IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 23RD DAY OF MARCH, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE A. H. MUSA
JUDGE

SUIT NO.: FCT/HC/M/3429/2020
MOTION NO.: M/13048/2020

BETWEEN:

MR. PROGRESS CYRIACUS OBIOMA ANOGHARA **CLAIMANT/APPLICANT**

AND

CITEC INTERNATIONAL ESTATES LIMITED **DEFENDANT/RESPONDENT**

RULING

This Ruling is in respect of the Motion on Notice with Motion Number FCT/HC/M/13048/2020. The Claimant/Applicant had filed, on the 14th of December, 2020, while instituting the suit of which this Motion is a component, this Motion dated the same 14th of December, 2020 seeking the following reliefs from this Honourable Court:-

1. *An order of interlocutory injunction restraining the Defendant/Respondent, its cronies, agents, staff, officers, privies, or any person(s) whosoever or howsoever described from entering and ejecting or taking any step to eject the Claimant/Applicant from House 13, F9 Street, Mount Pleasant Estate, Mbora District, Abuja pending the hearing and final determination of this suit by the Honourable Court.*
2. *Or in the alternative, an Order of the Honourable Court directing all the parties in this case to maintain status quo pending the hearing and final determination of this suit by this Honourable Court.*

3. *And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

The application was founded on seven grounds which were enumerated in the Motion Papers.

In the affidavit in support of the application deposed to by the Claimant/Applicant himself, the Claimant/Applicant provided the facts which formed the basis for the application. Put concisely, the Claimant/Applicant was living in a rented apartment specifically known as House E 11, E Close, CITEC Estate, Mbora District, Abuja, when, on the 28th of September, 2017, a raging fire which emanated from an adjoining apartment razed down his rented apartment and all his personal property, leaving him and members of his household to escape with only their skins. According to him, the immediate cause of the fire outbreak was the assorted inflammable substances which the Defendant/Respondent stored in the adjoining apartment.

Following this fire outbreak, according to the Claimant/Applicant, the Defendant/Respondent who, by the way, owns and manages the estate, promised to rebuild the burnt property and to compensate the Claimant/Applicant for the personal loss he had suffered. As a demonstration of its goodwill, the Claimant/Applicant averred that the Defendant/Respondent provided him with House 13, F9 Street, Mount Pleasant Estate, Mbora District, Abuja as a temporary shelter while it assessed the damage and loss the Claimant/Applicant had suffered in the inferno.

While the Claimant/Applicant was waiting for the Defendant/Respondent to perform its obligation of compensating him for the loss it suffered in the fire disaster, the Defendant/Respondent, on or about the 3rd of December, 2020, served him with a Seven-Day Notice of Owner's Intention to Apply to Court to

Recover Possession of House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja. Disconcerted and agitated, the Claimant/Applicant despatched a letter dated the 7th of December, 2020 to the Defendant/Respondent reminding it of its undertaking to compensate him for the loss it suffered and the fact that as of the date of the letter, the Defendant/Respondent had yet to fulfill its promise to compensate him. The Claimant/Applicant believed that it would "be unfair, unconscionable,inhuman, devastating and wrong" for the Defendant/Respondent to eject him from the temporary shelter it provided for him while it was yet to compensate him for the loss he had suffered as a consequence of the fire outbreak. He is alarmed greatly and feared that the Defendant/Respondent who has taken positive steps towards evicting him from the temporary shelter without the provision of the agreed restitution will not back down until it has defenestrated him from the temporary shelter he is occupying currently.

He has therefore approached this Honourable Court to seek for damages and compensation from the Defendant/Respondent and has, in the meantime, brought this application for an order of this Honourable Court restraining the Defendant/Respondent from continuing or proceeding on the path of expelling him from House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja. In the alternative, he prays this Honourable Court for an order directing all the parties in this suit to maintain *status quo ante bellum* pending the hearing and determination of this suit.

The Claimant/Applicant exhibited four documents. They are the reply of the Claimant/Applicant through his Solicitors, S. C. Uchendu Chambers, and the supporting documents which consist of the list of the Claimant/Applicant's items which were destroyed in the fire, a couple of sales receipt from Fouani Nigeria Limited, a computer print-out of the shipment receipt of DHL mail services for the service of the Claimant/Applicant's reply, the certificate of identification of

electronic evidence, the computer print-out of the DHL shipment tracking report of the Claimant/Applicant's reply, and pictures of a fenced house. Curiously, the pictures of the fenced house are collectively marked as "Exhibit E". Paragraph 14 in which Exhibit E was referred to did not say anything concerning a fenced house. Paragraph 14 stated *inter alia* "The reply/letter of demand dated 7th December, 2020 and the accompanying evidence of delivery are hereby attached and marked as Exhibits B, C, D and E respectively."Learned Counsel for the Claimant/Applicant should learn to pay more attention to his draftsmanship in future to save the Court from an unnecessary and avoidable voyage of discovery.

