

**IN THE HIGH COURT OF THE FEDERAL  
CAPITAL TERRITORY, ABUJA  
HOLDEN AT ABUJA**

**ON WEDNESDAY, 3<sup>RD</sup> DAY OF FEBRUARY, 2021**

**BEFORE HON. JUSTICE SYLVANUS C. ORIJI**

**SUIT NO. FCT/HC/CV/1289/2017**

**MOTION NO. FCT/HC/BW/M/422/2020**

**BETWEEN**

1. SUCCESS IKECHUKWU [IWUAGWU]  
OKERE-DESMOND
2. COLLINS UJU-UCHENDU IWUAGWU
3. IKEMEFUNA CAJETAN IWUAGWU



**PLAINTIFFS**

**AND**

1. CHINENYE IWUAGWU
2. EZENWA DESMOND IWUAGWU
3. CHARLES OKECHUKWU IWUAGWU
4. CHINEDU IWUAGWU
5. EKENE INNOCENT IWUAGWU
6. SUNNY GEORGE IWUAGWU
7. MARGARET CHIOMA IWUAGWU



**DEFENDANTS**

**DEFENDANT/APPLICANT**

**DEFENDANT**

**RULING**

This Ruling is on the 6<sup>th</sup> defendant's *Motion No. FCT/HC/BW/M/422/2020* filed on 16/7/2020 seeking the following orders:

1. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or transferring title in the property known as No. 153 AdemolaAdetokumbo Crescent, Wuse, Zone II [five blocks of 5 bedroom detached duplexes with boys quarters] which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.
2. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or transferring title in the property known as Flat 2, Kirfi Close, Lane 313, Kubwa, Abuja [a two bedroom detached flat] which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.
3. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or transferring title in the property known as Iwuagwu Estate, Mbaise-Emoha Street, Port Harcourt, Rivers State [ten blocks of three bedroom

detached bungalows] which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.

4. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or transferring title in the property known as No. 34 Arochukwu Street, Port Harcourt, Rivers State [five blocks of five bedroom detached duplexes with boys quarters] which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.
5. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or transferring title in the property known as No. 25 Item Street, Owerri, Imo State [three storey building complex] which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.
6. An order of interlocutory injunction restraining the plaintiffs by themselves or privies, agents, successors in title, legal representatives, assigns or anyone whomsoever claiming under them from renting out, occupying, interfering with, dealing, selling, pledging, mortgaging or

transferring title in the property known as No. 29 Odu Obi Street, Imo State which forms part of the Estate of the Late D. I. O. Iwuagwu pending the final determination of this case.

7. An order of this Honourable Court restraining the plaintiffs by themselves, agents, assigns or privies from further harassing, threatening and intimidating the defendants and their staff or agents.
8. And for such orders or further orders as this Honourable Court may deem fit to make in the circumstance.

The grounds for the application include that: [i] it is an undisputed fact that the properties listed above form part of the Estate of the Late Desmond I. O. Iwuagwu; [ii] the plaintiffs have been in illegal possession and control of the properties before the commencement of the suit in 2017 and have partitioned the said properties and have been renting the properties out and pocketing the proceeds therefrom to the detriment of other members of the family and heirs of the Estate of the Late D. I. O. Iwuagwu; and [iii] the *res* may be dissipated before the final determination of this case.

Abraham Abbas, a litigation secretary in the Law Firm of Kainan Partners, filed a 3-paragraph affidavit together with the written address of Adelewa Williams Esq. in support of the application. In opposition, the 2<sup>nd</sup> plaintiff filed a 30-paragraph counter affidavit on 30/10/2020; attached therewith are Exhibits 1 & 2. Ifeanyi L. Iroh Esq. filed a written address with the counter

affidavit. On 11/11/2020, Gabriel Abbas Akoja Esq. filed a reply on points of law. At the hearing of the application on 12/11/2020, learned counsel for the parties adopted their respective processes.

In the affidavit in support of the motion, Abraham Abbas stated that:

- i. Until the final devolution of the Estate of late D. I. O. Iwuagwu, the properties listed in the prayers remain a part of the common wealth of the heirs and family of late D. I. O. Iwuagwu and must be preserved against plundering by any party.
- ii. The current market rate for renting the said properties runs into hundreds of millions per annum.
- iii. The plaintiffs have been in illegal possession of the said properties since the commencement of this suit and have partitioned the said properties and have been renting the properties out and pocketing the proceeds therefrom running into hundreds of millions of Naira.
- iv. The plaintiffs are using all manner of legal antics to ensure that this suit is prolonged so as to enable them continuously collect rent from the properties.

