IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 6TH DAY OF NOVEMBER, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/

BETWEEN:

INNOVATION ERA NIGERIA LIMITED ------ PLAINTIFF

AND

1. FEDERAL HOUSING AUTHORITY
2. UNKOWN PERSONS ------ DEFENDANTS

RULING

On the 31st day of May, 2018 the Plaintiff, Innovation Era Nigeria Limited instituted this action against the Defendant Federal Housing Authority and unknown persons. The Defendants were served – the 1st Defendant personally on the 12th of June, 2018 and the 2nd Defendant through substituted service made on the 14th day of June, 2018. Till date the Defendants have not filed any Statement of Defence, almost two (2) years and four (4) months after they were served with the Originating Processes.

On the 8th day of March, 2019 the Plaintiff amended its Statement of Claim. In it they claimed the following:

1. **Declaration that the act of destruction/demolition, encroachment and continual destruction/demolition and encroachment into the Res – Plot ZVS – 66 measuring about 800 Squaremetre at Zuba Village Settlement, Abuja by Defendants without consent of the Plaintiff is an act of Trespass and therefore illegal and unlawful.**
2. **Declaration that in particular the 1st Defendant cannot take over the Res without revoking same and stating reason thereof for the revocation if any in line with the applicable laws.**
3. **Declaration that Defendants especially the 1st Defendant did not serve the Plaintiff Notice of Revocation before the said demolition and ought to have given the Claimant reasonable time to remedy any contravention if any before punitively demolishing her building.**
4. **Declaration that the act of the Defendants was unlawful, illegal, irrational and unjustifiable and a show of arbitrary use of power without any justification whatsoever.**
5. **An Order that the Plaintiff is the rightful owner and in possession of the land and therefore is entitled to the Res.**

6. **An Order restraining the Defendants, their assigns, agents, privies, servants and anyone claiming through them from further act of trespass or demolition or further demolition, working, entering, building, using, dealing and or further interfering or forcefully taking over the Res.**
7. **Payment of Two Million, Six Hundred and Fifty Three Thousand, One Hundred and Fifty Naira (₦2, 653, 150.00) as special damages against the Defendants.**
8. **Three Hundred and Fifty Thousand Naira (N350, 000.00) as cost of labourers.**
9. **Five Hundred Million Naira (N500, 000,000.00) as value of compensation and damages for the illegal and wrongful demolition of the Claimants building which is at the Res.**
10. **Three Million Naira (N3, 000,000.00) as cost of the litigation.**

He stated in details particulars of the Damages.

As stated earlier the Defendants were served but they did not file any Statement of Defence. The 1st Defendant only filed a Memorandum of Appearance on the 19th day of February, 2019.

In other to preserve the Res the Plaintiff filed a Motion for Interlocutory Injunction restraining the Respondents from taking any action on the Res, such action as would adversely affect the ownership claim

of the Claimant pending the determination of the substitute Suit.

Omnibus Order.

They supported it with Affidavit of 32 paragraphs and Written Address. They annexed several documents which included the documents of title, pictures of the development carried out at the Res by the Plaintiff before the demolition, as well as the glaring evidence of demolition allegedly carried out at the Res by the Respondents.

In the 8 pages Written Address the Applicant raised an Issue for determination which is:

> **"Whether based on the materials placed before the Court by Applicant, this Court can exercise its undoubted discretion in granting the Interlocutory Relief being sought".**

They submitted that Court has the discretion to grant this application. They referred to **Order 42 Rule 8 High Court Rules 2018.** He cited the case of:

Obeye Memorial V. A-G Federation
(2000) 24 WRN 138 @ 141 Ratio 1, 4 & 6

Saraki V. Kotoyo
(2001) 48 WRN 1 @ 7

Taking the principles laid down in the case of Obeye Memorial which the Court must consider before the grant or refusal to grant an Interlocutory Injunction.

The Applicant submitted that the Plaintiff has a legal right over the Res by virtue of the allocation of the Res going by the document of title exhibited as EXH A1 – A2 as well as Certificate of Occupancy No. FCT/GAC/RLA/MISC/9425. That he has both legal and equitable interest over the Res which is capable of being protected. Again that he took immediate possession of the Res by construction of a perimetre fence and security fence. That she enjoyed ownership of the Res without any encumbrances until the trespass and demolition by the Respondents. That they have therefore established their legal right. And they urged Court to grant the Injunction Order as sought.