In the Written Address in support of his application, the Claimant/Applicant through his Counsel formulated one issue for determination, which is, *"Whether the Honourable Court has power to grant the application sought."* In answering this question, learned Counsel for the Claimant/Applicant submitted that equity and justice demanded that the *res* of any suit be preserved pending the hearing and determination of the suit in which it was the subject matter. He further argued that the rule of law presupposed that parties to a dispute before the Court should submit themselves to the rule of law instead of resorting to self-help. He urged the Court to restrain the Defendant/Respondent from ejecting the Claimant/Applicant from the temporary accommodation it provided for him pending the payment of compensation for the loss it suffered as a result of the fire outbreak.

He contended that should the Defendant/Respondent be allowed to complete the process of removing the Claimant/Applicant from the property while the substantive suit was still pending before the Court, it would erode the sanctity of the Court. He concluded by referring the Court to the facts deposed to in the affidavit and prayed the Court to grant the reliefs sought in the application. In

support of his argument on this sole issue, learned Counsel cited and relied on the cases of ***North-South Pet (Nig) Ltd v. F.G.N. (2002) 17 NWLR (Pt. 797) 639 at 643, Enunwa v. Obianukor (2005) 11 NWLR (Pt. 935) 100 at 104, Osho v. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157 at 173, Oyefeso v. Omogbehin (1991) 4 NWLR (Pt. 187) 599 at 610*** and ***Chief Land Officer v. Alor (1991) 4 NWLR (Pt. 187) 617 at 626***.

In stiff opposition to the application of the Claimant/Applicant dated the 14th of December, 2020 for an Order of Interlocutory Injunction, the Defendant/Respondent on the 1st of February, 2021 filed a 5-paragraph counter-affidavit deposed to by Godfrey Omoha, a Litigation Assistant in the Law Office of Kayode & Co., Counsel to the Defendant/Respondent in this suit. The counter-affidavit was supported with an exhibit duly marked as "Exhibit A" which is the reply of the Claimant/Applicant through his Solicitors to the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession. In compliance with the Rules of this Honourable Court, the Defendant/Respondent filed a Written Address which embodied his legal submissions in opposition to the application of the Claimant/Applicant for a restraining order.

In the counter-affidavit, the Defendant/Respondent denied all the material averments of the Claimant/Applicant's affidavit in support of the Motion on Notice for a restraining order. Specifically, the Defendant/Respondent denied paragraphs, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Claimant/Applicant's affidavit. According to the Defendant/Respondent, it offered the Claimant/Applicant House 13, F9 Street, Mount Pleasant CITEC Estates, Mbora District, Abuja as a temporary shelter on compassionate ground "to enable Claimant/Applicant cushion the effect of the fire incident while the Claimant/Applicant source for alternative accommodation of his choice." It

therefore asserted that the Claimant/Applicant was a tenant-at-will. He annexed Exhibit A to establish this deposition of fact.

The Defendant/Respondent insisted that it never maintained any house adjoining the Claimant/Applicant's house and could not have stored any inflammable substance in the house. It denied ever making any promise of compensation to the Claimant/Applicant and stated further that it had asked the Claimant/Applicant to vacate the said House 13, F9 Street, Mount Pleasant CITEC Estates, Mbora District, Abuja. According to the Defendant/Respondent, the refusal of the Claimant/Applicant to deliver vacant possession of the property in spite of repeated demands necessitated the service on him of the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession.

In furtherance of its averments, the Defendant/Respondent asserted that the Claimant/Applicant instituted this suit in order to frustrate the Defendant/Respondent from taking over the said property which it has sold to a client. It further averred that the claims of the Claimant/Applicant in the suit were in respect of what it called "an alleged compensation" and had nothing to do with ownership or possessory rights over the said House 13, F9 Street, Mount Pleasant CITEC Estates, Mbora District, Abuja.

