

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

**ON WEDNESDAY, 30<sup>TH</sup> DAY OF JUNE, 2021**

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

**SUIT NO. FCT/HC/CV/539/2019**

**MOTION NO. M/1821/2019**

**MOTION NO. M/8601/2020**

**BETWEEN**

**INCORPORATED TRUSTEES OF  
SUNSHINE HOMES RESIDENTS ASSOCIATION,  
WUMBA DISTRICT** } **CLAIMANT**

**AND**

**1. ONDO STATE DEVELOPMENT AND  
PROPERTY CORPORATION**  
**2. MUSTADRAK CONTRACTS LTD.**  
**3. ALIADE ENGINEERING & CONSTRUCTION  
COMPANY LTD.** } **DEFENDANTS**

**RULING**

The claimant instituted this suit on 6/12/2019 by writ of summons. On 9/12/2019, the claimants filed motion on notice *No. M/1821/2019* for orders of interlocutory injunction. On 9/7/2020, the 1<sup>st</sup>& 3<sup>rd</sup> defendants filed motion on notice *No. M/8601/2020* also for orders of interlocutory injunction.

In the claimant's motion, it prays the Court for the following orders:

1. An order of interlocutory injunction restraining the defendants/respondents either by themselves or by their agents, privies, assigns, successors-in-title or howsoever described from interfering with the claimant/applicant's management rights over the affairs and welfare of the estate known as Sunshine Homes Plot 50 Wumba District, Abuja pending the hearing and final determination of the substantive suit.
2. An order of interlocutory injunction restraining the defendants/respondents either by themselves or by their agents, privies, assigns, successors-in-title or howsoever described from interfering, harassing, disturbing, intimidating, maligning, assaulting and/or threatening the claimant's members' right over their respective properties and exclusive possession thereof pending the hearing and final determination of the substantive suit.
3. An order of interlocutory injunction restraining the defendants/respondents either by themselves or by their agents, privies, assigns, successors-in-title or howsoever described from selling the remaining common areas meant for the use and enjoyment of the residents of Sunshine Homes Plot 50 Wumba District, Abuja pending the hearing and final determination of the substantive suit.

4. An order of interlocutory injunction restraining the defendants/respondents either by themselves or by their agents, privies, assigns, successors-in-title or howsoever described [from] direct and the indirect use of thugs, touts, the officers of the Nigeria Police Force, EFCC, SSS and other security agencies to invite, harass, arrest, detain, molest, intimidate, blackmail, breach and threaten the claimant's members' fundamental rights to life, human dignity, liberty, own moveable and immovable properties and freedom of movement at Plot 50 Wumba District, Abuja under the guise of criminal investigation pending the hearing and final determination of the substantive suit.

The claimant filed the following processes in support of the application:

- i. 49-paragraph affidavit of ChineduZeph[chairman of the claimant] and 19 exhibits filed on 9/12/2019 with the written address of Tochukwu Peter TochukwuEsq.
- ii. 44-paragraph further affidavit of ChineduZeph and 7 exhibits filed on 16/6/2020 with the written address of Mr.Tochukwu.
- iii. 38-paragraph better affidavit of ChineduZeph and 2 exhibits filed on 14/7/2020 with the written address of Mr.Tochukwu.

In opposition to the claimant's application,the 1<sup>st</sup>& 3<sup>rd</sup> defendants filed the following processes:

- i. 38-paragraph counter affidavit of AdahOchoechi [the managing director of the 3<sup>rd</sup> defendant] and 2 exhibits filed on 15/6/2020 along with an unsigned written address.
- ii. 30-paragraph further and better counter affidavit of AdahOchoechi and 1 exhibit filed on 9/7/2020 with the written address of Paul Erokoro, SAN.
- iii. 5-paragraph affidavit of Monday Uwana, the litigation secretary in the law firm of Paul Erokoro & Co., filed on 16/7/2020.

