

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT: FCT/HC/BW/228/2019

MOTION NO: /M/472/2019

BETWEEN:

1. THE INCORPORATED TRUSTEES

OF COVENANT HOUSE GLORY CHURCH

2. REV. HENDRICKS OMALE ----- PLAINTIFFS

AND

PROPHET EMMANUEL OMALE --- DEFENDANT

RULING

DELIVERED ON THE 5TH MARCH, 2021

The Motion on Notice for Interlocutory Injunction before me as dated and **filed on the 30th day of September, 2019** by the Claimants/Applicants prays for the following reliefs:

1. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent by himself, his servant, agent, privies and/or workmen from trespassing and destroying the property situate (sic) No 7 Living Faith Road Kubwa Abuja-FCT for the sole aim of forcefully evicting the Plaintiffs there from pending the determination of the substantive suit.
2. **AN ORDER** of interlocutory injunction restraining the Defendant/Respondent by himself, his servant, agent, privies and/or workmen from forcefully evicting, forcefully taking over of the property situate (sic) No 7 Living Faith Road Kubwa Abuja-FCT

in any form or manner pending the hearing and determination of the substantive suit.

3. AND FOR FURTHER OR OTHER ORDERS that this Honourable Court may deem fit to make in this (sic) circumstances.

In support of this motion is a **twenty-nine (29) paragraphed affidavit** deposed to by REVEREND HENDRICKS OMALE with which five (5) documentary exhibits (serialized as **Exhibit 1, 2, 3, 4, and 5**) are attached. There is also a written address in support. In opposition, the Defendant/Respondent, on the **24th day of October, 2019** filed a **counter affidavit of nine (9) paragraphs** with a written address dated the 22nd day of October, 2019 in support.

To further strengthen their position, the Claimants/Applicants filed a Reply on Point of Law with a **further affidavit of nine (9) paragraphs** on the **16th day of January, 2020**.

I have carefully gone through all the processes filed in elucidation of the different agitations of the respective parties. I have intimately read the affidavit, counter-affidavit and further affidavit inclusive of the annexed exhibits, written addresses and reply on point of law. The singular issue that has fallen for the resolution of this Court in disposal of this Motion is formulated by the Applicants at paragraph 3.1 of their written address thus:

Whether the Claimant/Applicant has furnished sufficient material facts, justifying the grant of interlocutory injunction against the Defendants/Respondents (sic) in this suit?

In resolution of the above solitary issue, diverse arguments have ably been advanced by the parties in hostility, both for and against, each

relying on different decided authorities, all of which I have dispassionately digested.

PRINCIPLES GUIDING GRANT OF INTERLOCUTORY INJUNCTION:

The principles crystallizing from a chain of superior decided authorities regarding the grant of interlocutory injunction under our laws may be summarized thus:

1. The grant of an interlocutory injunction is a remedy that is both temporary and discretionary.
2. An application for an interim injunction postulates that the applicant has a right, the violation of which he seeks to prevent and to do so effectively, he wants the Court to keep matters in status quo (The state in which things are).
3. The applicant must show that there is a serious issue to be tried.
4. The applicant must show that the balance of convenience is on his side which means that he stands to lose more if the status quo ante is not maintained until the final determination of the case.
5. The applicant must show that he will suffer irreparable damage or injury if the respondent is not restrained.
6. The conduct of the applicant is relevant. He cannot ask for an injunction on the basis of fraud. (He who comes to equity must come with clean hands) delay by the plaintiff may adversely affect the application. (Delay defeats equity). It is not possible to get an injunction to restrain an act, which has been carried out.
7. The applicant must give an undertaking as to damages. The plaintiff/applicant by this accepts to be liable for any damage suffered by the defendant as a result of the order of injunction if he (plaintiff/applicant) eventually loses the action.