In its Written Address in support of its counter-affidavit, the Defendant/Respondent invited this Honourable Court to consider a sole issue for determination, which is: *"Whether the Claimant/Applicant has satisfied the mandatory requirements of law for the grant of interlocutory injunction."*

In his argument on this sole issue, learned Counsel for the Defendant/Respondent submitted that the burden was on the applicant for an interlocutory injunction to establish their entitlement thereto. Relying on the case of ***Adeleke v. Lawal (2014) 3 NWLR (Pt. 1393) 1 at 17 per Aka'ahs JSC,***

learned Counsel proceeded to enumerate six conditions which, he contended, must exist before any applicant for an order of interlocutory injunction could succeed. The conditions were the existence of legal right, substantial issue to be tried, balance of convenience, irreparable damage or injury, conduct of the parties and undertaking as to damages.

In his submission on the existence of legal right, learned Counsel insisted that an applicant who wanted the Court to grant an order of interlocutory injunction in their favour must show that they have a legal right which the Court must protect by way of an injunction. Relating this condition to the suit of the Claimant/Applicant, learned Counsel submitted that the Claimant/Applicant had been unable to demonstrate the existence of any legal right. For his submission on this condition, learned Counsel cited and relied on ***Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 287) 266 at 289 para E*** and ***Adenuga v. Odumeru (2001) 2 NWLR (Pt. 696) 184***.

On whether the Claimant/Applicant has disclosed a serious issue to be tried, learned Counsel for the Defendant/Respondent argued that the Claimant/Applicant had not disclosed any serious issue to be tried in this suit as there was nothing in the substantive suit and the Motion on Notice that linked the Defendant/Respondent with the fire outbreak at the residence of the Claimant/Applicant. He also maintained that the Claimant/Applicant had not established that he owned or rented House 13 F9 Street, Mount Pleasant CITEC Estates, Mbora District, Abuja. According to him, since the Claimant/Applicant was a tenant at will, the concerns he raised over the possibility of an imminent eviction was, in the words of learned Counsel for the Defendant/Respondent, "clearly self-induced, unsubstantiated and unfounded." He relied on ***A.C.B. v. Awogboro & Anor (1991) 2 NWLR (Pt. 176) 711 at 718 – 719, paras G-H***.

On the question of balance of convenience, the Defendant/Respondent, through its Counsel, insisted that the balance of convenience was in its favour because the Claimant/Applicant was neither the owner of the property nor a tenant thereat. It further argued that since there was nothing to show that it was responsible for the fire outbreak, or that it made any promise of compensation of any kind to the Claimant/Applicant, or the disclosure of any wrongful act against it, and considering that the property in question had been sold, the Court should find that the balance of convenience leaned more on its side than on the side of the Claimant/Applicant. He relied on ***A.C.B. v. Awogboro & Anor, supra*** in support of his contention.

On whether damages would be inadequate compensation for the Claimant/Applicant, the Defendant/Respondent contended that the Claimant/Applicant had failed to disclose in his affidavit in support of his application that damages would not be adequate compensation for any damage he might suffer if his application for an order of interlocutory injunction was not granted. It also added that the Claimant/Applicant had not shown the Court the injury he would suffer if the Court refused to grant the Order for interlocutory injunction. The Defendant/Respondent in support of this ground relied on the case of ***Aboseldehyde Lab Plc v. U.M.B. Ltd (2013) 13 NWLR (Pt. 1370) 91 at 131 paras A-C.***

On the conduct of the parties, learned Counsel submitted that before an order of interlocutory injunction would be granted by the Court, the conduct of the applicant must not be reprehensible. He added that injunction being an equitable relief, he who came to equity must come with clean hands. He asserted that the Claimant/Applicant deliberately failed to disclose material facts to the Court and therefore, must not be entitled to the reliefs sought. He cited in support of his submission the cases of ***Okeke-Oba v. Okoye (1994) 8 NWLR (Pt. 364) 605 at***

617 paras D-E; King v. Brown, Durant & Co (1913) 2 Ch. 416; Aboseldehyde Lab Plc v. U.M.B. Ltd (supra), Adejumo v. Ayantegbe (1989) 3 NWLR (Pt. 110) 417 at 452 paras C-D; Reichie v. N.B.C.I. (2016) 18 NWLR (Pt. 1514) 294 at 316-317, paras H-A; and ***Telephone (Nig.) Ltd v. Nicholas Banna (2012) FWLR (Pt. 95) 255.***

Submitting on the condition of undertaking as to damages, learned Counsel for the Defendant/Respondent restated the law that undertaking as to damages was the price an applicant had to pay for the grant of the injunctive relief sought in the event that the application turned out to be improper and frivolous. He contended that the Claimant/Applicant having failed to give an undertaking as to damages should not be entitled to an order for interlocutory injunction. In conclusion, he submitted that these conditions were, in his word, cumulative and urged the court to dismiss the application as the Claimant/Applicant had failed to demonstrate the existence of these conditions.