In the counter affidavit on the other hand, Collins Uju-Uchendu Iwuagwu [the 2<sup>nd</sup> plaintiff] stated that:

- i. The 6<sup>th</sup> defendant had canvassed the subject matter of this application and a Ruling given thereon by the Court. A copy of the Ruling dated 6/6/2019 is Exhibit 1.
- ii. The children of late Nze D. I. O. Iwuagwu living in Abuja are receiving rent from No. 153 AdetokumboAdemolaCrescent, Abuja from which they support themselves and their widowed mothers and siblings; while the 6<sup>th</sup> defendant and his direct siblings [the 1<sup>st</sup>-5<sup>th</sup> defendants] are receiving rent from about 12 other properties of late Nze D. I. O. Iwuagwu.
- iii. The 12 properties which are in possession of the 6<sup>th</sup> defendant and his direct siblings [the 1<sup>st</sup>-5<sup>th</sup> defendants] are listed in paragraphs 6 & 7. The properties include: [i] No. 10 Burma Road Apapa, Lagos with massive warehouses and office spaces with yearly rental value of about N30 million; [ii] No. 12 Burma Road Apapa, Lagos, a one-storey hotel with yearly rental value of about N20 million; [iii] No. 14 Burma Road Apapa, Lagos [a massive warehouse] with yearly rental value of about N20 million; [iv] No. 172A Aba Road, Port Harcourt, Rivers State with yearly rental value of N20 million.
- iv. The fact that rent is being collected on both sides was canvassed before the Court prior to the Ruling of 6/6/2019. This motion is therefore an abuse of court process.

- v. In paragraphs 17, 18, 19, 20 & 21, he stated the position of the properties at: [i] Flat 2 Kirfi Close, Kubwa, Abuja; [ii] Iwuagwu Estate, Mbaise-Emoha Street, Port Harcourt, Rivers State; [iii] No. 34 Arochukwu Street, Port Harcourt; [iv] No. 25 Item Street, Owerri, Imo State; and [v] No. 29 Odu Obi Street, Imo State. It is not true that the said properties are in possession of the plaintiffs with rent accruing.
- vi. It is not correct that the amendment of the plaintiffs' statement of claim is aimed at delaying the trial. The 6<sup>th</sup> defendant is "*on a self-seeking quest*" to re-litigate the Court's Ruling of 6/6/2019.

From the affidavit evidence and the submissions of learned counsel for the 6<sup>th</sup> defendant and for the plaintiffs, the issue for determination is whether the 6<sup>th</sup> defendant is entitled to the exercise of the discretion of the Court for the grant of the orders of interlocutory injunction sought.

Learned counsel for the 6<sup>th</sup> defendant stated that where there is a property which is the subject of litigation, a court has a duty to preserve the *res* for delivery to the persons who ultimately establish their title. He referred to the case of Gombe v. P.W. [Nig.] Ltd. & Ors. [1995] LPELR-1330 [SC]. He argued that in the instant case, the properties listed in prayers 1-6 and the revenue accruable therefrom form part of the *res* in issue, which is the Estate of late Desmond I. O. Iwuagwu, and this Court has a duty to preserve same.

It was submitted that the plaintiffs' acts of occupying and renting out the properties constitute illegality; and it is the law that a party cannot be allowed to benefit from his illegality.

In urging the Court to grant the application, Adelewa Williams Esq. further submitted that plaintiffs have not been named executors and administrators of the Estate of late D.I.O. Iwuagwu but they have been dealing with the properties forming part of his Estate in a manner inconsistent with the Rules of the Court. He referred to Order 62 rule 3 of the Rules of the Court, 2018, which provides:

*"Where a person other than the person named executor or administrator, or an officer of the court or person authorized by the court, takes possession of and administers or deals with the property of a deceased person, he shall, besides other liabilities he may incur, be liable to fine not exceeding N5,000 as the court, having regard to the condition of the person so interfering with the property and the other circumstances of the case, may think fit to impose."*

