

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANYA, ABUJA ON THE 23RD DAY OF MARCH, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

SUIT NO.FCT/HC/CV/2468/20

COURT CLERKS: JOSEPH ISHAKU BALAMI & OTHERS.

BETWEEN:

KELVIN OBIPLAINTIFF

AND

CHRISTIAN CHUKWUDI OBI.....DEFENDANT

RULING

The Defendant/Applicants application on Notice dated 09/11/20 brought pursuant to order 43 Rule 1(1) of the High Court of the FCT (Civil Procedure) Rules 2018 is for:

- (1) An Order of Interlocutory Injunction restraining the Claimant/Respondent and or his heirs, agents from renting any of the rooms or collecting rent from any

tenant in Chris Obi Estate at AgwanDadi Village Nyanya, Phase 4 Extension, Nyanya, Abuja FCT pending the final determination of this suit.

- (2) An order of Court appointing the Registrar of Court or any other staff to manage the said Estate and pay the rent collected into an interest yielding account until the final determination of this suit.
- (3) An order restraining the Claimant/Respondent and or his heirs, agents from assigning, leasing, mortgaging the property, renovating, erecting or building any structures old or new in the said property pending the final determination of the suit.
- (4) An order restraining him from packing into any empty building in the said property pending the final determination of the suit.

In support is a 7 paragraph Affidavit deposed to by Tony Elachi, Litigation Secretary of House 1, Flat 3, Wanune Close, Garki Abuja. He deposed essentially that the Defendant is the lawful owner of Chris Obi Estate, AngwaDadi Village, Phase 4, NyanyaExtention, Nyanya. The deed of ownership transfer between the Claimant and the Defendant is Exhibit A. That the Claimant/Respondent has refused to hand over the management of the property to the owner the Defendant/Applicant and has continued to collect rent in the said property without rendering account. That the Claimant may assign or carry out an act that will affect the res before the final determination of the suit.

There is serious need to protect the res from being destroyed. The Claimant/Respondent will not be

prejudiced. The Claimant/Respondent's Counsel relied on his Counter Affidavit of 14 paragraphs deposed to by Peter Agu of No. 37 T.Y Danjuma Street, Asokoro. He denied paragraph 3 of the Affidavit in support. He deposes that Claimant is the bonafide purchaser and owner of all that property situate at AngwanDadi Village, Nyanya by virtue of an Irrevocable Power of Attorney dated 2/05/01 executed in his favour by Mr. BanabasOrie. It is Exhibit I. That Applicant has no legal interest to be protected. That Claimant never assigned his interest neither did he appoint any agent to manage the property and the Claimant resides in the property. That he has been putting the property in habitable condition and improving same since 2001 to date. That it is not in the interest of Justice to grant the application. That the Claimant has been in possession for about 18 years.

I have considered the Written Addresses. For an application for Interlocutory Injunction to succeed, the Applicant must establish:

- (1) That there is a substantial issue to be tried.
- (2) That the balance of convenience is on his side.
- (3) That damages cannot be an adequate compensation for his damage or injury if he succeeds at the end.
- (4) That his conduct is not reprehensible.
- (5) That the injunction is necessary to preserve the res which is in imminent danger.

See ***KOTOYE VS. CBN (1989) 1 NWLR (PT. 98) 419 SC.***

I have read the Affidavit in support. There is no doubt that there is a substantial issue to be tried in this matter as both Claimant and Defendant are laying claim to the ownership of the property in issue. The Affidavit evidence is that the Claimant is in possession which he also admitted in his Counter Affidavit in opposition to this motion. It is therefore my view that the balance of convenience is in favour of the Defendant. The conduct of the Defendant/Applicant is not reprehensible. He is not guilty of delay. He was served with the Originating Processes on 12/10/2020 and the Defendant filed this Motion on 9/11/2020.

The Defendant/Applicant states that the res is in imminent danger. That the Claimant/Respondent has been collecting rent without rendering account. That the Claimant may

assign or carry out an act which will endanger the res. A Court of law as this Court is indeed obliged protect the res. The Court has a duty to preserve the res in an action. The subject matter of this suit can be altered as interest of 3rd Parties can be involved if not restrained.

See **GLOBE FISHING IND. LTDVS.COKER(1990) 7 NWLR (PT. 162) 265 SC.**

Another crucial purpose of granting an order of injunction is to mitigate the risk of injustice aParty will suffer during the period when the uncertainty over the violation of his legal right would be resolved. The Applicant deposed that the Claimant is in possession. That he is collecting rent from the building. It is only fair that the application for an order of injunction be granted to mitigate the risk of only one party enjoying the rent during the period of litigation.

See **TOTAL NIG. PLC VS. V.I.I.R.A(2004) 7 NWLR (PT. 873) 446**

CA.

In my humble view, it is just and convenient to exercise my discretion in favour of the Defendant/Applicant. The application succeeds:

- (1) An Order of Interlocutory Injunction is hereby granted restraining the Claimant/Respondent and or his heirs, agents from renting any of the rooms or collecting rent from any tenant in Chris Obi Estate at AngwanDadi Village, Nyanya pending the final determination of this suit.
- (2) The Deputy Chief Registrar of Nyanya Judicial Division of this Court is hereby appointed to manage the said Estate and pay the rent so collected into an interest

yielding account until the final determination of this suit.

(3) The Claimant his heirs and agents are further restrained from assigning, leasing, mortgaging, renovating, erecting or building any structures on the said property pending the final determination of the suit.

(4) The Claimant, agents, heirs or privies shall not park into any empty building in the said property pending the final determination of this suit.

Suit is adjourned to 1/07/21 for hearing.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
23/03/21