On the 22nd of February, 2021, parties through their Counsel presented their arguments for and against the application for an Order of interlocutory injunction. While Counsel for the Claimant/Applicant implored this Honourable Court to grant the reliefs sought in the application, learned Counsel for the Defendant/Respondent urged this Honourable Court to discountenance the application in its entirety. This Honourable Court thereafter adjourned the suit for ruling on the application.

I have studied carefully all the processes and the supporting exhibits filed by both Counsel in support of their respective positions on this application. I also listened attentively to them as they presented their respective arguments in respect of the application. One common ground which the parties share is that the application is an invitation to this Honourable Court to invoke its discretionary powers to grant or refuse to grant the order for interlocutory injunction. To this end,

therefore, I will adopt the issues raised by the parties in determining this application. The Claimant/Applicant, in his written address, has formulated the following issue:-

"Whether this Honourable Court has the power to grant the reliefs sought in this application"

The Defendant/Respondent, on the other hand, has raised the following issue for this Honourable Court to resolve:-

"Whether the Claimant/Applicant has satisfied the mandatory requirements of law for the grant of Interlocutory Injunction?"

I shall take these issues one after the other.

An injunction is defined in Black's Law Dictionary (Sixth Edition, Centennial Edition) at page 784 as "a Court Order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury." Specifically, an interlocutory injunction is defined at the same place as an injunction which is "issued at any time during the pendency of the litigation for the short-term purpose of preventing irreparable injury to the petitioner prior to the time that the Court will be in a position to either grant or deny permanent relief on the merits."

The Courts in Nigeria have cited with approval these definitions and adopted same in a long line of cases which include ***Adeleke v. Lawal (2014) 3 NWLR (Pt. 1393) 1; Akapo v. Hakeem Habeeb (1992) 6 NWLR (Pt. 287) 266; Globe Fishing Industries Ltd & Ors v. Coker (1990) LPELR-1325 (SC) at 27 – 28; Buhari & Ors v. Obasanjo & Ors (2003) LPELR-24859; Uyokpeyi & Ors v Ukueku (2017) LPELR-42649 (CA) at 7 – 8; Adedeji v. Eso (2011) LPELR-***

8884 (CA) at 20; and Kalshingi v. Masoro & Ors (2015) LPELR-41654 (CA) at 21.

An injunction, whether interim or interlocutory, is usually granted to preserve the *res*, that is, the subject matter of the suit. It is also granted to restrain a party or all the parties in the suit from taking further steps in respect of the subject matter of a pending action so that by their action they do not render nugatory the judgment of the Court in the suit.

Injunctions are part of the reliefs which the Court in exercising its equitable jurisdiction may grant. Being an equitable relief, injunctions come within the discretionary powers of the Court; and the Court, in granting or refusing to grant an order for injunction, must consider what is fair and just to all the parties before it. In its consideration of what is fair and just, the Court must exercise this equitable jurisdiction and its discretionary powers judiciously and judicially. In ***Owerri Municipal Council & Ors. v. Onuoha & Ors (2009) LPELR-8422(CA)***, the Court of Appeal held that ***"An order of interlocutory injunction is granted upon exercise of discretionary power of the Judge in his equitable jurisdiction. Like with all other discretions, the Judge must act judicially and judiciously on the facts placed before him."*** In ***Adeleke v. Lawal, supra at pages 17 – 20***, the Supreme Court, per Aka'ahs, JSC, reiterated the position that an injunction is an equitable remedy which lies within the discretion of the Court to grant. See also ***Adenuga v. Odumeru (2001) 2 NWLR (Part 696) 184 at 185 per Karibi - Whyte JSC***.

In view of the foregoing, therefore, and considering that the reliefs being sought by the Claimant/Applicant in the present application are equitable reliefs, I have no hesitation in resolving the first issue herein in the affirmative. Injunctions are within the equitable jurisdiction of this Honourable Court. This Honourable Court therefore has the power to grant the reliefs sought.

