

**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/2512/20
MOTION NO: M/9441/20**

BETWEEN:

DATO & DETO LIMITED.....CLAIMANT/APPLICANT

AND

1. FEDERAL CAPITAL DEVELOPMENT AUTHORITY

2. HON. MINISTER, FEDERAL CAPITAL TERRITORY.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice with Motion No M/9442/2020 dated 31/8/2020 filed on the 1/9/2020, and brought pursuant to Order 43 Rules 1 (1), 42 (8) of the High Court of FCT (Civil Procedure) Rules 2018 (hereinafter called the Rules) and under the inherent jurisdiction of this Hon. Court, prays for the following reliefs:-

(1) An Order of Interlocutory Injunction restraining the Defendants/

Respondents their agents, servants or privies however described or anybody else acting on their behalf from unlawfully trespassing continuing and/or destroying any structure on the Plot ED1174, 1175, 1182 and 1183 Lugbe 1 Extension and harmonised as 1368 Kyami Layout measuring 21. Ha pending the hearing determination of this Suit.

- (2) An Order of Interlocutory Injunction restraining the Defendants, their privies, agents or assigns from allocating the land to a third party pending the hearing and determination of the substantive Suit.
- (3) And for such further order or other order(s) as this Hon. Court may deem fit to make in the circumstance.

In support of this application is 25 paragraphs affidavit deposed to by one Ayodamola Olu-Ayoola with Exhibits marked as "A" – "E". In compliance with the Rules filed a Written Address, adopts same as their oral argument, in urging the court to grant the reliefs sought.

The Respondents were duly served with the Motion on Notice on 2/9/2020, but failed to file any response to the application. Hearing Notice for the day's business, being 14/10/2020 was also served, but the Respondents failed and/or neglected to appear or be represented in court by counsel of their choice. In all of these, it trite that where a party is served with processes in a Suit, but fails to appear or defend, it is deemed that the application is undefended and taken as unchallenged and uncontroverted and the court should proceed to hear and determine the application as it were. See *Muomah Vs Enterprise Bank Ltd* (2015) LPELR – 245832 (CA), where the court held that'

"The law in my view is settled that where evidence given by a party to any proceedings was not challenged by the opposite party, who had opportunity to do so, it is always open to the court seized of the

proceedings to act on the unchallenged evidence before it.
.....unchallenged and uncontroverted evidence ought to be
accepted by the court as establishing the facts thereon contained”.

See also case of Njoemana Vs Ugboma & Ors (2014) LPELR – 22494 (CA).

In the circumstance therefore, this court will treat this instant application as unchallenged and determine the application on the face of the process to determine the grant or otherwise of it.

In the Written Address of the Applicant, dated 31/8/2020, settled by Anthony Biose Esq, Applicant Counsel

Counsel formulated one (1) issue for determination, which is;

“Whether by the facts and circumstances of this case the Plaintiff has disclosed sufficient facts to warrant the grant of the Interlocutory Injunction pending hearing and determination of this case”

And submits that the aim of an Order of Injunction is to protect the existing Legal Right with the aim of protecting the Respondent pending the determination of the suit. That in doing so, the court are enjoined to consider the facts as deposed in the affidavit in support, judicially and judiciously, in the grant or otherwise of an application of this nature. That in this instant application, the Applicant has variously stated the facts in line with stated guiding principles the court will consider in assuaging the court to so grant the reliefs sought. Counsel commended the court to the following judicial authorities; Ogunro Vs Duke (2006) 7 NWLR (PT. 318) Pg. 130 @ 132 Ratio 1, Obeya Memorial Specialist Hospital Ltd Vs Attn-Gen of the Fed. & Or

(1987) 7. S.C 52, LAFFERI (Nig) Ltd Vs NAL Merchant Bank Plc (2002) 1 NWLR (PT. 748) Pg 333; Kotoye Vs CBN (1989) 1 NWLR (PT. 98) Pg. 419. UKET Vs Okpa (2006) 8 NWLR (PT. 983) Pg. 464 @ 466 Ratio 1. And finally, urge the court to grant this application in the interest of justice.

