

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS 16TH DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA

SUIT NO:

FCT/HC/CV/467/2021

MOTION NO: /1517/2021

BETWEEN:

1. MR YUSUF SULEIMAN ILU
2. RITA FOLAKEMI AKALUGWA
3. MRS COMFORT DOUGLAS
4. OLAKUNLE FAYOMI
5. OMORE OMODHE OLOWDUN
6. ADEKUARO CHARLES
7. AISHA LABARAN IBRAHIM -----

CLAIMANTS/APPLICANTS

8. MR FEMI ADEYEMI
9. MBARA STELLA
10. FUNKE NWAFOR
11. BAMIDELE SHAFI
12. SUNDAY EMEFIELE
13. FARIDA KITCHENER
14. JAMIL SHITTU
15. INEDU EMMANUEL
16. ADEYEMI ADEWOYE
17. AMAEZE H. ONOCHIE
18. SHEHU HUSSAINI
19. AUWAL ABBAS

AND

**WHITE AVENUE REAL ESTATE-----
DEFENDANT/RESPONDENT**

RULING

This is an application brought by a Motion Exparte dated the 16th day of February 2021 and filed on the 18th day of February 2021. The Applicants brought this application pursuant to Order 43 Rules (1) & (2) of The High Court of The Federal Capital Territory Abuja Civil Procedure Rules 2018 and under the Inherent Jurisdiction of this Court praying for the following reliefs to wit:

- 1.** An order of interlocutory injunction restraining the defendant /respondent from further trespassing , invading or taken any further steps or doing anything whatsoever which may lead to disturb or interfered with peaceful enjoyment of the claimants respective property at Glendale place Estate of the plot 803 cadastral zone B03, Wuye District, Abuja as contained in the Exhibits A1-A5.seperately executed by each set of claimants with the defendant pending the determination of the motion on notice before this honorable Court.
- 2.** And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The applicant also filed a statement and raised grounds upon which the application is predicated as follows:

- 1.** That the claimants/Applicants are the owners of the Properties/houses at Glendale Place Estate located at Plot 803 Cadastral Zone, B03, Wuye District Abuja as contained in their

respective sale agreement they all freely entered into with the defendant.

2. That the defendant/Respondent in this application is a company registered under law of the Federal Republic Of Nigeria and is into the business of estate development in Nigeria.
3. That sometimes in the year 2018, the Defendant/Respondent advertised sale of housing units in their property consisting of 48 units of houses at Glendale Place Estate located at Plot 803, Cadastral Zone B08, Wuye District Abuja, which contains one (1) living room three (3)- bedroom apartments with a BQ all en suite Convenience, kitchen and pantry described in the sale agreement.
4. That consequent upon the said advertisement, all the Claimants/Applicants in this application at different times contacted the Defendant/Respondent and signified their intention to purchase a property/house within the said estate developed by the Defendant/Respondent.
5. That meetings were scheduled and held at different period separately with each set of Claimants/Applicants by the Defendant/Respondent over the modus operandi of acquisition of the said units of property/houses consisting 48 units up for advertisement. At the end of each of the meeting with the respective Claimants/Applicants, the Claimants/Applicants respectively purchased the application forms and the Defendant/Respondent asked each of the subscribers to make a deposit of money for the purchase of the said property/house.
6. The Defendant/ Respondent issued out to the Claimants/Applicants individually schedule of payments for the acquisition of the said houses and gave out the condition to be satisfied before each of the subscribers can take possession and ownership of the said property/houses. That the only condition given by the Defendant/Respondent is that each of the Claimants/Applicants will make commitment sum which is the (initial investment amount with some administrative charges after which a final allocation of the

property/house will be made to each of the Claimant/Applicant based on such payment.

7. That each and everyone of the Claimants/Applicants made the payments as scheduled by the Defendant/Respondent and discharged their obligation to pay the purchase price within the time given to them by the Defendant/Respondent.
8. That the Defendant/Respondent having been satisfied with the commitment of all the Claimants/Applicants as required by paying the total investment amount prepared a sale agreement evidencing the payment of all the prescribed fees; put the Claimants/Applicants in physical possession and handed over all the said houses to them.
9. That the execution of the said sale agreements, all the Claimants/Applicants were given their respective keys to their respective housing unit purchased from the Defendant/Respondent as contained under the said sale agreement.
10. That sometimes in the year 2020, the Defendant/Respondent wrote to the Claimants/Applicants asking them to sign a document unilaterally prepared by the Defendant/Respondent which was titled facility maintenance agreement for the common areas which comprises of the security gate, fence and flower planted by the fence of the Estate.
11. That the Claimants/Applicants engaged the Defendant/Respondent and intimated him that the terms in the said facility maintenance agreement were unacceptable to them. That the Claimants/Applicants refused to sign the facility maintenance agreement proposed by the Defendant/Respondent because parties do not agree to same and that they were not consulted.
12. That since June 2020 the Defendant/Respondent neglected to address the issue of mutual understanding raised by the Claimants/Applicants and subsequently, started sending notices to all the Claimants/Applicants to sign the said facility maintenance agreement which they unilaterally prepared and threatened to revoke the Claimants/Applicants rights over the properties they had already

bought and had full possession, if they failed to sign the said agreement.