Having found that this Court has the power to grant the reliefs being sought in this application, I shall now return to the second question, that is: whether the Claimant/Applicant has satisfied the requirements of the law for the grant of an interlocutory injunction.

Learned Counsel for the Defendant/Respondent cited the case of ***Adeleke v. Lawal, supra*** and distilled six conditions which, according to him, must exist together before the Court could make an order of interlocutory injunction. Those conditions are: (1) existence of a legal; (2) substantial issue to be tried; (3) balance of convenience; (4) irreparable damage or injury; (5) conduct of the parties; and (6) undertaking as to damages. Learned Counsel brilliantly and painstakingly juxtaposed these conditions with the facts disclosed in the Affidavit in support of the Claimant/Applicant's application and arrived at the conclusion that the affidavit of the Claimant/Applicant being bare of these preconditions, this Court must refuse the reliefs sought.

I have perused the case of ***Adeleke v. Lawal, supra*** and I agree with learned Counsel for the Defendant/Respondent that the Supreme Court in that case merely restated the guiding principles for the grant of interlocutory injunctions as laid down in a long line of cases such as ***Ladunni v. Kukoyi (1972) LPELR-1739;American Cynamid Co. v. Ethicon Ltd (1975) A.C. 396; Obeya Memorial Specialist Hospital v. Attorney-General of the Federation & Anor (1987)3 N.W.L.R. (Pt.60) 325;Kotoye v. Central Bank of Nigeria(1989) 1 NWLR (PT.98) 419; Saraki v. Kotoye(1992) 9 NWLR (Pt. 264) 156; Onyesoh v. Nnebedum(1992) 3. NWLR (Pt.229) 315; Buhari v. Obasanjo(2005) 13 NWLR (Pt.941)1*** among others. One thing that must be noted is that the Supreme Court did not stipulate that those conditions must be stated in any particular format in the affidavit in support of the application; what matters is that those conditions must be reflected in the affidavit via the facts deposed to

therein. The question, therefore, is, whether upon a careful examination of the Claimant/Applicant's affidavit in support of his application, these conditions are reflected therein.

In ***Akapo v. Hakeem-Habeeb supra***, relied on by the Defendant/Respondent's Counsel, Karibi-Whyte, JSC, at pages 30 – 31, paragraphs E – B, held that ***"The claim for an injunction is won and lost on the basis of the existence of competing legal rights."*** The Claimant/Applicant in paragraphs 3 – 12 disclosed the existence of a legal right, a right that the Defendant/Respondent denied in paragraph 3(c) – (l) of its counter-affidavit. These claims and counter-claims presuppose the existence of competing legal rights.

These same paragraphs in both the affidavit in support of the application and the counter-affidavit in opposition also reveal that there is a substantial issue to be tried. In fact, the mere fact that the parties hold such diametrically contradictory and irreconcilably divergent positions goes to show that there is a substantial issue to be tried. In other words, the conflict in the claims of both the Claimant/Applicant and the Defendant/Respondent presupposes, in fact, the existence of a serious issue to be tried.

I must say something about the Defendant/Respondent's contention that the Claimant/Applicant has not disclosed any legal right that should be protected by way of an injunction. In paragraph 3(q) of the Defendant/Respondent's Counter-Affidavit and paragraph 13 of its written address, the Defendant/Respondent contended that the Claimant/Applicant has not disclosed a legal right that ought to be protected by an injunction since his *"claims in this suit before this Honourable Court is in respect of an "alleged compensation" that was purportedly promised to the Claimant/Applicant and not in respect of ownership/possessory rights over House 13, F9 Street, Mount Pleasant Citec Estates, Mbora District, Abuja."* It argued further that the Claimant/Applicant has

failed to disclose the legal rights which he seeks to protect by the Order of interlocutory injunction because *"A careful perusal of the Claimant/Applicant's Writ of Summons/Statement of Claim revealed that Claimant seeks mainly declaratory reliefs and injunction."* I disagree with learned Counsel for the Defendant/Respondent.

