

**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/2367/2020
MOTION NO:M/9025/2020**

BETWEEN:

DIAMOND CITY & APARTMENTS LTD.....CLAIMANT/APPLICANT

AND

- 1. SUNDAY ENUJEKO**
- 2. AUGUSTINE EJIOFOR**
- 3. UNKNOWN PERSONS.....DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Noticedated 3/8/2020 and filed on the 7/8/2020 with No. M/9025/2020,brought pursuant to Order 43 Rules 1 (1), 42 (8) of the of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Hon. Court, Applicant prays for the following reliefs;

- (1) AN ORDER OF INTERLOCUTORY INJUNCTIONrestraining 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 Plot 3444 Sabon Lugbe East Extension Layout

measuring 1.6 Ha, pending the hearing and determination of this Suit.

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

In support of this application is a 19 Paragraph affidavit deposed to by depose to by Abraham Opaoluwa, staff of the Claimant with 3 Exhibits marked "A", "B" & "C" attached. In compliance with the Rules of court. Applicant filed a Written Address and adopts same as oral argument in urging the court to grant the reliefs sought.

The processes were served on the Defendants on 9/10/2020 by substituted means to wit: by pasting same on the wall/gate of Plot 3444 Sabon Lugbe East Extension Layout Abuja pursuant to Order of court made on 28/9/2020. Despite service of court processes as well as Hearing Notice, the Defendants/Respondents failed to react to the processes, and was absent in court and not represented by counsel. The implication of this, is that the application before the court stands unchallenged and uncontroverted. In Gana Vs FRN (2012) ALL FWKLR (PT.617) 793 @ 800 Paras D – E the court held that;

"Where an affidavit does not attract a counter-affidavit, the facts deposed to therein have been admitted and must be taken as true".

See also the case of CBN Vs Igwilo (2007) 15 NWLR (PT.1054) @ 406. However the success or failure of this application must rest upon the Applicant's satisfaction of the criteria for the grant o Interlocutory Injunction

stated in the case of *Kotoye Vs CBN* (1989)1 NWLR (PT. 89) 98 @ 119 and (2002) ALL FWLR (PT.49) 1567 @ 1576.

In the Written Address of the Applicant, Applicant's Counsel formulated a sole issue for determination, that is;

"Whether by the fact 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".

In summary, the submission of Claimant/Applicant's counsel is that an application of this kind is to protect the subject matter pending the hearing and determination of the substantive Suit. Refer to the cases of *Ita Vs Nyong* (1994) 1 NWLR (PT. 318) 56 and *Ogunro Duke* (2006) 7 NWLR (PT.978) 130 @132 Ratio 1. That by the affidavit filed in support of the Motion; Applicant has disclosed a legal right upon which court should exercise its discretion in favour of Applicant. Refer to *Obeya Memorial Specialist Hospital Ltd Vs Attorney General of the Federation & Anors* (1987) 7 SC 52 and *Latteri (Nig) Ltd Vs NAL Merchant Bank Plc* (2002) 1 NWLR (PT. 748) P. 333.

Applicant's counsel urge court to consider the principles which guides the grant of an application of this nature as stated in the case of *Uket Vs Okpa* (2006) 8 NWLR (PT. 983) 464 @ 466 Ratio 1 and grant the reliefs the Applicant, Applicant having satisfied the criteria for the grant of the reliefs as contained in the depositions/averments in the affidavit in support of the Motion.

Finally, urge court to grant the prayers to avoid the Defendants from completing the act of trespass on the land. And that parties must refrain from taking any action on the Res as a mark of respect for the court pending the determination of the Suit. Refer to the case of Ojukwu Vs Governor of Lagos State (1986) 3 NWLR (PT. 26) 39. And while adumbrating at the hearing of the application submits that the Defendants failed to file a counter-affidavit in opposition that it is trite law that facts deposed to in an affidavit not countered are deemed admitted. Refer to the case of Computer of Nigeria Prison Vs Adekanye (1999) 10 NWLR (PT.623) 400 @ 417.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibits marked "A", "B", "C", the submission of counsel as well as the judicial authorities cited, the court finds that, there is only one (1) issue that calls for determination which is;

"Whether or not the Applicant has placed sufficient facts for the grant of the reliefs sought"

An order of Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. The 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 deny permanent relief on the merit. See Yusuf Vs I.I. T.A. (2005) 5 NWLR (PT. 1133) 39 Para A – B.