Having carefully considered the unchallenged and uncontroverted affidavit evidence, the Exhibits the judicial authorities cited and submission of Applicant Counsel, the court finds that there is only one (1) issue that calls for determination; that is;

“Whether or not, the Applicant has placed before the court sufficient 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 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 refuse the application. In doing so, the court is invited to exercise its discretion, which such exercise must be done judicially and judiciously. See case of Anachebe Vs Ijeoma (2014) 14 NWLR (PT. 1426) Pg. 168 @ 184 Para D – F. This discretion must be exercised in relation to the facts and circumstances of the case before court, hence to be entitled to the reliefs, the Applicant must disclose all the material facts.

On the nature of the grant on an order of Injunction, the court in the case of Mohammed Vs Umar (2009) All FWLR (PT.267) Pg. 1510 @ 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 the Hard Law and facts”

In the exercise of that discretion, the courts are guided by certain principles set out in Pletoria of judicial authorities. See Akinpelu Vs Adegbore (2008) All FWLR (PT. 429) Pg. 413 @ 420; Kotoye Vs CBN (1989) 1 NWLR (PT. 98) Pg. 419, 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 have a right to be protected.
- (4) Whether the Applicant shall suffer irreparable damage of the order of Interlocutory Injunction is not granted pending the determination of the main suit. See also case of Owerri Municipal Counsel Vs Onuoha (2010) All FWLR (PT. 538) Pg. 896 @ 898.

The courts have also held that an application for Injunction will be granted in support of a Legal Right. See Gambari Vs Bukola (2003) All FWLR (PT.158) Pg. 1198 @ 1208 Para G.

The question that would of necessity came to mind at this stage, for determination is whether the Applicant has satisfied these conditions mentioned above for consideration in the grant of an application of this

nature. From a careful perusal of the Applicant's affidavit in support, in Particular, Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23 and 24, and Exhibit "A" copy of title document, Exhibit "B" - Copy of the layout Exhibit "C"- Copy of letter of demand, Exhibit "D", - Pictures of the demolished buildings, Exhibit "E" – Pictures of some standing buildings clearly shows that the Applicant have satisfied the above conditions mentioned above. These facts were not countered by the Respondent into who were duly served with the processes. This court in course of this Ruling have stated the position of the law and shall stand by it.

Going further, on whether there are triable issues at the main trial, the law is that, all the court need to establish, or consider, is whether the claim is not frivolous or vexation. From the facts stated in Paras 4,6,7,8,10,11,12,14,15,16,17,19 and 20 and the attached Exhibit "A" "B" "C" "D" and "E", clearly shows that these are issues to be tried. The success or otherwise of it, is not the function of the court to resolve at the 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, is an area where the discretion for the court comes into play. Judicial discretion is not a one way traffic, it takes into consideration of the competing rights of the parties to justice. It must be based on facts and guided by the law or equitable decision of what is just and proper in the circumstance. In this instance, the Applicant has stated in Paras 20 and 21 of the supporting affidavit contended 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 demonstrated sufficiently 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 process, 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 as correct. This position of the law was restated in the case of the Nigerian Army Warrant Officer Vs Bunmi Yakubu (2013) LPELR-2008 S.C, where FABIYI (JSC) as he then was, stated this;

“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) An Order of Interlocutory Injunction restraining the Defendant/Respondents, their agents, servant or privies however described or anybody else acting on their behalf from lawfully trespassing continuing and/or destroying any structure on the Plot ED 1174, 1175, 1182 and 1183 Lugbe 1 Extension and

harmonized as 1368 Karmi Layout measuring 21 Hq. pending the hearing and determination of this suit.

- (2) An Order of Interlocutory Injunction restraining the Defendants their privies, agents or assigns from allocating the land to a third party the hearing and determination of the substantive suit.
- (3) This order shall be served on the Defendants/Respondents.

HON. JUSTICE O. C. AGBAZA

Presiding Judge
20/10/2020

APPEARANCE:

ANTHONY BOISE ESQ. FOR THE CLAIMANT/APPLICANT

NO REPRESENTATION FOR THE DEFENDANTS/RESPONDENTS