

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT APO ABUJA**

**ON THE 30<sup>TH</sup> DAY OF APRIL, 2018**

**BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI**

**PRESIDING JUDGE**

**SUIT NO. FCT/HC/CV/685/17**

**BETWEEN:**

**HALLELUYA OLUWATOYIN NDIEB**

**(Suing through her agent ... PLAINTIFF/APPLICANT  
MUSLAC TECHNO COMPANY LIMITED)**

**AND**

**1. CON PROPERTY DEVELOPMENT LTD**

**2. NWEKE CHKWUDI . .... DEFENDANTS/**

**3. UNKNOWN PERSONS RESPONDENTS**

**PARTIES ABSENT APOLOGIES FROM COUNSEL**

**M. A ESSIEN HOLDING THE BRIEF OF S. I. IMOKHE FOR THE  
PLAINTIFF**

**RULING**

By a motion on notice No M/2853/17 filed on 2<sup>nd</sup> February 2017 the

Plaintiff /Applicant seeks: -

“1. An order of interlocutory injunction restraining the Defendants their privies, assigns, servants, workers, agents or any person acting or purporting to act on their behalf or otherwise from carrying out acts of development, selling, leasing, interfering with the property known and described as PLOT 09 LOCATED AND SITUATE AT MONARCH

HOMES PLOT 1918 SABON-LUGBE EAST LAYOUT, ABUJA pending the determination of this suit by this Honourable court.

2. AND for such order or further order(s) as this Honourable court may deem fit to make in the circumstance.”

The application is predicated on 5 grounds as indicated on the motion paper. Also filed is a 33 paragraph affidavit deposed to by Engr Chris Okoye, the Managing Director and Chief Executive of MUSLAC TECHNO COMPANY LIMITED, the plaintiff’s agent/attorney with 6 annexures marked Annexures 1-6 and counsel’s written address.

In response the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a 23 paragraph counter affidavit of Gabriel Ananwude with 3 exhibits attached marked Exhibits C1 to C3 and a written address in opposition to the application.

In response thereto the Plaintiff/Applicant filed a 20 paragraph further and better affidavit of Engr Chris Okoye with four more exhibits attached marked Exhibit 7 to 10.

In his written address in support of the application Victor Ojeifor Esq. for the Plaintiff/Applicant raised a sole issue for the court’s determination thus:

“Whether this is a proper case for the grant of this application”.

It was submitted that a grant of an interlocutory injuriction is discretionary and upon the fulfillment of the guiding principles as laid down by the court in **KOTOYE V CBN (2000) 16 WRN 71, OBEYA MEMORIAL HOSPITAL V AGF (2000) 24 WRN.**

It was the contention of learned counsel that the Plaintiff/Applicant had satisfied the conditions for the grant of this application thus the court was urged to exercise its discretion in the Plaintiff/Applicant’s favour. He also prayed that the status quo be maintained pending the determination of the suit.

Learned counsel for the Defendants/Respondents, Ernest Annie Nwoye Esq in his written address also raised a sole issue for the court's determination thus:-

“Whether the Applicant has made out a case to be entitled to the grant of interlocutory injuriction sought”.

He also placed reliance in **OBEYA MEMORIAL SPECIALIST HOSPITAL V AGF** supra and **KOLOYE V CBN** supra as well as other authorities.

On the guiding principles in the grant of an application such as this and posited that the Plaintiff/Applicant did not meet the criteria to merit a favourable order of the court.

It was also submitted that the act sought to be restrained has already deemed completed. The court was thus urged to dismiss the application. I have perused the affidavits of the parties before me and the written and oral submissions of learned counsel on both sides.

An interlocutory injunction as rightly submitted by learned counsel to the Plaintiff/Applicant is granted at the discretion of the court which must exercise its discretion judicially and judiciously, upon a consideration of the principles enumerated by learned counsel on both sides.

The essence of this application is for the court to restrain the Defendants, their privies, assigns, servants workers, agents or any person acting or purporting to act on their behalf from developing, selling, leasing or interfering with the property known as **PLOT 09 LOCATED AND SITUATE AT MONARCH HOMES PLOT 1918 SABON – LUGBE EAST LAYOUT ABUJA** pending the determination of the suit.

It is a well-known principle of law that an interlocutory injunction is not a remedy for a completed act.

In paragraph 12 of the further affidavit of Engr Chris Okoye deposed on 17<sup>th</sup> May 2017, it is averred thus: -

“That the Defendants have now reached roofing stage on the main building and have also commenced the building of the boy’s quarters. That I took photographs of the said development by men and agents of the Defendants.

The said photographs are hereby attached and marked Exhibits 10”.

The said photographs show extensive works already carried out on the plot in question. It is my view therefore that any alteration to the plot in question has already been done and an interlocutory injunction at this stage will serve no useful purpose. See **IHEANACHO EKPAHURU IDEOZU V CHIEF FRANK OKPO OCHOMA AND ORS- 2006 LPELR – 1419 SC; JOHN HOLT V HOLTS AFRICAN WORKERS UNION (1963) 2. SCNR 383.**

Besides, I agree with the Defendants/Respondents that damages will be adequate compensation to the Plaintiff/Applicant if she is successful in the main suit and the Defendants/Respondents being property developers would be in a position to pay damages. The Plaintiff/Applicant did not counter the averment in paragraph 20 of the Defendants/Respondents’ counter affidavit wherein they averred that the Plaintiff lacks the financial capacity to indemnify the Defendants if this suit turns out to be frivolous.

Again the Plaintiff/Applicant did not counter the averment of the Defendants/Respondents in paragraph 15 of their counter affidavit that “all building designs for houses at the 1<sup>st</sup> Defendant’s Monarch Homes, Lugbe, Abuja are designed and produced by the 1st Defendant. It is a prototype design and plan for each and every house. No Allottee has a right or privilege to produce his/her separate plan.

All things considered, the res in question here is land. It is not a perishable commodity and whoever is successful at the end of the day will be declared the owner of the land and all that is on it – a building already in line with the prototype design.

I therefore agree with the Defendants/Respondents that the Plaintiff has not convinced this court that it merits a grant of this application. Same is therefore dismissed.

The court orders accelerated hearing in this suit.

**Hon. Judge**

Essien: We have a motion on notice to amend our statement of claim.

Okoli: We do not object to the motion but we shall be asking for costs of N20, 000 as we had filed our statement of defence and have mobilised for service of same and an amendment will entail our having to file another statement of defence.

Essien: Since there is no opposition. I pray to move in terms of our motion M/4828/18. We do not concede costs because we did file timeously.

Court: Application for amendment of the statement of claim is granted as prayed. No cost awarded.

Matter adjourned to 4<sup>th</sup> July 2018 for definite hearing.

**Hon. Judge**