawal (Supra). That in the



instant, Applicant have failed to show any damages that would occur which cannot be adequately compensated for by monetary damage if the application is refused. Submits damages will be adequate compensated for Applicant as Defendants are in better position to pay monetary compensation to Applicant. On duty of court not to decide substantive Suit at Interlocutory stage, refer to N.A.U, Awka Vs Nweke |(2008) 1 NWLR PT 1069, 504 at 513 and submit Applicants application seriously jeopardizes the hearing of the substantive Suit as court cannot conveniently hear this application without delving into hearing issues in the substantive suit, refer court to the grounds for the application, the affidavit and Statement of Claim and submit that the entire affidavit is verbatim repeat of the Statement of Claim. Refer to Adeleke Vs Lawal (Supra), Agbaje Vs Ibru Sea Foods Ltd (1972) 5 SC, 50. On need for court to order accelerated hearing rather than taking application for injunction, submit from the facts of the case, its more expedient for court to order accelerated hearing rather than let Applicant waste precious time and resources of court in hearing application for injunction and refer to S.C.B. (Nig) Ltd Vs Braithwaite (2014) 4 NWLR PT 1397, 247 at 280.

In the 2<sup>nd</sup>/3<sup>rd</sup> Defendant Written Address, Funke C. Audu of counsel submitted a sole issue for determination namely:-

“Whether from the circumstances of this case and the counter-affidavit filed, the Applicant is entitled to the reliefs sought”.

And submit application of this nature is not granted as a matter of course, Applicant must show justifiable and compelling reason for the grant. On

factors to be considered in an application of this nature rely on *Kotoye Vs CBN (Supra)*, *Buhari Vs Obasanjo (2003) 17 NWLR 850 at 587*. That the Apex Court in the above cases set out issues to be resolved while considering an application for interlocutory injunction to include; that the subsisting action must denote a legal right which Applicant must protect, that Applicant must show damages cannot be adequate compensation for the injury they want court to protect. On the subsisting action to denote legal right which Applicant must protect, submit from its affidavit Applicant lacks the legal right, which this court can protect and commend the court to several judicial authorities; *Oluwole Vs Abubakar (2004) 10 NWLR PT 882 549 at 564*, *Adenuga Vs Odumoru (2002) 8 NWLR PT 821 163 at 185*; *Lafferi (Nig) Ltd Vs NAL Merchant Bank Plc (2002) 1 NWLR PT 748 333 at 338*. On requirement that Applicant must show damages cannot be adequate compensation for the injury he wants court to protect, submit 2<sup>nd</sup>/3<sup>rd</sup> Defendants have deposed in their counter-affidavit that damages cannot adequately compensate the Defendants/Respondents who have expended huge sums on the Plot duly allocated to them and have not in any way interfere with Plot 54 Kafe District. Urge court to dismiss the application and refuse the grant of the order.

Having carefully considered the affidavit evidence, the submission of counsel, the annexed Exhibits as well as the judicial authorities cited, the court finds that in this application only one (1) issue calls for determination and that is;

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

The grant or otherwise 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 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 position to either grant or refuse the application. In doing so, the court is invited to exercise its discretion which must be done judicially and judiciously. See the case of *Anachebe Vs Ijeoma* (2014) 14 NWLR PT. 1426 168 at 184 Para D – F. This discretion must be exercise in relation to the facts and circumstances of the case before the court hence to be entitled to the reliefs; the Applicant must disclose all the material facts.

On the nature of the grant of an injunction, the court in the case of *Mohammed Vs Umar* (2009) All FWLR PT 267 1510 at 1523 – 1524 Para H – D stated:

“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 hard law and facts”.

In the exercise of that discretion, the courts are guided by certain guidelines set out in Plethora of judicial authorities. In *Akinpelu Vs Adegboro* (2008) ALL FWLR PT 429 413 at 420, *Kotoye Vs CBN* (Supra) stated as follows;

- (1) Whether there are triable issues at the trial of the substantive Suit.
- (2) Whether the balance is on the side of the Applicant.

- (3) Whether the Applicant has a right to be protected.
- (4) Whether the Applicant shall suffer irreparable damages if the Order of Interlocutory Injunction is not granted pending the determination of the main Suit. See *Owerri Municipal Council Vs Onuoha* (2010) ALL FWLR PT 538 896 at 898.

