

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y.HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 22**

**CASE NUMBER : SUIT NO: CV/325/2019**

**DATE : THURSDAY 28<sup>TH</sup> JANUARY, 2021**

**BETWEEN**

**1. FES WOFESK NIGERIA LTD**

**2. FELIX ONI**

**} CLAIMANTS  
} APPLICANTS**

**AND**

**1. DOLLAR CONSTRUCTION NIG. LTD**

**2. LAMIDI IDOWU**

**} DEFENDANTS  
}**

# RULING

This Ruling is at the instance of the Claimants/Applicants who approached this Honourable Court for the following:-

1. An Order of Interlocutory Injunction restraining the Defendants, their privies, agents, assigns or anybody claiming title from the Defendants from further trespassing into the property known as Plot 185 Measuring Approximately 8.53 Ha Cadastral Zone D05 Karsana North, Abuja to take possession, develop or erect any structure pending the determination of the substantive suit herein.
2. An Order of this Court directing that a Notice Board be erected on the dispute land showing that this matter is pending before this Court for

adjudication over the ownership and to keep off any other trespasser.

3. And for such Order or Orders as this Honourable Court may deem fit to make in the circumstances.

In support of the Motion is 17 paragraph affidavit deposed to by the 2<sup>nd</sup> Claimant.

It is the deposition of the Claimant that they filed this Suit for determination of the interest/ownership of the property and that they have equal legal interest over the land as co-owners of the disputed land notwithstanding the allocation was in the name of the 1<sup>st</sup> Defendant.

That they had memorandum of understanding with the Defendants where the Applicant was made to

take management of the disputed land vide Exhibit “A1” and “A2”.

That while the matter was pending, a fence was erected on the property, subject matter of litigation.

That continuous excavation of the land will change the use of the land from intention on the land and monetary compensation will not be enough.

A written address was filed wherein a sole issue was formulated for determination to wit; whether the Claimant/Applicant have placed enough material evidence before the court to warrant the grant of this application.

Arguing on the above, learned counsel submit that the Applicant has placed material evidence before the court to warrant the exercise of the Court’s discretion in their favour.

Learned counsel submit that Order 24 Rule 8 of this Honourable Court empowered this Court to grant an injunction to restrain wrongful act by the parties before the court.

Counsel maintained that the essence of granting an injunctiive relief pending the determination of the substantive suit by the court is in preservation of the status quo of the subject matter. ***MADUBUIKE VS MADUBUIKE (2001) 9 NWLR (Pt. 719) 689 at 708.***

It is further the submission of counsel that the Applicant has met the principles as stated in the case of ***KOTOYE VS C.B.N (1989) 1 NWLR (Pt. 98) 419 to wit;***

- a. That there must be a subsisting action
- b. The subsisting action must denote a legal right.

- c. Is there serious issues to be tried.
- d. If so, would damages be adequate compensation and
- e. If damages will be adequate compensation in whose favour is the balance of convenience. And therefore Court was urge to grant the application.

On their part, the Defendants filed a counter affidavit of 5 paragraph duly deposed to by one Barnabas UkeyimaTsafa, a legal practitioner in the Law Firm of the Defendants/Respondents counsel.

It is the deposition of the Defendants/Respondents that the legal interest in the subject matter of this suit is solely that of the 1<sup>st</sup> Defendant and is not shared with any other person.

That the property in dispute belongs to the 1<sup>st</sup> Defendant, a distinct legal entity. And that it will be in the interest of justice to refuse this application.

A written address was filed wherein a sole issue for determination was formulated to wit; whether the Plaintiffs/Applicants have made out a proper case for the grant of an Order of Interlocutory Injunction in their favour in this case.

Counsel submit that the determination of this application will snowball into substantive suit at the interlocutory stage thereby leaving the Honourable Court with nothing to determine at the substantive case.

Learned counsel submit that the reliefs claim at the writ is the same with the present relief and therefore,

granting this relief will definitely affect the main case.

Learned counsel submit that the Applicant have failed to satisfy all the requirements of law as adumbrated in the case of *KOTOYE VS C.B.N as* cited and relief upon by the Plaintiff.

Court was urge to dismiss this application.

**COURT**:-On the part of court, after a very careful review of the affidavit in support of the application for interlocutory injunction and the annextures therein, on one hand, and the response of the Defendant/Respondent who is vehemently opposed to the grant of the said relief of interlocutory injunction, on the other hand, I have formulated an issue for consideration, i.e. **whether there is any legal right to be protected or preserved.**



The following condition must be met by Applicant for a court approached for an order of interlocutory injunction to grant same:-

- (a) Applicant must have a legal right in the subject matter which he seeks to prevent by the conduct of the Defendant to violate.
- (b) There must exist serious or substantial issue or case to be tried.
- (c) The preservation of the Res which is the subject matter of the suit.
- (d) Balance of convenience, the opposite of balance of inconvenience.
- (e) The Applicant must show by evidence question of real urgency and not caricature of it.

(f) The gravity of injury and the fact that the loss is irreparable.