See generally: **Obeya Memorial Hospital v. A-G Federation (1987) 3 NWLR (Pt. 60) 1; Akapo v. Hakeem-Habeeb [1992] 6 NWLR (Pt. 247) 266; U.T.B. Ltd v. Dolmetsch Pharm. (Nig.) Ltd (2007) 16 NWLR (Pt. 1061) 420; and Kotoye v C. B. N. (1989) 1 NWLR (Pt. 98) 419.**

Although the parties to this application, in their various written addresses, have alluded correctly to some of the highlighted principles above in expatiation of their divergent persuasions, I feel impelled to recap and elucidate more on them thus:

LEGAL RIGHT

In the case of **Akapo v. Hakeem-Habeeb [1992] 6 NWLR (Pt. 247) 266 @ 289** the Supreme Court, while relying on the earlier decisions in **Kotoye v C. B. N. (1989) 1 NWLR (Pt. 98) 419** and **Obeya Memorial Hospital v. A-G Federation (1987) 3 NWLR (Pt. 60) 1** restated that the essence of grant of an injunction is to protect the existing legal right or recognizable right of a person from unlawful invasion by another. Inferentially, the first hurdle an applicant for an injunction must surmount is to show the existence of a legal right which is being threatened and deserves to be protected. Justice Karibi-Whyte JSC in the case further observed:

“The claim for injunction is won and lost on the basis of the existence of competing legal rights.....where an applicant for an injunction has no legal right recognizable by the courts, there is no power to grant him an injunction.”

In the case at hand, how did the Claimants/Applicants fare in satisfying this leg of the itemized requirements? Apart from restating the principle

of law, the Claimants/Applicants did not lift any finger in pointing this Court in the direction of any evidence or portion of their affidavit which satisfies this aspect of the requirements as to entitle their application to success.

The Counsel could not, in the Claimants/Applicants' written address, tie the principle of law he expounded to any aspect of the Claimants/Applicants' case. I think that is unfortunate. However, by myself, in my dutiful study of the supporting affidavit, I discovered ***paragraph 23 of the Claimants/Applicants*** wherein it was deposed as follows:

"That I have a legal right to be protected in the circumstances"

Then comes the question: what is that legal right the Claimants/Applicants claim they have that requires the protection of the Court? What is its nature? How was it derived? Who or which law conferred it? It is unfortunate that the Claimants/Applicants' affidavit or written address did not go as far as providing answers to these crucial questions. They woefully fell short of addressing these salient points that would have been of immense assistance to this Court in arriving at the justice which the instant application deserves.

SUBSTANTIAL ISSUE TO BE TRIED

This condition is important because it raises a fundamental issue which a judicial officer must pay particular attention to. In considering an application for interlocutory injunction the court must be careful not to delve into facts the resolution of which might lead to a determination of the substantive suit. All that is required of the applicant is to show that there is a substantial issue to be tried at the hearing.

There is no longer any need to show a strong prima facie case as a condition for grant of an injunction as held in **U.T.B. Ltd v. Dolmetsch Pharm. (Nig.) Ltd (2007) 16 NWLR (Pt. 1061) 420**. Further, the applicant at this stage does not need to make out a case on the merits as he would in the substantive case. All he needs is to show is that there is a substantial issue to be tried. **Obeya Memorial Hospital v. A-G Federation (Supra)**.

BALANCE OF CONVENIENCE

Balance of convenience means that the court must look critically at the facts deposed to in the affidavits of the parties and determine on whose side the balance of convenience tilts. That is, who will suffer more inconvenience if the application for injunction was granted or refused? An injunction will be granted if the balance of convenience favours the applicant. In **Egbe v Onogun (1972) LPELR-1034 (SC)** the Supreme Court referred to **Para 766 of Halbury's Laws of England 3rd Edition Vol. 21** where it was stated that:

“.....the Court in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff.”

Consequently, balance of convenience means the disadvantage to one side or the other which damages cannot compensate. If the balance of convenience is on the side of the applicant it means more justice will result in granting the application than in refusing it. In this case, the damages which the Claimants/Applicants would suffer, if any, were never itemized by them or quantified in the event this application becomes unsuccessful beyond *a deposition in paragraph 26 of their affidavit* where they alleged that *"the actions of the Defendant/Respondent by continuously harassing the Plaintiffs and attempting to forcefully evict them has caused (sic) severe hardship occasioning heavy damage (sic) to me"*.