In ***Adeleke v. Lawal, supra***, the Supreme Court held that the target of the order of interlocutory injunction is to preserve the *res*. In ***Onyesoh v. Nnebedum (1992) LPELR-27421(SC)*** the Supreme Court per Nnaemeka-Agu JSC at page 38 paragraphs B – E held that ***"For the true nature of the right asserted by the respondents, it is useful to bear in mind the fact that when, in relation to an order of interlocutory injunction, we talk about preservation of the res that word is not taken narrowly or literally. For, although the word res normally means a thing, in relation to an order of interlocutory injunction it means "all physical and metaphysical existence, in which persons may claim a right" "it comprehends corporeal and incorporeal objects of whatever nature, sort, or species" (Wharton: Law Lexicon) 14th Edition pp. 871 - 872. It therefore extends to any right which a person may exercise over such a res."*** In **Buhari v. Obasanjo (2005) 17 NWLR (Pt. 850) 587 or (2003) LPELR-813(SC)** the Supreme Court per Niki Tobi JSC defined *res* as follows: ***"In general parlance res means "thing" in reference to a particular thing, known or unknown. It also means affair, matter or circumstances. In our context, res generally refers to subject matter of the right complained of by the applicant."*** In ***Obeya Memorial Specialist Hospital v. Attorney-General of the Federation & Anor (1987) LPELR-2163(SC)***, Nnamani, JSC in his concurring judgment, while citing ***Ojukwu v. Governor of Lagos State (1986) 3 N.W.L.R. 39: Agbor v. Metropolitan Police Commissioner (1969) 1 W.L.R. 703***, noted that ***"It has, however, been held that in an application for interim relief it is not necessary to prove proprietary interest in the***

property to be protected. All that seems to be needed is proof of lawful occupation with authority of owner."

In view of these, therefore, I find it difficult to agree with learned Counsel for the Defendant/Respondent that the Claimant/Applicant has not disclosed any legal right that should be protected by an injunction.

With regards to whether or not the balance of convenience is on the side of the Claimant/Applicant, it must be noted that the determination of the balance of convenience is a question of fact. In doing this, the Court examines the facts in the contesting affidavits in arriving at a decision as to who will suffer the most if the order for injunction is made or refused. See ***Ayorinde v. AG and Commissioner for Justice, Oyo State & Ors (1996) LPELR-685 (SC); Mereni & Ors v. Onyechere & Ors (2015) LPELR-25623(CA).*** The burden of establishing the burden of convenience is on the applicant for an interlocutory order. See ***Ladunni v. Kukoyi (1972) LPELR-1739 (SC)***. The Claimant/Applicant in paragraphs 13 and 14 of the affidavit in support of his application deposed to the fact that the Defendant/Respondent has already taken steps to eject him from House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja, a fact that the Defendant/Respondent conceded to in paragraph 3(m) of its counter-affidavit. It is clear to my mind that the balance of convenience is on the side of the Claimant/Applicant, since he is the person that will suffer the most if the application is not granted. On the other hand, the Defendant/Respondent has little to suffer if this Court grants this application.

Would the Claimant/Applicant suffer irreparable damage if this application is refused? One fact that the parties are agreed is that the Claimant/Applicant was let into House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja by the Defendant/Respondent. Whether the Claimant/Applicant was let into the premises by the Defendant/Respondent as an admission of culpability in the fire

outbreak that razed the Claimant/Applicant's former residence at House E 11 E Close, CITEC Estate, Mbora District, Abuja as asserted by the Claimant/Applicant; or whether he was let into the property by virtue of the grace and benevolence of the Defendant/Respondent as claimed by the Defendant/Respondent are issues that would be determined at the hearing of the substantive suit. What is clear at this stage, however, is that the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession dated the 2nd day of December, 2020 and served on or about the 3rd day of December, 2020 disclosed the imminence of the Defendant/Respondent's intention to remove the Claimant/Applicant from the premises. The spectre of homelessness and the consequential psychological trauma cannot be quantified by the payment of damages should the Claimant/Applicant succeeds at the hearing of the substantive suit.

Moreover, when the totality of the facts in the affidavit and the counter-affidavit are considered, I do not find the conduct of the Claimant/Applicant in bringing this application reprehensible. There was no delay on his part in bringing the application. The Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession was dated the 2nd of December, 2020 and served on or around the 3rd of December, 2020. The Claimant/Applicant reply to the said Notice was dated the 7th of December, 2020 and received by the Defendant/Respondent on the 9th of December, 2020. This suit was instituted and this application filed on the 14th of December, 2020. I do not see any delay in that.