That by the facts in the Affidavit, the Statement of Claim and the EXH A1 – A2, B & C the Plaintiff has made out substantial issue to be tried which will warrant Court to grant the Order as sought. That they are not called upon at this stage to establish his case on merit. They are only called upon to establish that there is substantial issue to be tried. The referred to the case of:

Kufeji V. Kogbe
(1961) 1 All NLR 113 @ 114

which the Supreme Court adopted in the case of Obeye Memorial V. A-G Federation Supra. That EXH B & C shows the extent of development on the Res as well as the destruction and demolition by the 1st Respondent.

On the Issue of Balance of Convenience, they submitted that on the basis of their deposition in the Affidavit and Statement of Claims the Respondent have taken ostensible steps aimed at overreaching this Court just to place the Court in with state of helplessness.

That Balance of Convenience is on part of the Applicant as they have suffered damages and will suffer more if the Res is not protected and this Order is not granted as prayed. They urged Court to grant the Injunctive Order more so when the issue is already pending in this Court. They relied on the case of:

Daniel V. Ferguson
(1891) 2 CH.D 27

Obeye Memorial V. A-G Federation Supra.

On irreparable loss suffered by Applicant they referred to paragraph 4.01 – 4.16 Written Address stating that they will and have already and will continue to suffer irreparable loss if the Injunctive Order is not granted.

The Claimant/Applicant also undertook to pay damages to Defendants if the Court holds that they are not entitled to the Reliefs sought and if their application is found to be frivolous.

In conclusion they urged the Court to grant the Order as sought in the interest of justice at this stage in the stage.

The 2nd Defendant did not enter appearance or file any Memo. They did not file any Counter Affidavit in challenge of this application. They did not also file any Statement of Defence. The Court ensured that the two (2) Defendants were served with all the Processes and Hearing Notices as appropriate.

As already stated the 1st Defendant only entered appearance. They did not file any Statement of Defence or even Counter Affidavit document. But since the Court is called upon to do substantive justice at every stage, this Court in exercise of its discretionary power to do so ordered that the 1st Respondent who was represented by a lead Counsel J.O. Ojo allowed the said Ojo Esq. to respond orally to the Motion.

The said Counsel to the 1st Respondent responded on 3 points thus raising 3 Issues to wit:

(1) Whether the Court can grant the Relief/Order in view of the document submitted before the Court.

(2) Whether Court can grant an Injunction of a completed act.

(3) *Whether the Plaintiff has established that Balance of Convenience is in their favour.*

He submitted that in an application like this the Court is enjoined to look at the Processes (Writ) and the Motion before it. He cited the case of:

Felshade Int. Nigeria Limited V. VTD Armsterdam (2020) 14 NWLR (PT. 1743) 107 @ 144

where the Court held that it is the claims, facts and Exhibit attached to Act which are before the Court that the Court should consider in determining the case before it at every stage. That contrary to what the Applicant said, they have no legal right to claim in the Res. He referred to the case of:

Onah V. Afanda
(2000) 5 NWLR (PT. 656) 244 @ 275 Ratio 9

That by **S. 18 FCT Act** only the FCT Minister that can grant Right of Occupancy over land in the Federal Capital Territory (FCT). That there is no rural land in the FCT. That the Plaintiff have not shown that they have legal right in the Res. So they have no stand to seek redress over the Res. He referred to the case of:

UAC V. Mc Foy

They urged the Court not to grant the Order as sought and cannot exercise its discretion in favour of the Plaintiff as sought.

The 1st Defendant also submitted that houses has been developed in the area where the Res is located by the Respondent.

That the Applicant is only claiming ownership on a small portion of the land at the Res in estate. That it is an act that has been completed. That it is the law that the Court cannot grant an Injunction on a completed act. He referred to the case of:

A.R. Security Solutions Limited V. EFCC
(2018) 6 NWLR (PT. 1616) 552 @ 559 Ratio 3

where the Court held that an Injunction is not a remedy to an act that has been completed. He urged the Court not grant the application and not to exercise its discretion in favour of the Applicant.

