

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

THIS MONDAY, THE 16TH DAY OF NOVEMBER, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CV/2184/19

MOTION NO: M/5349/2020

BETWEEN:

**HONNS ALUMINIUM COMPANY
NIGERIA LTD**

.....CLAIMANT/APPLICANT

AND

1. TON INVESTMENT LIMITED

2. UNKNOWN PERSONS

}.....DEFENDANTS/RESPONDENTS

RULING

By a motion dated 17th February, 2020, the Applicant seeks for the following reliefs:

- 1. An Order of Interlocutory Injunction restraining the Defendants, their agents, privies, workmen, foremen, Engineers, Architects or by whatever named called from taking possession of, trespassing into, further developing, roofing, changing the shape of or in any way disturbing or interfering with claimant’s property situate at Plot B78, Sabon Lugbe Layout, Lugbe, Abuja pending the final determination of the substantive suit.**

2. And for such further or other order(s) as this Honourable Court may deem fit to make in the circumstance.

In support of the Application is an 18 paragraphs affidavit with 7 annexures marked as **Exhibits A, B-B1, C, D, E and F**. A brief written address was filed in compliance with the Rules of Court in which the well-known principles governing the grant of an order of injunction were stated and it was submitted that the Applicant has on the facts and materials met or fulfilled the legal requirements to enable the court make the orders sought in Applicant's favour.

At the hearing, L. Akhrame of counsel for the Applicant relied on the contents of the paragraphs of the supporting affidavit and the annexures. He adopted the submissions contained in the written address and urged the court to grant the application.

From the records, the defendants were duly served with originating court processes, the extant motion on notice and hearing notices. Counsel for the 1st defendant indicated in court that they are not opposing the application, while 2nd defendant neither appeared nor file any counter affidavit in reaction or opposition to the application.

I have carefully considered all the processes filed on behalf of the Applicant. The issue to be resolved by this application falls within a very narrow legal compass with very well defined principles. The facts and justice of each matter dictates whether the order(s) sought will be granted or not. It must also be borne in mind that at this stage, there is no trial on the merits.

Before dealing with the merits, let me quickly make the point that the failure of the defendants to react to the contents of the affidavit of applicant meant that the applicants affidavit should be taken as true since it is unchallenged. See **Nwosu V Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt.135) 6877 at 721 and 735**. I am however quick to add that although this is a general rule, it is also true to say that the court is not in all circumstances bound to accept as true, evidence that is un-contradicted where such evidence is willfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular

case. See **Neka B.B.B. Manufacturing Co. Ltd V. ACB Ltd (2004) 2 NWLR (pt.858) 521 at 550, 551.**

It equally follows that the fact that an affidavit is unchallenged does not in any way lessen the duty of the court to ensure that the reliefs sought are creditably established. The court has the bounden duty to look at the contents of the unchallenged affidavit to determine if it is sufficient or meets the required standard of cogency and creditably to determine the claim made by the applicant. See **Martchem Ind. Nig. Ltd V M.F. Vent Inest. Arice Ltd (2005) 129 LRN 1896 at 1899.**

As a logical corollary, it is now the duty of the court to examine the established facts within the context of the principles guiding the grant of an order of injunction and then determine whether the Applicant has made out a good case for the exercise of the court's discretion in their favour.

Now the grant or otherwise of an interlocutory injunction involves the exercise of the court's undoubted discretion which discretion must be exercised judiciously and judicially. The basis for the grant of an injunction is the need to protect the applicant by preserving the circumstances that are found to exist at the time of the application until the rights of the parties can be finally established. This need is weighed against the corresponding need of the respondents to be protected against any injury resulting from having been prevented from exercising their legal rights for which they could not be adequately compensated in damages if in the end the substantive case is decided in their favour. See **Odutan V General Oil Ltd (1995) 4 NWLR (pt.387) 1 at 12 H – 13 A.** The essence of the injunctive relief is the preservation of the status-quo. The order is given in the light of the threat, actual or perceived, to the applicant's rights. The order is put in place to forestall irreparable injury of the applicant's legal or equitable rights. See **Madubuike V Madubuike (2001) 9 NWLR (pt.719) 698 at 708 A-C.**

The principles that inure in favour of granting an order of interlocutory injunction are now fairly well settled. In the exercise of its undoubted discretion, the court usually raises three posers, to wit:

1. Is there a serious question to be tried?

2. If so, will damages be adequate compensation for the temporary inconvenience?
3. If damages will be inadequate compensation, in whose favour is the balance of convenience?

See **Sunmonu V Nigeria Synthetic Fabrics Ltd (2002) 51 WRN 186** and the Book *Injunctions and Enforcement of Orders* by Afe Babalola SAN at page 54.

The first of the considerations to consider is that of whether there are serious questions to be tried. It is perhaps important to state immediately on this point that an applicant for an order of injunction is no longer expected to show a strong prima facie case or an indefeasible right to the relief(s) sought or indeed establish or show a prospect of obtaining a permanent injunction at the end of trial. It is sufficient once the applicant shows that there are serious questions to be tried between parties at plenary hearing. See **Adenuga & Ors V Odumeru & Ors (2003) 5 SCM 1 at 13; Onyesoh V Nebedun (1992) 3 NWLR (pt.229) 315 at 319 Oyeyemi V Irewole Local Govt, Ikire (1993) 1 NWLR (pt.270) 462 at 461.**

On the first consideration, the Applicant drew the attention of the court to paragraphs 3 – 7 and in particular Exhibits A, B1, C and D of the affidavit in support which clearly showed its prima facie legal right on the subject matter of dispute situate at Plot B78, Sabon Lugbe Layout, Abuja, while paragraphs 8-13 goes further to show the attempts made by certain unknown person(s) at tampering or developing this plot of land and attempts made by them to stop this infringement. Paragraphs 14-17 disclosed matters that goes to the balance of convenience which it was contended are in favour of the plaintiff.

As stated earlier, issues were not joined on these assertions. The whole basis of an order of interlocutory injunction is to preserve the status quo pending the determination of rights of the disputants. See **Odutan V General Oil Ltd (1995) (supra).**

On the unchallenged facts, the plaintiff has made out a case for the grant of an order of interlocutory injunction. The application succeeds, except for the aspect of the relief on trespass which was withdrawn and struck out. However since as stated earlier that the basis for the grant of an order of injunction is the need to protect the Applicant by preserving the circumstances that are found to exist at the

time of the application until the rights of the parties is finally established, I accordingly having found that the Applicant has made out a case for a favourable exercise of the court's discretion make the following order:

- 1. An Order of Injunction is granted restraining the defendants, their agents, privies, Workmen, Foremen, Engineers, Architects or by whatever name called from taking possession, further developing or in any way interfering with the property situate at Plot B78, Sabon Lugbe Layout pending the hearing and determination of the substantive suit.**

- 2. Matter adjourned to 9th February, 2021 for hearing. Hearing notice to issue on the 2nd Defendant.**

.....
Hon. Justice. A.I. Kutigi

Appearances:

- 1. L. Akhrame, Esq., for the Claimant.**

- 2. U.P. Ogarakwe, Esq., for the 1st Defendant.**