13. That the Defendant/Respondent on the 21st January 2021, sent another notice to the Claimants/Applicants given them up to 20th day of February 2021 to sign the said facility maintenance agreement or risk their property/house been revoked.
14. That in furtherance of the said threat of revocation, the Defendant/Respondent through her agent (Moris Danjuma and Paul) whom are agents of the Defendant in conjunction with the security men at the gate unlawfully trespassed and unlawfully invaded the apartments/house of the 1st Claimant at Flat 1 Block B at Glendale Place Estate at Plot 803, Cadastral Zone B03, Wuye Abuja when the said 1st Claimant/Applicant was not around on the 5th day of February, 2021 and vandalized the electricity meter personally paid for by the said 1st Claimant/Applicant; and also removed the switch connecting electricity to the said 1st Claimant's house and made away with it and hide same in the security office engaged by the Defendant/Respondent thereby putting the house of the 1st Claimant in total darkness.
15. That the said act of Defendant/Respondent in this application through her agent has caused the 1st Claimant/Applicant serious inconveniences and huge losses.
16. That the attitude of the Defendant/Respondent in this case if not properly checked will continue to work hardship against the interest of the Claimant/Applicant and will jeopardize their interest and rights unless this Honourable Court restrains the Defendant as sought in this application pending the hearing of the substantive action filed in this case.
17. _That this application is not an abuse of court process but same brought to protect the legal right of the Claimant/Applicant as well as the res the subject matter of this case.
18. That the Claimant/Applicant undertakes to indemnify the Defendant if this order ought not to have made in this first place.

19. That it will serve the interest of justice to grant the entire reliefs claim by Claimant/Applicant in this application having regard to the peculiar facts and circumstances of this application.

Attached to the application is a 27 paragraphs affidavit with annexures marked as Exhibits "SA1-SA5" and Exhibits"NR". The Claimants/Applicants in proof of their case attached the following documents as exhibits as follows:

1. Exhibit SA1 is the Sale Agreement between White Avenue Real Estate and Mr Yusuf Suleiman Ilu. Dated 19th day of October 2018
2. Exhibit SA2 is the sale Agreement between White Avenue Real Estate and Mrs Rita Folakemi Akalugwa dated the 26th day of July 2019.
3. Exhibit SA3 is the sale Agreement between White Avenue Real Estate and Mrs Comfort Douglas dated the 15th day of March 2019.
4. Exhibit SA4 is the sale Agreement between White Avenue Real Estate and Mr Olakunle Blessing Fayomi dated the 23rd day of July 2019.
5. Exhibit SA5 is the sale Agreement between White Avenue Real Estate and Omore Omodhe Olowodun dated the 29th day of August 2019.
6. Exhibit NR is the Final Request To Conclude The Sale Transaction for a unit of three bedroom apartment at Glendale Place Estate Wuye Abuja dated the 21st of January 2021.

Also filed is a 21 paragraphs affidavit of urgency dated the 18th day of February 2021 deposed to by one Yusuf Suleiman Ilu of flat B at Glendale place Estate Ghali Na'aba Street, Wuye Abuja.

At the hearing of the application on the 08th of March 2021 Learned counsel to the Claimant/Applicant moved the motion Exparte and cited the following cases in his written address in support of this application.

- 1. Akibu v Oduntan (1991) 2 NWLR (PT 171) 1 AT 10**
- 2. Saraki Vs Kotoye (1990) 4 NWLR (PT 143) 114 AT 187**
- 3. Ezebilo Vs Chinwuba (1997) 7 NWLR (PT. 511) 108 AT 124**

4. Onyesoh Vs Nnebedum (1992) 3 NWLR (PT.229) 315 AT 336-337. Para E-F

5. Kotoye Vs Cbn (1989) INSCC 239 AT 251 LINES 15-20

6. Falomo Vs Banigbe (1998) 7 NWLR (PT. 557) 679 AT 699 PARAGS G-H

Learned counsel further urged the court to grant the interlocutory application and order that the status quo be maintained.

I have perused the documents before me, the affidavit in support of the application together with the written address of learned counsel. It is my considered view that this application raises a lone issue for determination to wit:

Whether the Claimants/Applicants are entitled to the grant of an interlocutory injunction?

In considering an application for interlocutory injunction the following questions should be answered:

1. Is There a serious issue to be tried.
2. Are damages an adequate remedy?
3. Where does the balance of convenience lie?
4. Are there any special factors to be considered?

See the case of **Braithwaite Vs S.C.B (Nig) Ltd (2012)1 NWLR (PT 1281) P 301 .**

On the lone issue distilled above, the Courts have given legal imprimatur on the grounds upon which an interlocutory injunction would be granted. See **KOTOYE Vs. CENTRAL BANK OF NIGERIA (1989) 1 NWLR (PT 98) 419 @ 441-442** Per Nnaemeka- Agu JSC as he then was said.

".....even though the word "interlocutory" comes from two latin words "inter" (meaning between or among) and "locutus" (meaning spoken)Applications for interlocutory injunctions are properly made on notice to the other side to keep matters in status quo until the

determination of the suit.....they cannot and ought not be decided without hearing both sides to the contest.

Learned counsel to the Claimants/Applicants filed a Motion on Notice with Motion NO. M/1518/ 2021 on the same day the Motion Ex-Parte was filed on the 18th of February 2021 before this honourable court.

Learned counsel while moving his Motion Ex- Parte informed the Court that the Motion on Notice have not been served on the Defendant/Respondent . A careful perusal of the Motion Exparte and the Motion on Notice before this honourable court did show that the Claimants/Applicants are praying for the same order.

Be that as it may, it is my considered humble legal opinion that the defendant/ Respondent be put on notice. I so HOLD.

It is ordered that the parties maintain Status Quo pending the determination of the motion on notice.

Appearance:

Parties are absent in court L O. Fagbemi Esq with M Alhassan for the Claimant/Applicant, matter was adjourn today for ruling on Ex-parte application ,

Ruling read in open court this day 16th day of March, 2021

And case is adjourned to 20th day of April 2021 for continuation of hearing motion on notice.

Signed
Hon. Presiding Judge
16/03/2021