



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF



SUIT NO: FCT/HC/CV/2006/2020

BETWEEN:

YINKA OYEWOLEPLAINTIFF/APPLICANT
(Carrying on business in the name and style of MIZA & CO.)

AND

1. 1909 GLOBAL COMPANY LTD)
2. SHELTER GOLD GROUP)
3. PHILIP ISAH)DEFENDANTS/RESPONDENTS

RULING

The Plaintiff/Applicant filed a Writ of Summons on 29th June, 2020 seeking declaration of title to Plot No. MF 3029 Cadastral Zone 07-07 Sabon-Lugbe East Extension Layout, Abuja and measuring about one Hectare. The Plaintiff also wants the Court to declare the Defendants/Respondents as trespassers on the disputed land and in consequence award damages in his favour in addition to an Order of Perpetual Injunction against the Defendants/Respondents. Meanwhile, on the 9th November, 2020 and before the matter proceeded to trial, the Plaintiff/Applicant brought the instant application for an Order of Interlocutory Injunction.

The application is supported by an affidavit of 33-paragraphs personally deposed to by the Plaintiff/Applicant. Photocopies of certain documents were attached and marked as Exhibits "A" - "G". Learned counsel also filed a written address in line with the Rules of Court.

There is no opposition to this application as the Respondents elected not to file any process by way of counter affidavit or reply on points of law. They were also absent in Court when the application was moved, despite the fact that hearing notices was duly served on them.

It is now trite law that essentially an application for Order of Injunction seeks for equitable jurisdiction of the Court. The grant or refusal of same is dependent on the discretion of the Court. The discretion must be exercised judicially and judiciously. The principles for the consideration of the application are well spelt out in a plethora of cases. As a take off point, it's good to bear in mind that at the stage of interlocutory application, there is no trial on the merits.

See **ANTHONY Vs SURVEYOR-GENERAL, OGUN STATE (2007) ALL FWLR (PT.354) 375 AT 390 PARAS E-F**, where Augie, JCA (as he then was) succinctly but aptly captured the law as follows:

“The whole essence of interlocutory injunction is to restrain a party from taking special steps. It is made before the actual trial of a case and granted to keep matters in status quo until trial.”

The main purpose of the application is to protect the Plaintiff against injury by violation of his right to the disputed property for which he could not be adequately compensated in damages.

That being the case, an Applicant for an Order of Interlocutory Injunction must first and foremost disclose in his application that he has a recognizable legal right to the disputed property. He must also show that if there are competing rights, the balance of convenience is in his favour and that damages will not be adequate compensation in the event that he succeeds in the substantive case.

See ONYESOH Vs NNEBEDUM (1992) 3 SCNJ 129 where Karibi-Whyte, JSC stated the principle thus:

“In KOTOYE Vs CENTRAL BANK (1989) 1 NWLR (Pt.98) 419; 2 SCNJ 31, this Court restated some but not all the principles governing the grant of interlocutory injunctions. It was stated that the following factors should be taken into account. These are:

- 1. The strength of the Applicant's substantive Suit, and that there is a serious issue to be tried – See OBEYA MEMORIAL SPECIALIST HOSPITAL Vs ATTORNEY-GENERAL FOR THE FEDERATION (1987) 3 NWLR (Pt.60) 325 at p.340.**
- 2. That the balance of convenience is on the side of the Applicant. The onus of proof of which is on the Applicant – See MISSINI & ORS. Vs BALOGUN (1968) 1 All NLR 318.**
- 3. That monetary damages will not be an adequate compensation for the injury resulting from the violation of his right if he succeeds in the action.**
- 4. That the conduct of the parties is a relevant factor.”**

I have considered the depositions in the affidavit of the Applicant in support of this application which are not opposed by the Respondents. Exhibit “A” attached to the affidavit is an offer letter in favour of the Plaintiff/Applicant while Exhibit “C” is a schedule of Right of Occupancy Rent and Fees issued to the Applicant by the authority of Abuja Municipal Area Council in the sum of N146,100.00 (One Hundred and Forty-Six Thousand, One Hundred Naira) Only. Exhibit “B” is the treasury receipt in support of the payment of the schedule of fees captured in Exhibit “C”. These

exhibits in my view amply suggest that the Plaintiff/Applicant has disclosed a cognizable legal right in the subject matter of dispute. However, this is not to suggest that the Applicant has proved his title to the disputed land as trial is yet to commence as stated elsewhere above. Nevertheless, at this preliminary stage, I am satisfied that the Applicant has disclosed a legal interest in the subject matter of litigation.

The question therefore is whether the legal interest of the Applicant ought to be protected pending the hearing and determination of the substantive action? The law is clear that where parties have taken their grievances to the Court, they should maintain status quo and not to do anything that would dissipate the res pending trial. See the case of **EFFIOM Vs IRONBAR (2000) 3 NWLR (PT.650) 545** ably cited by the learned counsel to the Plaintiff/Applicant.

The Plaintiff/Applicant has stated in his affidavit that the Defendants who are land developers have entered the disputed land and commenced development while denying him access to the said land. Paragraphs 21 to 26 of the affidavit in support tell the story with utmost clarity, to wit:

21. That I know as a fact that the Defendants have commenced building of structures on the said land. The pictures of the structural development on the land in

dispute are hereby attached to this affidavit and marked as Exhibit "G1" "G2" & "G3"

22. That the act of the Defendants has remained unabated, as the Defendants have consistently employed various means of stopping me from further coming close nor developing the said plot of land and the Defendants have been enjoying the full benefits of interest in the land in dispute selling it to his subscribers and receiving proceeds from the said land.

23. That the Defendants have incessantly employed various means, including using some boys and even miscreants to harass, intimidate and even prevent me from entering into the said plot of land.

24. That, at the moment, the Defendants have resorted to using unconventional means barring the Plaintiff from getting anywhere close to the said land in dispute.

25. That the Defendants are going about boasting that they have successfully taken over the said land from me, and boasted that they are highly connected to the former AIG of the Nigerian Police who is both influential at AGIS and Land registry who will soon allocate same to another person.

26. That in furtherance of the above, I have been receiving strange calls threatening not to go anywhere close to the land in dispute or risk losing my life.

In the circumstances of this case, I think that it is in the interest of justice to grant the application to ensure that while the matter is pending before the Court one of the parties does not gain access to develop the property to the disadvantage of the other. Accordingly, this application has a lot of merit and it is hereby granted. An Order of Interlocutory Injunction is hereby made restraining the Defendants/Respondents whether by themselves, their agents, assigns, privies whosoever or howsoever styled from selling, building or committing further trespass on Plot. No. MF 3029 Cadastral Zone 07-07 Sabon-Lugbe East Extension Layout, Abuja and measuring about one Hectare. They are further restrained from taking any further step prejudicial or inimical to the property pending the determination of this Suit.

Signed
Hon. Justice H. Y. Baba
(Presiding Judge)
20/01/2021