On the other hand, learned plaintiffs' counsel stated that the principle of *res judicata* forbids the 6<sup>th</sup> defendant/applicant from seeking to vary or re-litigate the earlier decision of this Court save by appeal. He referred to **Wema Bank Plc. v. Abiodun [2006] 16 WRN 72** and other cases on the doctrine of *res judicata*. Ifeanyi L. Iroh Esq. submitted that the 6<sup>th</sup> defendant filed an earlier application with *Motion No. M/3978/2019* involving the same parties and same issues in the present application. The Court delivered its Ruling on



that application on 6/6/2019. He concluded that the 6<sup>th</sup> defendant's application is not only an abuse of court process but robs the Court of jurisdiction to entertain it.

In the 6<sup>th</sup> defendant's reply on points of law, Gabriel Abbas Akoja Esq. argued that the 6<sup>th</sup> defendant's *Motion No. M/3978/2019* filed on 8/3/2019 and the present application are not the same. He referred to one of the orders made by the Court in its Ruling of 6/6/2019 thus:

*"An order of interlocutory injunction restraining the plaintiffs from selling or assigning any property belonging to, or forming part of, the estate of late Nze Desmond I. OkereIwuagwu."*

Mr. Gabriel Abbas Akoja then submitted:

*"The Plaintiffs have mischievously taken advantage of the fact that my lord never stated that the said property could not be rented out to enrich themselves by partitioning and renting out the above stated properties and pocketing the proceeds therefrom.*

*This act of the Plaintiffs is an affront to the Powers of this Honourable Court, it is contemptuous of this Court and constitutes constructive disobedience of the Orders of this Court ..."*

Now, the orders of interlocutory injunction sought by the 6<sup>th</sup> defendant in prayers 1-6 are in respect of the properties listed therein. In the counter

affidavit, the 2<sup>nd</sup> plaintiff admitted that *“the children of late Nze D.I.O. Iwuagwu living in Abuja are receiving rent from No. 153 AdetokumboAdemola Crescent ...”*

The 6<sup>th</sup> defendant stated that it is not true that the plaintiffs are in possession of the other 5 properties. He gave detailed explanations about the position of the 5 properties. The 6<sup>th</sup> defendant did not file a further affidavit to challenge the explanations given by the 6<sup>th</sup> defendant on the said 5 properties. That being the case, the Court holds that the facts stated by the 2<sup>nd</sup> plaintiff in respect of the said 5 properties are true and that the plaintiffs are not in possession of the 5 properties.

Further, in paragraphs 6 & 7 of the counter affidavit, the 2<sup>nd</sup> plaintiff listed the 12 properties under the management and control of the 1<sup>st</sup>-6<sup>th</sup>defendants and the yearly rents they collect from some of them. The 6<sup>th</sup> defendant did not file a further affidavit to challenge the depositions in paragraphs 6 & 7 of the counter affidavit. Thus, the Court holds that these depositions are true.

In the light of the fact that the plaintiffs are in possession of the property at No. 153 AdetokumboAdemola Crescent, Abuja, which forms part of the Estate of late D. I.O. Iwuagwu; while 1<sup>st</sup>-6<sup>th</sup>defendants are in possession of the said 12 properties, which also form part of the Estate of late D.I.O. Iwuagwu, will it be in the interest of justice to grant an order of interlocutory injunction to restrain the plaintiffs from renting, occupying and dealing with the property at No. 153 AdetokumboAdemola Crescent, Abuja?

On 5/7/2018, 1<sup>st</sup>& 2<sup>nd</sup> plaintiffs [who were the only plaintiffs at that time] filed *MotionNo. M/7866/2018* for some interlocutory orders, including:

- i. An order restraining the defendants/respondents from selling, leasing or otherwise assigning any property belonging to the estate of late Nze Desmond I. OkereIwuagwu.
- ii. An order restraining the defendants/respondents from harassing the plaintiffs and any other member of the family pending the determination of this suit.

