IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS MONDAY, THE 1ST DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/410/18
MOTION NO:M/1533/19

BETWEEN:

GOSHEN FOAM INDUSTRIES LIMITED.....PLAINTIFF/APPLICANT

AND

1. **NIGERIAN ARMY PROPERTIES LIMITED**
2. **THE HONOURABLE MINISTER, FEDERAL CAPITAL TERRITORY, ABUJA**
3. **THE ZONAL MANAGER, DEPARTMENT OF LAND, PLANNING & SURVEY ZONAL OFFICE, GWAGWALADA, ABUJA**

.....DEFENDANTS/ RESPONDENTS

RULING

By a Motion on Notice dated 29th November, 2019 and filed same dated in the Court's Registry, the Plaintiff/Applicant seeks for the following reliefs:

1. **An order of interlocutory injunction restraining the 1st Defendant/Respondent from tampering or demolishing any part of the Plaintiff/Applicant factory structures, fence or whatsoever pending the determination of the substantive suit.**

2. **An order of interlocutory injunction restraining the 1st Defendant/Respondent from further intimidation, molestation and threat of**

ejection on the Plaintiff/Applicant from plots Numbers MF 39 and MF 53 pending the determination of the substantive suit.

3. **And for such order or other orders as this Honourable Court may deem fit to make in the circumstance.**

In support of the motion is an 18 paragraphs affidavit with 14 annexures marked as **Exhibits A1-H2.** A very brief written address of two pages 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, Benson Aghaegbuna 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 the originating Court processes, the extant motion on notice and hearing notices. Counsel for the 2nd defendant indicated in court that they are not opposing the application, while 1st and 3rd defendants 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(s) 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 its favour.

Now the grant or otherwise of an interlocutory injunction involves the exercise of the court's undoubted discretion which discretion must be exercise 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 inures 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 attention of the court to paragraphs 3-7 and in particular **Exhibits A1-G2,** the title documents attached to the affidavit in support which cumulatively show the prima facie legal interest of the Applicant on the subject matter of dispute, to wit Plots MF53 and MF 39 both with about 2000 square meters each situate at Zuba II, Part II Layout in the F.C.T. What is interesting here is that the root of title on which Applicant predicates its interest over the disputed lands is a customary allocation of Gwagwalada Area Council vide **Exhibits C1, C2, D1 and D2.** This then raises the fundamental question or issue for substantive trial of whether such **customary allocation** is cognisable under the land tenure system in the F.C.T.

Without giving any opinion on the matter, the pronouncements of our superior courts on the issue donates the proposition that such allocation may be of doubtful validity. The legal right of Applicant which must be established as a critical element to allow for a grant of injunction has contentious legal questions surrounding it. This then makes it imperative since the questions cannot be determined at the interlocutory stage that an order of accelerated hearing should enure to allow for a determination of the substantive action with minimum of delay.

It is true and I note that paragraphs **7-16** disclose matters that goes to the balance of convenience which it is contended are in favour of Applicant. The fact that Applicant has developed and or constructed a factory on the two plots since the sale in 2005 and has been in undisturbed possession and has also commenced production on the land until sometime in 2012 when it said it received a letter from the 1st Defendant describing the Applicant as an **"encroacher"** and the subsequent letters to vacate vide **Exhibit H1** and the notice to quit vide **Exhibit H2** all issued to Applicant by 1st Defendant threatening its interest in the subject matter of dispute all points to the need for the temporary intervention of court, to forestall an irreparable situation pending when the substantive rights of the parties are determined.

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

In the circumstances, the imperatives or dictates of justice demands some fair intervention to preserve the status-quo on the ground or better put the preservation of the circumstances that are found to exist at the time of the application until the rights of parties is finally established. On the facts, I consider that the following orders are necessary and availing:

1. **An order that parties maintain status-quo.**

2. **An order of accelerated hearing is granted.**

Finally, parties should now act poste-haste, get their witnesses ready so that this matter can be heard with minimum of delay.

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Hon. Justice. A.I. Kutigi

<u>Appearances:</u>

1. **Benson Aghaegbuna, Esq for the Plaintiff/Applicant.**

2. **Betty A. Umegbulem, for the 2nd Defendant/Respondent.**