In the motion filed by the 1<sup>st</sup> & 3<sup>rd</sup> defendants, they pray the Court for:

1. An order of interlocutory injunction restraining the claimant/respondent whether by itself, its servants, privies, members, successors-in-title or anyone howsoever acting through it from continuing any construction, and violation of the site plan in respect of the property situate at Plot 50 Wumba District, FCT-Abuja, pending the determination of the substantive suit.
2. An order of interlocutory injunction restraining the claimant/respondent whether by itself, its servants, privies, members, successors-in-title or anyone howsoever acting through it from preventing or obstructing the 3<sup>rd</sup> defendant in carrying out its lawful duty as the 1<sup>st</sup> defendant/applicant's agent in respect of the property situate at Plot 50 Wumba District, FCT-Abuja, pending the determination of the substantive suit.

3. An order of interlocutory injunction restraining the claimant/respondent whether by itself, its servants, privies, members, successors-in-title or anyone howsoever acting through it from processing any document, search, permit or approval in relation to Plot 50 Wumba District, FCT-Abuja, pending the determination of the substantive suit.
4. An order of interlocutory injunction restraining the claimant/respondent whether by itself, its servants, privies, members, successors-in-title or anyone howsoever acting through it from further trespassing and or developing Plot 50 Wumba District, FCT-Abuja, pending the determination of the substantive suit.

1<sup>st</sup>& 3<sup>rd</sup> defendants filed the following processes in support of their motion:

- i. 34-paragraph affidavit of AdahOchoechi and 7 exhibits filed on 9/7/2020 with the written address of Paul Erokoro, SAN.
- ii. 5-paragraph further and better affidavit of Monday Uwana [the litigation secretary in the law firm of Paul Erokoro& Co.] filed on 16/7/2020.

In opposition to 1<sup>st</sup>& 3<sup>rd</sup> defendants' motion, ChineduZeph filed a counter affidavit of 31 paragraphs and 3 Exhibits attached therewith. Tochukwu Peter TochukwuEsq. filed a written address with the counter affidavit.

By the Court's direction, the two motions were heard together on 16/3/2021. This Ruling is on the two applications.

It is trite law that the grant or refusal of an order of interlocutory injunction is at the discretion of the court. The discretion must be exercised judicially and judiciously depending on the facts of each case. There are established guiding principles for the grant or refusal of this equitable remedy, to wit:

1. Whether the applicant has a legal right;
2. Whether there is a serious question or substantial issue to be tried in the main suit;
3. Whether the balance of convenience is in favour of granting the order;
4. Whether damages will be adequate compensation for the applicant if the interlocutory injunction is refused and he wins the substantive suit;
5. Whether the applicant's conduct is reprehensible e.g. by being guilty of undue delay in bringing the application; and
6. Whether the applicant has given an undertaking to pay damages in the event of a wrongful exercise of the court's discretion in granting the interlocutory injunction.

For the above principles, see Kotoye v. Central Bank of Nigeria (1989) 1 NWLR [Pt. 98] 419; and Bajela O. Fadina&Ors. v. Veepee Industries Ltd. [2001] 2 NWLR [Pt. 698] 518.

I have read the processes filed by the parties in respect of the two motions. It is not in dispute that on 16/11/2005, Plot No. 50 Wumba District, Abuja was allocated to the 1<sup>st</sup> defendant by the Federal Capital Territory Administration under the accelerated housing programme. The terms of grant were contained in the Development Lease dated 12/1/2006. The offer of grant is attached to the affidavit in support of the claimant's motion as Exhibit 2 while the Development Lease is Exhibit 3. The claimant is an association of residents of Sunshine Homes, Plot 50 Wumba District, Abuja.

Let me pause to remark that the facts relied upon by the claimant in support of its application are similar to the facts relied upon in opposition to the 1<sup>st</sup> & 3<sup>rd</sup> defendants' application. These facts are also similar to the facts pleaded in its statements of claim. The facts relied upon by the 1<sup>st</sup> & 3<sup>rd</sup> defendants in opposition to the claimant's application are similar to the facts they rely on for their application. These facts are also similar to the facts pleaded in their statement of defence and counter claim.