On 8/3/2019, 6<sup>th</sup> defendant also filed *MotionNo. M/3978/2019* for the following orders:

1. An order of interlocutory injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs/respondents from staying or harbouring any person or persons at No. 153 AdemolaAdetokumbo Crescent, Wuse, Zone II, Abuja...
2. An order of this Honourable Court directing the registrar of this Court to take over the management of the estate of Nze D. I. O. Iwuagwu at No. 153 AdemolaAdetokumbo Crescent, Wuse, Zone II, Abuja pending the determination of this Court or this Court directing the 2<sup>nd</sup> defendant/respondent who is the 1<sup>st</sup> son and the heir apparent of late Nze D. I. O. Iwuagwu to take over the management of No. 153 AdemolaAdetokumbo Crescent, Wuse, Zone II, Abuja.

In the consolidated Ruling delivered on 6/6/2019 on the two applications, the Court made orders to restrain the parties from selling any property forming part of the Estate of late Desmond I. O. Iwuagwu so as to preserve the *res* until the determination of the suit. The orders include:

1. An order of interlocutory injunction restraining the defendants from selling or assigning any property belonging to, or forming part of, the estate of late Nze Desmond I. OkereIwuagwu.
2. An order of interlocutory injunction restraining the plaintiffs from selling or assigning any property belonging to, or forming part of, the estate of late Nze Desmond I. OkereIwuagwu.
3. An order of interlocutory injunction restraining the defendants from harassing the plaintiffs and any other member of the family pending the determination of this suit.
4. An order of interlocutory injunction restraining the plaintiffs from harassing the defendants and any other member of the family pending the determination of this suit.

In respect of the present application, I have given due consideration to the factors or principles guiding the exercise of the Court's discretion to grant or refuse an order of interlocutory injunction. One of the factors is whether the balance of convenience is in favour of granting the application i.e. whether more justice will result in granting the order than in refusing it. Let me remark

for emphasis that in determining where the balance of convenience tilts, the court is expected to pose two related questions. The first is: *“who will suffer more inconvenience if the application is granted?”* The second is: *“who will suffer more inconvenience if the application is not granted?”* See **Edosomwan v. Erebor [2001] 13 NWLR [Pt. 730] 265.**

As I said before, one crucial fact in respect of prayers 1-6 sought by the 6<sup>th</sup> defendant is that 1<sup>st</sup>-6<sup>th</sup> defendants have control over 12 properties forming part of the Estate of late Nze D.I.O. Iwuagwu and collect rents from some of them. On the other hand, the plaintiffs have control over, and collect rent from, the property at No. 153 Adetokumbo Ademola Crescent, Abuja. In these circumstances, I take the view that 6<sup>th</sup> defendant has not established that the balance of convenience is in his favour or that more justice will result in granting the orders of interlocutory injunction in prayers 1-6 than in refusing them. Therefore, prayers 1-6 are refused.

In arriving at the decision to dismiss prayers 1-6, I have taken into account the submission of Gabriel Abbas Akoja Esq. in the 6<sup>th</sup> defendant's reply on points of law that the plaintiffs are in *“constructive disobedience”* of the Order of the Court made on 6/6/2019. From all that I have said, this argument is not correct and is accordingly rejected. Also, Order 62 rule 3 of the Rules of the Court, 2018 relied upon by Adelewa Williams Esq. is not applicable and, contrary to his submission, the Court cannot hold at this interlocutory stage of the proceedings that the plaintiffs' acts are illegal.

In respect of the 6<sup>th</sup> defendant's prayer 7 [that is an order restraining the plaintiffs from harassing, threatening and intimidating the defendants], I need to reiterate the fact that the Court made some orders in its Ruling on 6/6/2019, which are subsisting. The 6<sup>th</sup> defendant's prayer 7 was granted by the Court on 6/6/2019 against all the parties in this suit. Therefore, it will not serve any useful purpose to grant the order afresh. On this ground, prayer 7 is also refused.

**Conclusion:**

From all that I have said, the 6<sup>th</sup> defendant's motion lacks merit and is dismissed. I award cost of N30,000 to the plaintiffs/respondents payable by the 6<sup>th</sup> defendant/applicant.

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HON. JUSTICE S. C. ORIJI  
(JUDGE)

**Appearance of counsel:**

1. Ifeanyi Iroh Esq. for the claimant/respondent.
2. Essien H. Andrew [SAN] for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> & 7<sup>th</sup> defendants/respondent; with U. V. Egelamba Esq. and Ebenezer Amadi Esq.

3. Gabriel Abbas Akojaesq. for the 6<sup>th</sup> defendant.