

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 11 BWARI, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO.: CV/2011/2020

MOTION NO: FCT/HC/BW/M/3781/2020

BETWEEN:

IDRISU SHAIBU

(Suing Through his lawful
Attorney GODWIN INYAMA)

PLAINTIFF

AND

TONY NNAMDI NGOKA

DEFENDANT

RULING

DELIVERED ON THE 28TH JUNE, 2021

By a Motion on Notice, dated 10/08/2020 and filed on the same day, the Plaintiff/Applicant is seeking for the following reliefs:

1. **AN ORDER** of interlocutory/interim injunction, restraining the defendant/Respondent whether by himself, his agents, servants, assigns or privies however described from encroaching, continuing(sic) to encroach, erecting or continuing(sic) to erect (sic) illegal structures on the Land of the plaintiff, Plot No. 538 of about 1800m² of Dutse Alhaji Layout.
2. **AN ORDER** of interlocutory/interim injunction, restraining the defendant/Respondent whether by himself, his agents, servants, assigns or privies however described from destroying, and/or demolishing structures already put on ground by the plaintiff in his Plot No. 538 of about 1800m² of Dutse Alhaji Layout, Bwari Area Council, Abuja.

3. AND FOR SUCH FURTHER OR OTHER ORDER(S) as the Honourable Court may deem fit to make in the circumstances of the case.

The Applicant filed a 20-paragraph affidavit in support of the motion and a written address. The Respondent on being served with the application by the Plaintiff has elected not to file any process in opposition to the Motion on Notice.

Learned Counsel for the Applicant, A. Akunebu argued in his written address in support of the Motion that this application is of such nature that is dependent on the exercise of discretion by this Court in one way or the other. Learned Counsel submitted that for the Court to exercise its discretion in favour of the Applicant, the Applicant must disclose materials sufficient to convince the Court to exercise this discretion in his favour.

Learned Counsel to the Plaintiff/Applicant also argued that the principles governing the grant of an order of injunction have been settled by case law and to that end, cited the case of OGBONNA V NURTW (1990) 3 NWLR (PT.141) 696 RATIO 98. Learned Counsel to the Plaintiff/Applicant went further and expounded on each of the Principles in furthering his arguments in favour of the grant of the Motion on Notice for Interim/Interlocutory Injunction.

The learned Counsel to the Plaintiff/Applicant in conclusion, then urged this Honourable Court to exercise its discretion in favour of the Plaintiff/Applicant and grant the Application as prayed.

As I have stated earlier, the Defendant/Respondent has elected not to file any process in opposition to the instant Motion on Notice filed by the

Plaintiff/Applicant. Out of an abundance of caution, I have however satisfied myself that the Motion on Notice was served on the Defendant/Respondent Counsel on 20/08/2020 and the Hearing Notice for the date fixed for hearing of the application, being 15/10/2020, was also served on the Defendant/Respondent. The Defendant/Respondent was therefore aware of the pendency of the Motion of Notice, I so hold. I have carefully read the Motion on Notice and Affidavit in support filed by Plaintiff/Applicant and I have adverted my mind to all the authorities cited. I shall proceed to treat the application based on the process filed. To my mind, the sole issue, the determination of which will successfully dispose of this Application is:

Whether the Plaintiff/Applicant has provided sufficient materials to enable this Court exercise its discretion in favour of the Plaintiff/Applicant?

In resolving this issue, recourse must be had to the facts presented before Court has grounding the instant application. The Plaintiff/Applicant has deposed to facts in his Affidavit in Support aimed at establishing that he is entitled to the reliefs claimed in this application. I have gone through the facts particularly paragraphs 5 through 19 of the affidavit. These facts remain uncontroverted and unchallenged and the law is clear on uncontroverted and unchallenged facts the Court can properly accept and rely on uncontroverted and unchallenged facts. See the case of ARABAMBI & ANOR. V. ADVANCE BEVERAGES IND. LTD. (2005) LPELR-529(SC) where the Apex Court held thus:

"I think it is now well settled that a court can properly accept and rely upon any evidence before it which is unchallenged and uncontroverted provided that it is relevant to the issues before it.

In this case the evidence of Mr Oke was unchallenged and uncontroverted and so the lower courts are entitled to rely on it on the issue of special damages claimed. "Per KAL GO, J.S.C (Pp.38-39, paras. G-A)

The facts deposed to in support of this Application are relevant to the instant Application and are unchallenged; I hereby accept and rely on them as true. The next point of call is to determine if the Principles for the grant of this Application as laid down by the Courts in a myriad of cases favour the instant application. See the cases of OBEYA MEMORIAL HOSPITAL LIMITED V AGF (1987) 3 NWLR (Pt. 60) 325 KOTOYE V CBN (1989) 7 NWLR (Pt. 98) Pg. 419; ONWUZULUIKE V. NWOKEDI (1989) 2 NWLR (Pt. 102) Pg. 229. From the totality of the Application of the Applicant, I am satisfied of the following:

1. There is indeed a legal right to be protected.
2. There are serious issues to be tried at the hearing of the substantive suit.
3. The balance of convenience is in favour of the Applicant.
4. The Applicant has not conducted himself in a reprehensible manner.
5. The extent of the damages being done will not be adequately compensated by award of damages against the Respondent.
6. The applicant has also in his Affidavit made an undertaking as to damages.
7. There is a vital need to protect the res pending the determination of the substantive suit.

I am therefore of the opinion that the Plaintiff/Applicant has placed enough before this Court to enable the Court exercise its discretion in his

favour. On the whole, I find the application is meritorious, it is hereby ordered as follows:

1. AN ORDER of interlocutory injunction is hereby made, restraining the defendant/Respondent, whether by himself, his agents, servants, assigns or privies however described from encroaching, continuing to encroach, erecting or continuing to erect structures Plot No. 538 of about 1800m² of Dutse Alhaji Layout pending the determination of this suit.
2. AN ORDER of interlocutory injunction is hereby made, restraining the defendant/Respondent, whether by himself, his agents, servants, assigns or privies however described from destroying, and/or demolishing structures already put on ground by the plaintiff in Plot No. 538 of about 1800m² of Dutse Alhaji Layout, Bwari Area Council, Abuja pending the determination of this suit.

This shall be the ruling of this Court.

APPEARANCE:

DR. A. AKUNEBU.
Joy Ukado Esq. }
P.T. Longinus Esq. } for the Plaintiff/Applicant.

D.A Enyan Esq. for the defendant.

Sign
Hon. Judge
28/06/2021