

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE NYANYA JUDICIAL DIVISION

HOLDEN AT NYANAYA, ABUJA ON THE 9TH DAY OF MARCH, 2021

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

SUIT NO.FCT/HC/CV/0873/18

COURT CLERKS: JOSEPH ISHAKU BALAMI & OTHERS.

BETWEEN:

STELLA ABURIME.....PLAINTIFF

AND

1. THE HON. MINISTER OF THE FEDERAL

CAPITAL TERRITORY

2. FEDERAL CAPITAL DEVELOPMENT

AUTHORITY

3. MR. SAMSON NORMA

4. MR. BITRUS ILIYA

5. UNKNOWN PERSONS

.....DEFENDANTS

RULING

The Claimant/ApplicantS' application dated 2/02/2018 and filed the same date is brought pursuant to Order 7 Rule 1, 2, 3 & 5 of the Rules of Court.

It prays the Court for:

a. An order of Interlocutory Injunction restraining the 3rd, 4th and 5th Defendants/Respondents either by themselves or acting through their servants, agents, privies or through any person or persons howsoever from encroaching or further encroaching, trespassing or further trespassing, taking over, taking control or further taking control of the land situate, lying and being at Plot No. 255 Cadastral Zone A09 Guzape District, Abuja by virtue of a Certificate of occupancy No. 8a2uw-d6dez-633qr-2f30u-10 with file No. ED10426 dated 29th July 2020, and registered as No. 8165 at page 8165 in Vol. 41 of the Certificate of Occupancy Register in the Lands Registry Office, Abuja pending the hearing and determination of the substantive suit.

b. An order of injunction restraining the 3rd – 5th Defendants/Respondents either by themselves or acting through any of their servants, agents, privies or through any person or persons howsoever from constructing or taking any further steps towards the illegal development of the subject land situate, lying and being at Plot 255 Cadastral Zone A09 Guzape District, Abuja.

c. An Order of Interlocutory Injunction restraining the 1st& 2nd Defendants either by themselves, servants, privies or through any person or persons howsoever from aiding, encouraging or assisting the 3rd - 5th Defendants from further entering , trespassing or encroaching on the Claimant's land situate lying and being at Plot 255 Cadastral Zone A09 Guzape District Abuja.

And for such Order or other orders as the Court may deem fit to make in the circumstance.

In support is a 28 paragraph Affidavit which Learned Counsel relied upon.

Succinctly, he deposed that 3rd, 4th and 5th Defendants are the persons who trespassed/encroached on Plot 255 Cadastral Zone A09 Guzape District, Abuja to erect structures on same knowing or having reasons to know that the said property belongs to her. That she had earlier engaged the service of a surveyor to place beacons around the subject plots in 2012 preparatory to commence construction works. She thereafter travelled out of the country to attend to her health.

In 2016, she went to the plot with architect to discover that the 3rd – 5th Defendants had encroached upon the said plot

by erecting illegal structures thereon. The pictures are Exhibit SA2a-c. She wrote to the 2nd Defendant and reported the case of trespass and encroachment by the 3rd – 5th Respondents. The letter dated 21/02/17 of SA3. That she also wrote to the Solicitor-General of the Federation complaining about the activities of the 3rd – 5th Defendants/Respondents on the subject plot. The letter dated 24/02/17 is Exhibit SA4. She made contact with the 3rd and 4th Defendants/Respondents asking them to stay off the land to no avail as they defiantly remained on the subject plot till date. That the continued illegal occupation of the land by the 3rd – 5th Defendants/Respondents constitute an infringement of her right. That the activities of the 3rd – 5th Defendants/Respondents have caused her great emotional stress/trauma and great damages. That they are dealing with the subject matter in a manner that destroys the

res. That Applicant has a prima facie case. That the balance of convenience is in favour of the Applicant. That damages shall not be adequate compensation. The Applicant undertakes to pay damages.

1st& 2nd Defendants/Respondents are not opposing the application. The 3rd – 5th Defendants/Respondents' Counter Affidavit in opposition to the application was struck out on 25/01/21 for being incompetent.

I have carefully read the Affidavit and Exhibits attached. I have also considered the Written Address of Counsel. The structures erected on the land could be gleaned from Exhibit SA2a-c. They are completed houses, village huts etc.

The law is that an order of interlocutory injunction is not a remedy for an act that has been completed or carried out.

Consequently no interlocutory injunction would be granted to restrain a completed act.

IDEOZU VS. OCHOMA (2006) 4 NWLR (PT. 970) 364 SC.

AYOMIDE VS. A.G. OYO STATE (1996) 3 NWLR (PT. 434) 20 SC.

The Subject matter in this suit is land. Interlocutory Injunction is concerned principally with the protection of the res and maintaining the status quo. The Court has not only the power and jurisdiction but also the duty to preserve the res in an action. The res or subject matter such as land is not perishable or capable of being permanently destroyed in such a way that it cannot ever be recovered or replaced. It

is only where the subject matter will be permanently destroyed and cannot be recovered or replaced that an order of interlocutory injunction will be appropriate to maintain the status quo until the final determination of the substantive suit.

An order of interlocutory injunction may be granted in all cases where it is just and convenient to do so. The Exhibits SA 2a-c look like completed village houses/huts. It will not be just and convenient to grant the order sought in the circumstance of this case. The application therefore fails and it is dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)

09/03/21