On the other hand, the Defendant/Respondent claimed that the conduct of the Claimant/Applicant was reprehensible and unconscionable on the grounds of concealment of facts relating to the series of letters which it claimed it served on the Claimant/Applicant. See paragraph 3(f) of the counter-affidavit and paragraph

32 of the Defendant/Respondent's written address. The Claimant/Applicant has deposed to the fact that the Defendant/Respondent served him with a Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession. He even annexed a copy of his reply to the said Notice to his affidavit. It is the duty of the Defendant/Respondent who claimed it served a series a letters on the Claimant/Applicant to show proof of such service. Section 167(d) of the Evidence Act 2011, as amended provides that ***"the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."***

On the claim that the Claimant/Applicant misrepresented facts to this Court when it claimed that the Defendant/Respondent was responsible for the fire outbreak, it is my considered view that this question is one that is more suitable to be determined at the hearing of the substantive suit. Inviting this Court to consider this question at this preliminary stage is tantamount to determining the final rights and obligations of the parties at this interlocutory stage. In ***Achebe v. Mbanefo (2017) LPELR-41886(CA)*****,** the Court of Appeal per Tur, JCA cited with approval the dictum of Lord Diplock in ***American Cynamid Co. v. Ethicon Ltd. (1975) 1 All E.R. 504 at 510*** where the noble Law Lord stated *inter alia* that ***"It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence of affidavit as to facts on which the claims of either party may ultimately depend not to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial…"*** Elsewhere in the ***American Cynamid*** case, Lord Diplock held that***"My Lords, where an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the 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 the existence of the right or the violation of it, or both is uncertain***

and will remain uncertain until final judgment is given in the action." See ***Obeya Memorial Specialist Hospital v. A.-G. Federation & Anor (supra)*** per Obaseki, JSC and ***Nwarie v. Amauwa & Ors (1991) LPELR-12784(CA)*** per Kolawole, JCA. It is my strong position that it is at this stage that an interlocutory injunction is more apposite.

With regards to the condition for giving an undertaking for damages, I agree with learned Counsel for the Defendant that the Claimant/Applicant did not provide an undertaking as to damages in his affidavit. I have gone through the affidavit in support of the application and have come to the inevitable conclusion that there is no immediate or remote inkling therein that suggests that the Claimant/Applicant has provided an undertaking as to damages should this application turn out to be frivolous. I have also considered the position of the Courts in this regard. See, for instance, ***Adeleke v. Lawal, Supra; Buhari v. Obasanjo, supra; Kotoye v. Central Bank of Nigeria, supra.*** There is no doubt that undertaking as to damages is one of the conditions that must be fulfilled before an order of interlocutory injunction can be granted.

But I must necessarily add that failure to give an undertaking as to damages does not render the order thus made incompetent; it only makes it liable to be set aside. Besides, the Supreme Court has stated in a plethora of cases that there are exceptional cases in which an undertaking as to damages is not necessary. Though the Supreme Court did not state, enumerate or explain those circumstances, choosing rather to leave it at the discretion of the Court, it is important to note that an undertaking as to damages must not be given in all cases. Each application must, therefore, be treated on its own merits to determine whether an undertaking as to damages is necessary. In ***Onyesoh v. Nnebedum & Ors (1992) LPELR-2742 (SC)***, the Supreme Court per Nnaemeka-Agu, JSC held that though an undertaking as to damages was one

which ought to be given in every application for interlocutory injunction, it was, however, not required in certain exceptional circumstances; and, therefore, it would be putting the consequence of failure to give an undertaking as to damages too high to say that failure to give an undertaking as to damages rendered the order incompetent. See also ***Kotoye v. Central Bank of Nigeria, supra, per Nnaemeka-Agu, JSC.*** In Kotoye's case, the Supreme Court set aside the order of interlocutory injunction the High Court made, not on the ground that an undertaking as to damages was not given; but on the ground that the trial court made an order of interlocutory injunction upon an *ex parte* application.

In ***Afro Continental (Nig.) Ltd. v. Ayantuyi (1995) 9 NWLR (Pt. 420) 411***, the full Court of the Supreme Court in that case laid down the following principles on the issue of giving an undertaking as to damages; they are: (1) That it is not in all cases that extraction of an undertaking as to damages is necessary; (2) That a trial Court has a discretion on the question whether or not to order an undertaking as to damages. (3) The absence of an undertaking as to damages will not of itself lead to setting aside the order made.(4) That indeed where the trial Court failed to extract an undertaking as to damages an appellate Court can vary the order to include an undertaking by the plaintiff to pay damages. These principles were followed in the Court of Appeal cases of ***Mobil Oil (Nig) Ltd. v. Assan (2002) LPELR-5861 (CA); Ojimba & Ors v. Ojimba & Ors (1996) LPELR-13897 (CA)***;***Sabru Nig Ltd v. Jezco Nig Ltd (2000) LPELR-6082 (CA); Ikonne v. Nwachukwu & Ors (2017) LPELR-42449(CA); Ilechukwu v. Iwugo (1998) 2 NWLRL (Pt. 101) 99; SPDC v. Crestar Integrated Natural Resources Ltd (2015) LPELR-40034(CA)*** among others. See also the Supreme Court case of ***Oduntan v. General Oil Limited (1995) LPELR-2249 (SC) per Ogwuegbu, JSC.***