See *UNIVERSAL TRUST BANK LTD AND ANOTHER VS DOLMERCH PHARMACY (NIG) LTD (2007) ALL FWLR (pt. 385) 434 at 454 – 455 paragraph H - D (S C)*.

Plaintiffs/Applicant clearly stated in paragraphs 2, 3, 4, and 5 of the affidavit in support of motion on notice for interlocutory injunction that the he had a memorandum of understanding with the Defendants showing their joint legal interest over the property.

Learned counsel for the Plaintiff/Applicant also stated in his affidavit in support that the Defendants continuous excavation or developing of the land will change the use of the land from their

intention on the land where they got approval to develop.

The essence of interlocutory injunction is to serve as a stop – gap measure. It is granted usually at an early but critical stage in the life and pendency of the substantive case before the court has had opportunity to fully hear and weigh the evidence and determine one way or another the case of parties.

It is similarly important to note that the jurisdiction of court to grant interlocutory injunction is equitable, the manner of the exercise of the discretion depends upon the precise nature of the particular rights which is sought to be protected and upon all the materials and circumstances. This is so because relief for interlocutory injunction, like most other reliefs, is punitive and therefore should be granted after due

process of the law which involves given parties fair hearing, as done in this case.

See *RANSTON PROPERTIES LTD VS F.B.N PLC (2007) ALL FWLR (pt. 392) 1954 at 1965 – 1986 C – D.*

When an application for an interlocutory injunction to restrain a Defendant from doing acts alleged to violation of Plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when hypothetically, the existence of the right or the violation of it is or both are uncertain until final judgment is given in the action. The practice of granting the Plaintiff's relief by way of interlocutory injunction arose to mitigate the risk of injustice to

him during the period the uncertainty could be resolved.

Above was stated by **PETER ODILI JCA** (as he then was) in the case of **STALLION (NIG.) LTD V- E. F. C. C. (2008) 7 NWLR (pt. 1087) 461 at 473 paragraph A- C.**

In granting an interlocutory injunction, the scope usually is limited to the actual “Res” in the suit.

It is usually based on specific claims or reliefs sought in the substantive suit.

See the case **NWANNEWNINE VS NWANNEWNINE(2007) NWLR (Pt. 1059) 1 at 13 paragraphs B – C.**

I wish to state reiteratedly that Applicant’s real prospect of success in the right claimed must, at the

outset, be satisfied that the Plaintiff's claim is not frivolous or vexatious and that there is a serious question to be tried at the substantive suit. Where Plaintiff fails to satisfy these requirements, it will in effect automatically bring to an end defeat his application.

See page 18 paragraphs B – D in *FALOMO VS BANIGBE & ORS (1998) 6 S. C 141*.

The Power to grant or refuse an interlocutory injunction is discretionary but as discretionary as it is to a Judge, it must be exercised judicially and judiciously, bearing in mind the competing interest of parties and the circumstances of each case.

It has been decided in plethora of cases that all an Applicants need to prove in an application for an

interlocutory injunction is the existence of a legal right which ought to be protected.

Legal right was defined by SC in *A-G LAGOS STATE VS AG FED. (2004) 18 NWLR (pt. 9041) 1 per Niki Tobi JSC* (as he then was) to mean “a right recognized in law. It means a right recognized by law and capable of being enforced by the Plaintiff”.

It is a right of a party recognized and protected by the Rule of law, the violation of which would be a legal wrong done to the interest of the Plaintiff, even though no action is taken.

The determination of the legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action.

It is instructive to note the trite position of law that, the essence of interlocutory injunction is to restrain a party from taking special step. It is often made before the actual trial of a case and is granted to keep matters in status quo until trial. See ***ANTHONY VS SURVEYOR GENERAL, OGUN STATE (2007) ALL FWLR (Pt. 354) 370 at 390 paragraphs E-F.***

Hence relevant documents are annexed, I shall for the purpose of law and posterity preserve the res from annihilation and or any structural disfigure. Court of law must avoid delving into the facts of cases at the stage of considering interlocutory application.

On the whole, after a careful study of both the affidavit in support of the motion on notice and



counter affidavit and on the sound reasoning I have come to a conclusion that the Plaintiffs/Applicants has establish a case for an order of interlocutory injunction to be granted.

Accordingly, I hereby ordered as follows:-

1. An Order of Interlocutory Injunction restraining the Defendants, their privies, agents, assigns or anybody claiming title from the Defendants from further trespassing into the property known as Plot 185 Measuring Approximately 8.53 Ha Cadastral Zone D05 Karsana North, Abuja to take possession, develop or erect any structure pending the determination of the substantive suit herein.
2. An Order of this Court directing that a Notice Board be erected on the dispute land showing that this matter is pending before this Court for

adjudication over the ownership and to keep off any other trespasser.

*Justice Y. Halilu*  
*Hon. Judge*  
*28<sup>th</sup> January, 2021*

## **APPEARANCES**

O. ADAMS O. – for the Plaintiffs/Applicants.

I. J Mbatsavdue with T.C Adaga and UjuTerseer –  
for Defendant