There are fundamental, material and irreconcilable conflicts in the affidavits of the claimant on the one hand and the affidavits of 1<sup>st</sup> & 3<sup>rd</sup> defendants on the other. These conflicts relate to right of ownership of properties in Plot 50 Wumba District by members of the claimant, the right of the members of the claimant to manage the Estate, the right of the 1<sup>st</sup> defendant to manage the Estate through its agent [3<sup>rd</sup> defendant], etc. Reference to some paragraphs of the affidavit of Chinedu Zeph filed on 9/12/2019 and some paragraphs of the

counter affidavit of AdahOchoechi filed on 15/6/2020 will show some of these difference or conflicts.

Paragraphs 8-16of the affidavit of ChineduZeph filed on 9/12/2019 read:

8. *The terms of grant was set out in the Development Lease Agreement of 12<sup>th</sup> January, 2006 between the 1<sup>st</sup> defendant and the Federal Capital Territory Authority [FCTA] and the representations made to the claimant's members by the 2<sup>nd</sup> defendant in respect of the agreement ignited the claimant's members' interest in the property.*
9. *The 2<sup>nd</sup> defendant informed me and other members of the claimant's association that the 1<sup>st</sup> defendant had a tripartite Memorandum of Understanding that involved one Kelle West Nigeria Limited where it was agreed that the 2<sup>nd</sup> defendant should develop Sunshine Homes, Plot 50 Wumba District measuring about 15 hectares. The Memorandum of Understanding dated 5<sup>th</sup> February, 2009 made available to me and other members of the claimant's association is hereby attached as Exhibit 4.*
10. *The 2<sup>nd</sup> defendant made representations that amongst other authorities conferred on her by the 1<sup>st</sup> defendant, she was solely empowered to carry out the sale and development of the properties at Plot 50Wumba District, Abuja and these representations made me and other members of our association to proceed and deal with the 2<sup>nd</sup> defendant as the agent of the 1<sup>st</sup> defendant.*



11. *The members of our association upon seeing that the 2<sup>nd</sup> defendant was totally in control of the site and exhibiting unfettered acts of definitive possession over the property, were practically convinced that the 1<sup>st</sup> defendant conferred the requisite powers attached to the land on the 2<sup>nd</sup> defendant; so we proceeded to acquire varying interests on the property from the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant.*
12. *The claimant's members paid a non-refundable sum of N10,000 to the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant representing application form fee and apart from the varying consideration that were furnished to the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant at the time of acquiring these properties, the claimant's members including me paid additional sums of money for infrastructure, development levy, building plan, legal fee, administrative charges and VAT ranging from N3,350,000.00 to other sums of money depending on the nature of the property so acquired from 1<sup>st</sup> & 2<sup>nd</sup> defendants.*
13. *Upon the payment of the valuable consideration and the ancillary charges to the defendants, Provisional Letters of Offer were issued to our members including me by the defendants pending the issuance of final title documents by the Federal Capital Territory Authority to the claimant's members. A copy is attached as Exhibit 5.*
14. *That with payments made for infrastructure, there are basic facilities that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are obliged to provide in the estate for the*

*use and benefits of the residents of the estate which among others include: tarred road within the estate, drainages, street lights, water reticulation but the 1<sup>st</sup> and 2<sup>nd</sup> defendants woefully failed to provide all these amenities. The estate infrastructure was completely abandoned and our association members were exposed to security risk leading to three armed robbery attacks which was communicated to the 1<sup>st</sup> and 2<sup>nd</sup> defendants while the Commissioner of Police FCT was put in copy on the 16<sup>th</sup> of December, 2013. The said letter is attached as EXHIBIT 6.*

15. *That in addition to dereliction of obligation by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the 1<sup>st</sup> defendant in particular opted to interfere with the ownership and possessory rights of the claimant's members by putting up signposts with inscriptions that challenged the claimant's ownership rights. A picture is attached as Exhibit 7.*
16. *That the unbearable acts of the 1<sup>st</sup> defendant climaxed when on the 7<sup>th</sup> day of April 2014, the defendants through Paul Erokoro & Co. (Legal Practitioners) wrote to the claimant threatening to evict us from the properties even though the 1<sup>st</sup> defendant conceded that they contracted the 2<sup>nd</sup> defendant as its agent. A copy of the letter is attached as Exhibit 8.*