Considering the plethora of decisions of the Supreme Court and the Court of Appeal on the point that there are exceptional circumstances under which an undertaking as to damages is not required, I believe strongly that this present application falls within the perimeters of those exceptional cases for which an undertaking as to damages is not required. My belief is founded on the facts as disclosed in the affidavit in support of the application and the counter-affidavit in opposition. This is particularly so having found earlier that the balance of convenience is heavily on the side of the Claimant/Applicant.

In view of the foregoing, therefore, I resolve the second issue herein, which is, actually, the issue formulated by the Defendant/Respondent in its written address, in favour of the Claimant/Applicant.

The Claimant/Applicant has asked this Court, in the alternative, to make an order directing all the parties in this case to maintain *status quo* pending the hearing and final determination of the substantive suit by this Court. I think that implicit in an application for an order of interlocutory injunction is the need for parties to maintain *status quo*. In ***Adeleke v. Lawal, supra***, the Court held that it is trite law that the purpose of the application for interlocutory injunction is to keep the parties in an action in *status quo*, in which they were before the judgment or act complained of. See ***Globe Fishing Industries Ltd & Ors Vs. Chief Folarin Coker (1990) NWLR (Pt.162) 265; (1990) 11-12 SC 80***. In ***Buhari v. Obasanjo, supra***, the Supreme Court, in laying down the conditions that must exist before an order of interlocutory injunction may be granted, held *inter alia* that because of the existence of a substantial issue to be tried, the *status quo* must be maintained pending the hearing and determination of the substantive suit. See also ***Onyesoh v. Nnebedum, supra.*** In ***GTB v. Garba (2015) LPELR-41656(CA)***, the Court of Appeal adopted the definition of *status quo* provided in ***Fellows v. Fisher (1975) All E.R. 843*** where *status quo* was defined as the

position of things prevailing when the Defendant embarked upon the activities sought to be restrained. Also in ***Military Governor of Lagos State V. Ojukwu (1986) 1 NWLR (Pt. 18) 621***, the Supreme Court defined *status quo* thus: ***"Status quo presupposes the existence of an actual peaceable uncontested position of things preceding the pending controversy as distinguished from a status quo effected by the wrong doer before the institution of the suit, thus the aim of status quo is to preserve the position of things that existed before the pending controversy."*** See also ***Ayorinde v. A.-G. and Commissioner for Justice, Oyo State & Ors (1996) LPELR-685 (SC); Dieli & Anor v. Commissioner for Environment, Solid Minerals and Cooperatives, Abia State & Ors (2018) LPELR-45115 (CA)***.

As to what amounts to the *status quo ante bellum* in this case, it is my considered view that, flowing from the definitions provided in the above judicial authorities, the *status quo ante bellum* in this case was the state of affairs before the Defendant/Respondent took the step that propelled the Claimant/Applicant to institute this suit and to file this application. The step, in this case, is the service of the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession dated the 2nd of December, 2020. This step puts it beyond all vestiges of doubt that the Defendant/Respondent is intent on ejecting the Claimant/Applicant from House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja. This Court therefore has the responsibility to preserve the *res* of this suit.

In conclusion, the Motion on Notice dated and filed on the 14th of December, 2020 hereby succeeds and the reliefs sought therein are granted as follows:-

(1) That an Order of Interlocutory Injunction is hereby made restraining the Defendant/Respondent, its cronies, agents, staff, officers, privies, or any person(s) whosoever or howsoever described from entering

and ejecting or taking any step to eject the Claimant/Applicant from House 13 F9 Street, Mount Pleasant Estate, Mbora District, Abuja, pending the hearing and final determination of this suit by this Honourable Court.

(2) **That by this Order, all parties herein and their agents, privies, assigns, etc are hereby directed to maintain the *status quo ante bellum* pending the hearing and determination of the substantive suit by this Honourable Court.**

This is the Ruling of this Honourable Court delivered today, the 23rd day of March, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
23/03/2021