

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 24TH DAY OF JUNE, 2021.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CV/1508/2020

MOTION NO:M/8732/2020

MAMMAN YAKUBU BARRY ----- APPLICANT

(Doing business under the name
and style of P. D. Horvest survey)

AND

IBRAHIM MOHAMMED ROTIMI ----- RESPONDENT

RULING

The Claimant/Applicant filed a motion on notice dated 16th July, 2019 brought pursuant to Order 43 of the High Court of F.C.T Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, praying for the following:

1. An Order of Interlocutory Injunction restraining the Defendant/Respondent, his agents, staff, servants, thugs and privies from entering, trespassing or further trespassing into the Claimant's allotted Plot 3729 Lugbe 1 Extension Layout, Abuja pending the determination of the substantive suit.
2. And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.

In support of the application is a 12 paragraph affidavit and a 13 paragraph further affidavit in reaction to Respondents counter affidavit

both deposed to by the Applicant, three (3) exhibits, a written address and additional written address of the Claimant as argument in support of the application. In the affidavits, Applicant averred that by OFFER OF TERMS OF GRANT/CONVEYANCE OF APPROVAL dated 29/06/1998 he was allocated in his business name Plot No. 3729 Lugbe 1 Extension Layout Abuja by the Minister of Federal Capital Territory Abuja vide Statutory Right of Occupancy No. MFCT/ZC/AMAC/LUE 3729. That he was later issued a Technical Data Plan (TDP) and Right of Occupancy Rent and Fees. That in February 2020 the Defendant led over 20 armed thugs into the said Plot and demolished his concrete fence and blocks therein, and further carted away one 40feet metal container containing 20tons of iron rods, tow (2) iron gates and two (2) big plastic water tanks kept on the land. That the Defendant claims it is one of the plots given to him as compensation by Abuja Municipal Area Council. That he has been enjoying peaceful possession of the said plot for 21years. That he wrote petitions to the Honourable Minister of FCT and the Police. That in spite of the aforesaid petitions, the defendant has continued to trespass on the said plot of land and have been threatening to kill his workers on the site which will not be compensated in damages. That unless restrained by an order of this court the defendant will continue in his act of lawlessness against him and his property. That the purported Edge Environmental Services (Nig) Ltd is not a party to this suit and not in existence in 1998 when the said plot was allocated to the Claimant. That the counter affidavit of the Respondent is false and denied.

Learned Counsel in the written addresses submitted that the Applicant will lose more if this application is not granted and he later succeeds at last. He submitted that it is the law that balance of convenience is

always in favour of the party in possession of the res in an application for interlocutory injunction. Counsel further submitted that if this application is not granted and the Defendants continue in their recklessness and lawlessness and the Applicant succeeds at last, a fait accompli would have been foisted on the Court as what is sought to be protected by the timely institution of this action would be in vain. Counsel also submitted that the Defendant/Respondent has nothing to show to the court either by affidavit or documentary evidence what he stands to lose if this application is granted. Counsel submitted that the loss that will be suffered by the Applicant if this application is not granted cannot be estimated either in terms of time or in quantum of damages. Counsel also submitted that the Applicant has proved convincingly that there are triable issues to be determined in the substantive suit. Finally counsel submitted that in order to determine where the balance of convenience rests, the court will consider who will stand to lose more if the application is not granted. Counsel submitted that the Respondent has not filed his defence to disclose his interest in the subject matter. Counsel urge the court to disregard all the averments in the Respondent's counter affidavit and grant this application prayed. Counsel referred this Court to the cases of **OBEYA MEMORIAL SPECIALIST HOSPITAL V. A.G FEDERATION & ANOR (1987) 2 NSCC (VOL 18) AT 961; SHUAIBU V. MUAZU (2007) 7 NWLR PT 1033 AT 271 AT 280 RATIO 6; SULU-GAMBARI V. BUKOLA (2004) 1 NWLR PT 853 AT 122; BELLO V. INEC (2010) 8 NWLR (PT. 1196) 342 RATIO 3** and a plethora of other decided cases.

The Defendant/Respondent filed a 35 paragraph Counter Affidavit to this application on the 18/11/2020 and a 10 paragraph Respondent's further

and better counter-affidavit to the applicant's further affidavit both deposed to by Surveyor Ibrahim Mohammed Rotimi, the Defendant/Respondent, attached are eight (8) exhibits and a written address. And in the written address raised a sole issue for determination "whether the Applicant is entitled to the grant of his application for interlocutory injunction".