On Balance of Convenience, he submitted that if the Court grant the application the Plaintiff will be able to pay the Defendant. But different if Court grants the application Defendant will be able to pay. That the Plaintiff has not deposed to any fact in Affidavit that Federal Housing Authority (FHA) does not have enough money to pay the Plaintiff. He submitted that the Applicant has failed to prove Balance of Convenience is on their favour. He referred to the case of:

Saraki V. Kutoye
(1990) NWLR (PT. 143) @ 144

Based on the 3 points the 1st Defendant Counsel urged Court not to exercise its discretionary power in favour of the Plaintiff/Applicant.

Court allowed the Plaintiff Counsel to respond to the submission of the 1st Defendant Counsel. The Plaintiff Counsel then submitted as follows:

That their Motion is unchallenged as the Defendants/Respondents did not file any Counter. He referred to the case of:

Ajowale V. Yadua't
(1991) 5 NWLR (PT. 191) 266

Owunu & Anor V. Adigwe & Anor
(2017) LPELR – 42763 SC

On Issue of Legal Right as raised by the 1st Defendant Counsel, the Plaintiff Counsel submitted that the application does not demand that the Plaintiff establish his case on merit at this stage. But the Plaintiff is only required to show that sufficient issue is raised before the Court.

On the Issue of Completed Act as raised by the 1st Defendant Counsel, the Plaintiff Counsel submitted that the Court does not allow a party to overreach the Court. That the Court is not independent and usually guide its independence jealously. That Court should not allow the Defendants/Respondents to overreach it in this case.

On Balance of Convenience not being in favour of Plaintiff/Applicant, the Plaintiff Counsel submitted that the averment in paragraph 25 of the Affidavit in support of the Motion is unchallenged. He urged the

Court to grant the application because the Defendants has nothing to loose if it is granted. That the Plaintiff will loose its investment and continues to loss its investment. He urged the Court to grant the Oder as sought.

COURT:

Be it known to all and sundry that Demurrer Proceeding has since the 2004 been abolished in the FCT.

That means that the Court does not entertain any demurrer proceeding within FCT.

Again once a party is served with an Originating Process and it fails to respond to same by way of Statement of Defence and Counter Claim or where there is Motion on Notice with Counter Affidavit, it is held that such party has accepted the facts as contained therein. Again such facts are deemed admitted too.

This is more so where the party has all the ample time to respond to the said Processes but decided to sleep on its right or deliberately refused to so respond.

There is no Statement of Defence or Counter Claim in this case. There is no Counter Affidavit challenging this Motion too. This Court had allowed the Defendant Counsel to respond. The Court had

summoned in great details the submission of the 1st Respondent Counsel.

The 2nd Respondent did not enter appearance and has no representation in Court.

After due consideration of the reasoning/submission of the Plaintiff this Court holds that there is a dire need to preserve the Res and party maintain Status quo. There is no evidence to show by the 1st Defendant Counsel that there is development of building in the Res.

The Applicant has been able to establish that it has Balance of Convenience on the Res in his favour.

They had undertaken to pay compensation.

There is no doubt that there is a legal right to be protected at this stage. There is equally a legal issue to be determined which is the true ownership of the Res.

The allegation of demolition can be seen in the pictures attached. Though the Court is yet to determine the validity or otherwise of the allegation of the demolition/destruction and trespass. There is every reason to grant this Injunction. The 1st Defendant Counsel had stated that the Plaintiff is claiming a small portion of the Res. It is still a right worth fighting for. This Court has every right to grant this application and the Relief sought pending the

determination of all the issue in dispute in the substantive Suit.

The Plaintiff/Applicant having established all the principles as enumerated in the case of:

Obeya Memorial V. A-G Federation Supra

and

Saraki V. Kutoye Supra

This Court holds that there is need to grant this application and grant the Relief sought so far. This application is meritorious. It is therefore GRANTED as prayed.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2020 by me.

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K.N. OGBONNAYA
HON. JUDGE