The courts have also held that an application for injunction will be granted to support a legal right. See *Gambari Vs Bukola* (2003) ALL FWLR PT. 158 1198 at 1208 Para G.

The question that would necessarily come to mind at this stage for determination is; whether the Applicant has satisfied the conditions mentioned above for consideration in the grant of an application of this nature.

On a carefully perusal of the affidavit evidence of Applicants and in particular Paras 4 (a – j) and the Exhibits "A1" – "A10" annexed, shows Applicants have satisfied the above conditions stated above. 1<sup>st</sup> Defendant/Respondent, however, by their Paragraphs 7 – 11 of their counter-affidavit contend that their Plots are completely distinct from Applicants Plots and further that aside the disparity in Plots numbers, 1<sup>st</sup> Defendant/Respondent Plots put together are way more than the purported remainder claimed by Applicants and that 1<sup>st</sup> Defendant/Respondent has not tampered with Applicants property in any way. 2<sup>nd</sup>/3<sup>rd</sup> Defendant/Respondent, on the other hand has by Para 5 (a – f) of their counter-affidavit contend that Applicants were not allotted and has no title over Plot 54 Kafe District, subject matter of the Suit, and

further that 2<sup>nd</sup>/3<sup>rd</sup> Defendant/Respondent never deprive Applicants of any purported property. These issues as contended by 1<sup>st</sup>, and 2<sup>nd</sup>/3<sup>rd</sup> Defendants/Respondents are, in my view, not matters for determination at this interlocutory stage, rather are matters for determination at the main trial. And overtime, the courts are enjoined to refrain from deciding on issues for the main trial at an interlocutory stage if done would be tantamount to deciding the issues before trial. See the case of C.G.C Nig Limited Vs Baba (2005) ALL FWLR PT 242 515 at 520 – 521. See also Chisco Samuel Trading Co Ltd Vs Iloerike 92018) ALL FWLR PT 918, 95.

On the issue raised by 1<sup>st</sup> Defendant/Respondent in its supplementary written submission in further support of its counter-affidavit that the affidavit in support of Motion of Applicants was sworn to by counsel for Applicants and violates Section 115 of Evidence Act and Rules 20 (1) Rules of Professional Conduct for Legal Practitioner and therefore be struck out and in consequence dismiss the entire Motion. I am not in agreement with this submission by learned counsel for 1<sup>st</sup> Defendant/Respondent on the point. The fact that counsel has sworn to the affidavit of Applicants on their behalf does not ipso facto makes the Applicants affidavit incompetent or violate Section 115 of the Evidence Act as canvassed. In such situations, counsel are advised to refrain from deposing to affidavit on behalf of clients but does not in any way rendered such deposition incompetent. See the case of Musa Vs AG, Taraba State & Anor (2014) LPELR – 24183 (CA). See also Becay Int'l (Nig) Ltd Vs Fidelity Bank (2018) ALL FWLR PT 948 1356 at 1364 – 1365.

In conclusion and having considered this instant application in line with the position of the law, it is the finding of the court that this application has merit and should be allowed for the preservation of the Res. Accordingly, this application succeeds and it is hereby ordered as follows:-

- (i) An Order of Interlocutory Injunction restraining the 1<sup>st</sup> Defendant/Respondent, whether by herself, agents, servant, privies and representatives or howsoever called from carrying out any construction or continuing with the construction currently on Plot 54, Cadastral Zone CO5, Kafe District Abuja pending the determination of the substantive Suit.
- (ii) An Order of Interlocutory Injunction restraining the Defendants/Respondents, whether by themselves, agents, `servants, privies and representatives or howsoever called, from interfering in any way with the Claimants/Applicants' right of ownership over Plot 54, Cadastral Zone CO5 Kafe District Abuja pending the determination of the substantive Suit.

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

Judge

10/7/2020

GEORGE IBRAHIM – FOR CLAIMANTS/APPLICANTS

B.C. IGWILO (SAN) WITH SALIHU BABAKEKE – FOR 1<sup>ST</sup> DEFENDANT/  
RESPONDENT

FUNKE C. AUDU – FOR 2<sup>ND</sup>/3<sup>RD</sup> DEFENDANT/RESPONDENT.