What is the nature of the severe hardship alleged? In what way has it manifested or was it going to manifest? What are the heavy damages occasioned? No particulars to offer satisfactory answers to these posers were provided by the Claimants/Applicants.

IRREPARABLE DAMAGE OR INJURY:

In **Saraki v. Kotoye (Supra)** irreparable damage was defined as injury which is substantial and cannot be adequately remedied or atoned for by damages. The applicant in his affidavit evidence must depose to facts which show that if the injunction is not granted he will suffer serious and substantial damage which cannot be remedied by monetary compensation or damages. I ask again: what are the facts cataloguing the woes that would befall the Applicants in the event of the failure of their application? Where are those facts? Did the Applicants keep them to themselves? If so, why did they keep them to themselves? Are they entitled to withhold such crucial facts from the same Court they are seeking its indulgence? Does the law support the grant of their

supplications if they withhold these crucial facts from the Court? If yes, which law is that? Cocktail of questions with no answers.

CONDUCT OF THE PARTIES:

In **Peter v Okoye [2002] 3 NWLR (PT. 755) 529 @ 552 AC**, the Court of Appeal Enugu Division per Fabiyi JCA (as he then was) observed:

“In determining an application for interlocutory injunction, conduct of the parties is one of the relevant factors to be taken into consideration. On the part of an applicant, a reprehensible conduct is enough to deny him a grant of his application. An applicant for an order of interlocutory injunction should fail if he is guilty of delay. This is because an order of interlocutory injunction is an equitable remedy. It is known that delay defeats equity. An applicant should act timeously so as not to overreach his opponent. *Kotoye v. CBN (Supra)*; *Nigerian Civil Service Union v. Essien (supra)*; *Ezebilo v. Chinwuba (supra)* at page 128.”

In **Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 247) 266**, the Supreme Court held that where a respondent to an application for injunction relies on the illegality of his actions, he has no right to resist the application of the applicant with a recognized legal right to an order of injunction because injunction being an equitable remedy he who comes to it must come with clean hands. It is clear then that the conduct of both the applicant and the respondent are very material in the exercise of the discretion whether or not to grant an injunction.

UNDERTAKING AS TO DAMAGES:

One of the conditions for a grant of interlocutory injunction is that the applicant must give an undertaking to pay damages in the event it turns out that the injunction ought not to have been granted. The usual practice is for the applicant to depose in his affidavit in support of the application his willingness to pay damages.

The undertaking is an enforceable promise at large to pay the defendant what he might suffer by way of damages to be determined at a later stage. If the plaintiff loses the case on the merit the undertaking becomes realizable. In this case, the Claimants/Applicants gave undertaking as to damages in their supporting affidavit. That is all the requires them to do in that regard.

I must mention finally that the Rules of Court empower the courts in appropriate cases to make an order for accelerated hearing of the suit instead of wasting time hearing an application for injunction. It is this power of the Court as enshrined in the Rules that I am rather inclined to invoke against the backdrop of a clinical analysis of the entirety of circumstances propelling the institution of this application by the Claimants/Applicants.

To this end therefore, I am oriented towards returning the answer to the sole issue raised herein in the negative. The trend and flow of the existing and binding authorities in this area of our law as discussed above lean against the persuasions of the Claimants/Applicants. The reliefs sought by this Motion is REFUSED by me. I am minded to, and I do enter an Order DISMISSING this Motion.

I am minded to make an Order, which I hereby make, for the accelerated hearing of the Claimants/Applicants' substantive Writ of Summons by which this suit was commenced on the 30th day of September, 2019.

This is my Ruling which I reserved on the 14th day of December, 2020.

APPEARANCE

N. A. Omaye Esq. for the plaintiff.

Sign
Hon. Judge
05/03/2021