In paragraphs 7-12, 14, 15 & 36 of his counter affidavit filed on 15/6/2020, AdahOchoechi stated as follows:

7. *I admit Paragraph 8 of the claimant/applicant's affidavit to the extent that the terms of the grant are as set out in the Development Lease*

*Agreement of 12<sup>th</sup> January, 2006. However, the claimant/applicant's members' resolve to believe the misrepresentations of the 2<sup>nd</sup> defendant/respondent was solely their choice and constitutes an oversight without any input from the 1<sup>st</sup> and 3<sup>rd</sup> defendants/respondents. The claimant/applicant very well knew that the allocation was made to the 1<sup>st</sup> defendant and not the 2<sup>nd</sup> defendant. The claimants never sought for, nor contacted the 1<sup>st</sup> defendant/respondent to verify the authenticity of the 2<sup>nd</sup> defendant/respondent's presentation to them.*

8. *Paragraph 9 of the claimant/applicant's affidavit is false and in response thereto, I aver that the members of the claimant/applicant never bothered to do their due diligence with respect to the authenticity of title covering Plot 50, Wumba District, Abuja before subscribing to purchase their respective plots from the 2<sup>nd</sup> defendant. I further aver that the 1<sup>st</sup> defendant/respondent was not a signatory or party to the tripartite agreement.*
  
9. *I deny paragraphs 10 and 11 of the claimant/applicant's affidavit and in response to the said paragraphs, I state that by the terms of the agreement, the 2<sup>nd</sup> defendant/respondent was to bear the cost of development of the estate by building houses for sale therein; and it is only when profit is derived from the sale of the completed houses that it would be shared accordingly. Going by the Memorandum of Understanding, the 2<sup>nd</sup> defendant/respondent was only empowered to carry out sale of completed/constructed houses to recoup its investment*

*in line with the sharing formula contained therein in respect of the proceeds of the sale. There is no clause in the Memorandum of Understanding that sanctions or authorizes the sale of any undeveloped land in Plot 50, Wumba District, Abuja.*

10. *Paragraph 12 of the claimant/applicant's affidavit is false and in reply to the said paragraph, I state that the claimant/applicant's members never paid any money and neither did it receive such money from the claimant. I put the claimant to the strictest proof thereof.*
11. *Paragraph 13 of the claimant/applicant's affidavit is false and in response thereto, I state that the 1<sup>st</sup> defendant never issued any Provisional Letters of Offer to the claimant's members and neither were any documents executed by the 1<sup>st</sup> and 3<sup>rd</sup> defendants/respondents in their favour.*
12. *I deny paragraph 14 of the claimant/applicant's affidavit and in reply to the said paragraph, I state that there is no such payment for infrastructure. In fact, the 1<sup>st</sup> defendant/respondent believed at that time that the Estate was still under construction, and Plot 50, Wumba District was not occupied at that period.*
14. *Paragraph 15 of the claimant/applicant's affidavit is false and in response thereto, I aver that nobody had lawfully subscribed to Plot 50, Wumba District, FCT Abuja. Therefore, nobody had any legal right to any property in the estate. The putting up of signposts was necessitated*

*when the 1<sup>st</sup> defendant became aware that several individuals were trespassing on the land.*

15. *I admit Paragraph 16 of the claimant/applicant's affidavit to the extent that the 1<sup>st</sup> defendant's solicitors wrote to the trespassers. The 1<sup>st</sup> defendant was right to do so in order to protect its property. The 1<sup>st</sup> defendant never represented the 2<sup>nd</sup> defendant as its sales agent, neither did it give the 2<sup>nd</sup> defendant any right to sell, lease or execute ownership rights over the said property. Furthermore, that the content of the letter was clear on the invalidity of the purported sale of plots by the 2<sup>nd</sup> defendant.*

36. *The claimant/applicant has no legal right or management right over Plot 50, Wumba District, Abuja as title to the said property is vested in the 1<sup>st</sup> defendant, who in exercise of its legal right, has given management rights to the 3<sup>rd</sup> defendant.*

