

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN
THE ABUJA JUDICIAL DIVISION**

HOLDEN AT ABUJA

ON WEDNESDAY 3RD DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

MOTION NO: CV/045/2021

BETWEEN:

BLESSING ONWUMEREPLAINTIFF

AND

1. THE NIGERIA POLICE FORCE

2. FEDERAL HOUSING AUTHORITYDEFENDANT

RULING

The Claimant/Applicant, in this Motion on Notice No M/158/21 dated 11th January, 2021 and filed on the 12th January, 2021 after the leave of court was sought and granted same is praying the court for the following reliefs:

- 1. An Order of Interlocutory Injunction restraining the 1st Defendant whether by themselves, assigns, servants, agents, Privies or employees directly or indirectly from further trespassing into or further carrying on any acts of trespass or development on the claimant's Property known as Plot 1353, Along 1st Avenue, M-close Lugbe Estate Abuja.*

2. And for such further or other orders as this Hon. Court may deem fit to make in the circumstances.

In support of this Application, the claimant/Applicant filed a 12 paragraphed affidavit and a written address. The affidavit relied on by the applicant and deposed to by same contains inter alia the following facts:

- 1. That by virtue of undated deed of Assignment between Olawabunmi Adineke Delora Ajayi and the Claimant sometime in 2017, the claimant become the owner of plot 1353 Along 1st Avenue, M-close, Lugbe Estate Abuja.*
- 2. That claimant purchased the property through the Diamond Bank Plc (now Access Bank) Mortgage plan. Claimant who only presently has photocopies of the document will be able to access original copies of same after she has completed payment for the property under the Mortgage.*
- 3. That Plot 1353, Along 1st Avenue, M-close, lugbe Estate Abuja was originally allocated to One Victor Mayomi via an allocation letter dated 23rd May, 2012 and file no FHA/ES/UG/P. 1353 by the 2nd Defendants and that the said Victor Mayomi obtained consent from the 2nd Defendant vide a letter dated 15th September, 2014 with ref*

No. FHA/ES/LUG/P. 1353 to transfer the titled to Olubunmi Adenike Debra Ajayi.

- 4. That pursuant to the said consent, Olunbami Adenike Debra Ajayi obtained a conveyance of Approval for development plan dated 6th May, 2015 with Ref No. FHA/ABJ/EST/LUG/BLD/2014/12/043 from the 2nd Defendant.*
- 5. That consent was given to Olubunmi Adenike Debra Ajayi by the 2nd Defendant to sell to the applicant via a letter dated 3rd October, 2017 with Ref No; FHA/ES/LUG/P.1353/consent 2.*
- 6. That sometimes in 2018, the 1st Defendants men installed a sign post that this land belongs to the Nigeria police force on the Plot the applicant bought from Olubunmi Adenike Bebra Ajayi persons purporting to act on the instruction of the 1st Defendant came with bulldozers to clear the said land in December, 2020 and threatened to arrest anyone who interfered with what they were doing.*
- 7. That the applicants visit and complaints to the office of the 2nd Defendant since 2018 has not yielded any result while the 1st Defendant is about to commence work on the said property.*

A deed of assignment between Olubunmi Adenike Debra Ajayi as assignor and Blessing Onwumere as Assignee is attached to this application and marked as Exhibit A.

In his written address, counsel on behalf of the applicant presented a sole issue for determination viz:

Is the applicant entitled to the relief?

Counsel submits that applicants has brought this application with facts and exhibits contained on the merit of order 42 R4 (1) of the High Court of the FCT Civil Procedure Rules 2018 which allows the grant of interlocutory Injunction for the presentation of a disputed property pending the determination of the suit.

Counsel relied on **ADELEKE AND ORS VS. LAWAL & ORS (2013) LPELR 2009 (SC)** with regards to principal guiding the application of interlocutory Injunction includes:

- 1. There must be a subsisting action.*
- 2. The subsisting action must clearly show a legal right which the applicant must protect.*
- 3. The applicant must show that there is a serious question or substantial issue to be tried.*
- 4. The status quo should be maintained pending the determination of the substantive suit.*

5. *The applicant must show that the balance of convenience is in favour of granting the application.*
6. *The applicant must show there was no delay on his part in bringing the application.*
7. *The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect.*
8. *The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the court's discretion in granting the injunction.*

Counsel submits that the applicant has fulfilled the 1st condition that there must be a subsisting action as evidenced by Exhibit A which clearly denotes a legal right which the applicant must protect.

Counsel opined that by EXLA it is clear that there is a services issue to be tied which will require that status quo be maintained. That paragraphs 10 and 11 of applicant's affidavit reveal what will happen if this application is not granted and the defendant are allowed to continue their acts of trespass.

That the alteration the defendant will do to the subject matter will lead to the inability of the applicant to use the property as the plans would have been altered and this, damages will not be enough

remedy to redeem. Counsel submits that the applicant having met the criteria for grant of this application should be granted.

In consideration of the applicant's reliefs aforesaid as well as the reproduction of the entire process substantially filed by the applicant. The applicant's motion on notice should be brought pursuant to OR 42 R 3e of the FCT High Court Rules 2018 which essentially deals with the preservation or interim custody of subject matter of disputed contract and OR 42 R 4 (1) which primarily is about detention, preservation or inspection of property. In my opinion the aforesaid orders may be jointly taken into effect when considering this application.

However, it is trite that the courts will consider an application on its merit in respect of whether the same is brought pursuant to a wrong section of the law. **PER OWOADE JCA (PP 16.PARAGRAPHS A) IN FGN IS AKINOLA (2014) LPECR 23978(CA).**

In **AFOLABI VS. AFOLABI (1976) LPECR-1236 (SC)**. It is the court view that if a relief is provided for by any written law (or by the common law and or in equity for that matter) that relief or remedy, if properly claimed by the party seeking it, cannot be denied to the applicant simply because he has applied for it under the wrong law. To do so would be patently unjust.

The condition precedent for the grant of interim and interlocutory injunction have been spelt out in **ADELEKE & ORS VS. LAWAL & ORS (2013) LPECR -2009(SC) AND BUHARI VS. OBASANJO (2003) 17 NWLR (PT 850) 587**. And they include:

- (a) Existence of a legal right.
- (b) Substantial issue to be tried.
- (c) Balance of convenience.
- (d) Irreparable damage or Injury.
- (e) Conduct of the parties.
- (f) Undertaking as to damages.

The applicant has tried in her written address to fulfill a few conditions spelt out in the above mentioned cases. Not all the condition have been proved.

In **ADELEKE & ORS VS. LAWAL & OR (SUPRA) PER ARIWOOLS JSC (PP 37-39 PARAGRAPHS D)** stated:

...The burden of proof that the in convenience 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 or the Plaintiff. See **DONMAR PRODUCTIONS LTD VS. BART 2 ORS (1967) 2 AIDER 338**.

However, notwithstanding the above authority in an application for interim relief by way of injunction, it is not necessary that a Plaintiff or applicant should make out as complete a case as he would be required to do on the merits. It being sufficient that he establishes that there is a substantive issue to be tried at the hearing per **COKER J** in **KUFEJI VS. KOGBE (1961) ALL NCR (PT) 113**. I would like to add on record that the 1st Respondent Nigeria Police they were duly served but same refused to appear there is a proof of service as to that effect.

I therefore, consider it just to grant the application as prayed finally the application is hereby granted.

Signed
Hon Judge
3/3/2021