In an application for Interlocutory Injunction, it is not necessary that the Applicant must make out a case as he would on the merit. It is sufficient that he should establish that there is a serious issue to be tried. It is unnecessary to determine the legal right to a claim since at that stage there can be no determination, because the case has not been tried on the merit. It is on this basis the court will consider this application.

In *Kotoye Vs CBN (Supra)*, the Supreme Court set out certain guidelines to be followed by the court in deciding whether or not to grant Interlocutory Injunction amongst these factors to be considered are;

- (1) Whether there are triable issues at the trial of the substantive Suit?
- (2) Whether the balance of convenience is on the side of the Applicant.
- (3) Whether the Applicant have right to be protected.
- (4) Whether the Applicant shall suffer irreparable damages if the Order of Interlocutory Injunction is not granted pending the determination of the main Suit.

See also *Yusuf Vs I.I. T.A. (Supra)*; *Owerri Municipal Council Vs Onuoha (2010) ALL FWLR (PT.538) 896 @ 898.*

On whether there are triable issues at main trial, the position of the law is that; all the court need to establish ; is that the claim is not frivolous or vexations.

From the facts stated in the affidavit of the Applicant particularly in Paragraphs 3, 4, 5, 6, 7 8, 9, 10, 11, 13 and 14, clearly shows that there are issues to be tried. The success or otherwise of it, is not the function of the court to resolve at this stage, but for the main suit.

On the issue of 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, this is an area where the discretion of the court comes into play. Judicial discretion is not a one way traffic. It takes into consideration the competing rights of the parties to justice. It must be based on facts and guided by the law or the equitable decision of what is just and proper under the circumstance. In this instant application, the Applicant have by her affidavit shown that she would suffer loss if the application is not granted and that the balance of convenience is in her favour. See paragraphs 15 and 17 of the supporting affidavit. Though it is not for the court to determine the merit of the case, at this stage. It is the view of the court that the Applicant have by her affidavit evidence shown clearly that she would suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to be protected; from the paragraph 4 and 5 of the supporting affidavit and Exhibit "A", "B", "C" and the claim before this court the Applicant have stated her legal right and in the court's view they are rights worthy of protection by this court.

The Applicant in paragraph 18 of her supporting affidavit undertakes to pay damages in favour of the Defendants/Respondents should this application turns out to be frivolous.

In all of these, the Defendants/Respondents who were duly served with the process did not react to the Motion, the consequence of this is that the facts contained in the affidavit evidence before this court are deemed true and correct and the court can act on it. They stand unchallenged and uncontroverted. It is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See Nigerian Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 200085 SC. Fabiyi (JSC) stated". It is basic that unchallenged evidence stands. The court should accept same and act on it". Per Fabiyi (JSC) @ Pg 11. Para D – F.

In conclusion and having considered the unchallenged and uncontroverted evidence and having satisfied the conditions for the grant of an order for Interlocutory Injunction, the court finds that the Claimant/Applicant have succeeded in making a case deserving of the grant of the relief sought. The application therefore succeed. It is hereby ordered as follows:

- (i) 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 Plot 3444 Sabon Lugbe East Extension Layout measuring 1.6 Ha, pending the hearing and determination of this Suit.

HON. JUSTICE O.C. AGBAZA

Judge

11/1/2021

EMMANUEL ONUCHE – FOR CLAIMANT/APPLICANT

NO REPRESENTATION FOR DEFENDANTS/RESPONDENTS