I will like to state that both in the counter affidavit, further affidavit and the written address the Respondent delved into the substance of the suit which is not what is to be decided at this preliminary stage. For the Court to consider the averments of the Defendant/Respondent at this preliminary stage is tantamount to the Court determining issues that deal with the substantive suit. Therefore the court will go ahead and determine if the Applicant is entitled to the grant of his application.

The principle of law is that the Court while considering interlocutory rulings must desist from making any finding, which may prejudice the substantive suit. It is therefore necessary that a Court of law should tread safely in interlocutory applications in order not to be entangled in the web of the main issue before the Court as held in the case of **OGUNRO V DUKE (2006) 7 NWLR (PT. 978) 466**. In the instant case, the subject matter of this suit is that the Claimant is asserting ownership over Plot 3729 Lugbe 1 Extension Layout, Abuja and praying the court for declaratory reliefs and damages. At this stage, this Court cannot determine the question of who has the right to assert ownership of the property in question as to do so would in effect dispose of the main issues in the substantive suit. In **UNIVERSITY PRESS LTD V. I.K. MARTINS NIG. LTD. (2000) 4 NWLR(PT.654) 584 at 595**, the Supreme Court, per Achike, JSC, held that;

“the trial Court as well as intermediate appellate Court should desist from making positive pronouncement touching on the substantive issue while they are only engaged in determination of interlocutory matters before them. As the practice is unacceptable because it pre-judges the real matter in controversy even before argument by learned counsel have being marshalled on the substantive issue. This Court therefore must comply with the Supreme Court decision in the determination of this appeal.”

One of the main purposes of granting an interlocutory injunction as held in **Obeya v Memorial Specialist Hospital Ltd v Attorney-General of the Federation & Anor (1987) 2 NSCC p. 961** is to protect the Applicant against injury by the Respondent who is violating or about to violate those rights, which violation cannot be adequately compensated by damages even if the Applicant succeeds in the main action. The power of the court to grant an injunction where it is just and convenient so to do is a discretionary remedy. Being based on discretion, there are no hard and fast rules as to the exercise of the discretion, and every case is resolved on its own peculiar facts.

The Claimants/Applicant in the Writ of Summons stated and I reproduce;

“TAKE FURTHER NOTICE that parties shall maintain status quo”.

This I interpret to mean a commitment by the Claimant to maintain status quo. The status quo to be maintained is the state of affairs before hostility began. An interlocutory injunction will be granted to maintain the status quo pending the determination of the Applicant’s right in the

substantive suit. See **Madubuike v Madubuike (2000) FWLR (pt. 30) p.2611 at 2620.**

The averment of the Claimant/Applicant was denied seriatim by the Defendant/Respondent though he delved into the substance of the suit which this Court will not determine at this stage. One thing is crystal clear and that is, there is no peace between parties. This Court will therefore invoke its powers under the omnibus prayer 2 of the motion on notice, as it is necessary for peace to reign between parties till this suit is determined. On the purpose of an order of court to maintain the status quo the Supreme Court held in **OYEYEMI & ORS V. IREWOLE LOCAL GOVT., IKIRE & ORS (1993) LPELR-2881(SC)**

"...Also it must be noted that the whole purpose of an order to maintain the status quo is to preserve the res, the subject matter of the litigation, from being wasted, damaged, or frittered away, with the result that if the appeal succeeds, the result would be nugatory in that the successful appellant could only reap an empty judgment. When as in this case, a court of law finds that completion of a step sought to be restrained will not render the appeal, if successful, nugatory, then there is absolutely no basis for making the order to maintain the status quo." Per NNAEMEKA-AGU, J.S.C. (P. 20) paras. B-D

Consequently, **IT IS HEREBY ORDERED THAT: -**

1. STATUS QUO BE MAINTAINED BY BOTH PARTIES AS REGARDS Plot No. 3729 Lugbe 1 Extension Layout Abuja subject

matter of this suit pending the final determination of the substantive suit

2. IT IS FURTHER ORDERED THAT both parties should maintain peace and none of the parties should disturb the other's peaceful existence pending the determination of this suit.
3. The Defendant should within 5days of this ruling file their statement of defence as the Hon. Chief Judge of this Hon. Court has placed this suit to be heard in the Fast Track Division since the 27th day of April, 2020.

Parties: Absent

Appearances: Chuka Egbo for Claimant/Applicant. S. G. Kekere-Akpe for the Defendant/Respondent.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

24TH JUNE, 2021