In paragraph 40 of his further affidavit filed on 16/6/2020, Mr.Zeph stated:

*That in response to paragraph 36, the applicant states that the issue of legal right or management right over the estate has been submitted before this Honourable Court for determination and pending when this Honourable Court makes pronouncement, the status quo should be maintained.*

The above depositions, which are irreconcilably in conflict on crucial facts, are also material and central to the determination of the claimant's claims and the

reliefs in the counter claims of the 1<sup>st</sup>& 3<sup>rd</sup> defendant. For instance, the claimant's claims include: [i] an order validating the sales of the properties to the claimant's members as was conducted by the 2<sup>nd</sup> defendant on behalf of 1<sup>st</sup> defendant in respect of Plot 50 Wumba District, Abuja; and [b] an order directing the defendants and their agents, etc. to desist from interfering with the claimant's management rights over the affairs and welfare of the Estate.

On the other hand, 1<sup>st</sup>& 3<sup>rd</sup> defendants' reliefs in the counter claim include: [i] a declaration that any agreement or contract executed by claimant conferring any right of title to any person or entity is illegal, null and void; [ii] a declaration that the claimant and its members are mere trespassers and have no title to any portion of the property known as Plot 50, Wumba District, Abuja; and [iii] an order of possession in favour of the 1<sup>st</sup> defendant of all that property consisting of Plot 50 Wumba District, Abuja.

Ordinarily, the requirement of the law is for the Court to order parties to proffer oral evidence to enable it resolve the conflicts in the affidavit evidence by virtue of section 116 of the Evidence Act, 2011, which provides:

*“When there are before a court affidavits that are irreconcilably in conflict on crucial facts, the court shall for the purpose of resolving the conflict arising from the affidavit evidence, ask the parties to proffer oral evidence as to such facts, and shall hear any such oral evidence of the deponents of the affidavits and such other witnesses as may be called by the parties.”*

In view of the fact that the Court is considering interlocutory applications, an order for parties to proffer oral evidence to resolve conflicts in the affidavits on facts which are also central or material in the determination of the main suit will amount to double hearing on the same facts or issues. The effect of such approach is that the Court is likely to make decisions or observations which may prejudice issues in the substantive suit. It is trite law that while determining interlocutory applications, courts must avoid prejudging issues that may arise for determination in the substantive suit. In the circumstance, what is the proper order for the Court to make?

In **Globe Fishing Industries v. Coker [1990] LPELR-1325 [SC]**, it was held that the approach to an application for an order of interlocutory injunction should always take into account the clear implication that the court is not to try the issues in contention in the case twice, first while considering the application for an interlocutory injunction and secondly during the trial. Once the Court is faced with a situation where it may have to do that in order to give due consideration to the application, the correct thing to do is to stop hearing the application and accelerate the trial of the substantive suit.

In the case of **Onyesoh v. Nnebedum [1992] 3 NWLR [Pt. 229] 315**, His Lordship Philip Nnaemeka-Agu, JSC held *at page 341, paras. F-G*: "... The better view is, therefore, that whenever it is possible to accelerate the hearing instead of wading through massive affidavits and hearing lengthy arguments on interlocutory injunction, the court should accelerate the hearing and decide finally on the rights of

*the parties. ...*"See also the cases of One Laptop Per Child Association Inc. & Ors. v. Oyegbola & Anor. [2016] LPELR-41499 [CA].

As rightly stated by Mr. Chinedu Zeph in his further affidavit filed on 16/6/2020, the issues of legal right and management right over the estate have been submitted to the Court for determination in the main suit. In line with the above authorities, the proper approach is to refuse the two applications for interlocutory injunction and order accelerated hearing of the suit. I so order.

---

HON. JUSTICE S. C. ORIJI  
[JUDGE]

*Appearance of Counsel:*

1. T. P. Tochukwu Esq. for the claimant/respondent; with N. S. Ekpenyong Esq.
2. Molang E. Peter Esq. for the 1<sup>st</sup> & 3<sup>rd</sup> defendants/applicants.
3. Chukwuma Ozougwu Esq. for the 2<sup>nd</sup> defendant/respondent.