

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 15TH DAY OF SEPTEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/2995/2020
MOTION **NO.:**
FCT/HC/M/11152/20

BETWEEN:

MRS ANUMUDU CHI-CHI ERNESTINA

CLAIMANT/APPLICANT

AND

1. ANUMUDU BRIGHT

2. ANUMUDU PRECIOUS OPUL



DEFENDANTS/RESPONDENTS

RULING

By way of a Motion on Notice dated and filed on the 26th day of October, 2020, the Claimant/Applicant seeks the following reliefs from this Honourable Court:-

1. AN ORDER of interlocutory injunction restraining the Defendants by themselves, their agents, servants, privies, and any other person acting on their behalf in whatever name, from interfering with, meddling, obstructing and hindering the Claimant/Applicant from the management and control of the properties pending the final determination of this suit, including the following:-

- i. Shop at Block 4, 23 Old Market Road, Festac Town, Lagos which the Claimant bought in 1996.
- ii. House in the Claimant's hometown at Nwokolobia, Umuelelete, in Owerri West LGA, Imo State, which was given to the Claimant by her family (the Ojjiemesi) in 1983.
- iii. Uncompleted fuel filling station at OkokoNwikoOgbaku, along Owerri to Onitsha express road, Mbaitoli, Owerri, Imo State, which belongs to the Claimant.
- iv. The 13 plots of land situate and lying at Ugwuala, UmuduruEshimeshi, Ohii in Owerri West LGA, Imo State, belonging to the Claimant.
- v. House at No. 284, Apo Mechanic Village, Apo, AMAC, Abuja belonging to the Claimant/Applicant's late husband.
- vi. House at SP 616, Apo Mechanic Village, Apo, AMAC, Abuja, belonging to the Claimant/Applicant's late husband.
- vii. House at No. 318 with Reference No. FHA/82/LEM/LUGS318, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.

- viii. House at No. 453 with Reference No. FHA/82/LEM/LUGS453, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.
 - ix. House No. 319 with Reference No. FHA/82/LEM/LUGS319, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.
 - x. Shop at Gudu Tire Plaza, Apo owned by the Claimant/Applicant's late husband.
 - xi. House in the village, Ugwuala, EshimeshiOhii, in Owerri West LGA, Imo State owned by the Claimant/Applicant's late husband.
2. AN ORDER of interlocutory injunction restraining the Defendants by themselves, their agents, servants, privies and any other person acting on their behalf in whatever name, from selling, mortgaging, alienating or parting with the title in whatever means over the properties of the Claimant/Applicant and her late husband pending the determination of this suit, including the following:-
- i. Shop at Block 4, 23 Old Market Road, Festac Town, Lagos which the Claimant bought in 1996.

- ii. House in the Claimant's hometown at Nwokolobia, Umuelelrete, in Owerri West LGA, Imo State, which was given to the Claimant by her family (the Ojjiemesi) in 1983.
- iii. Uncompleted fuel filling station at OkokoNwikoOgbaku, along Owerri to Onitsha express road, Mbaitoli, Owerri, Imo State, which belongs to the Claimant.
- iv. The 13 plots of land situate and lying at Ugwuala, UmuduruEshimeshi, Ohii in Owerri West LGA, Imo State, belonging to the Claimant.
- v. House at No. 284, Apo Mechanic Village, Apo, AMAC, Abuja belonging to the Claimant/Applicant's late husband.
- vi. House at SP 616, Apo Mechanic Village, Apo, AMAC, Abuja, belonging to the Claimant/Applicant's late husband.
- vii. House at No. 318 with Reference No. FHA/82/LEM/LUGS318, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.
- viii. House at No. 453 with Reference No. FHA/82/LEM/LUGS453, 1 R 5 Road, Federal Housing Lugbe, issued by Federal

Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.

- ix. House No. 319 with Reference No. FHA/82/LEM/LUGS319, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.
 - x. Shop at Gudu Tire Plaza, Apo owned by the Claimant/Applicant's late husband.
 - xi. House in the village, Ugwuala, EshimeshiOhii, in Owerri West LGA, Imo State owned by the Claimant/Applicant's late husband.
 - xii. The bank books, share certificates, insurance and pension documents belonging to the Claimant/Applicant's late husband.
3. AN ORDER of mandatory injunction directing the Defendants to forthwith deliver and submit to the Registrar of this Court, all the original title documents in their custody relating to the properties of the Claimant/Applicant and her late husband SP AnumuduEkechi Moses as aforementioned, pending the final determination of this suit.
4. AN ORDER of interlocutory injunction restraining the Defendants by themselves, their agents, servants, privies and any other person acting

on their behalf in whatever name , from further intimidating, harassing, attacking and assaulting the Claimant/Applicant in their desperate bid to forcefully takeover ownership and management of the aforesaid properties, pending the determination of this suit.

5. AND FOR SUCH FURTHER ORDERS that this Honourable Court may deem fit to make in the circumstances of this case.

The Claimant/Applicant premised the application upon five grounds, namely, that the Claimant/Applicant was the owner of the properties itemized in the first and second reliefs as Nos. (i), (ii), (iii) and (iv); that the Claimant/Applicant was the only spouse of the late SP AnumuduEkechi Moses and, during his lifetime, jointly and severally owned the properties itemized in the first and second reliefs as Nos. (vi), (vii), (viii), (ix), (x), (xi); that the Defendants/Respondents broke into the matrimonial bedroom of the Claimant/Applicant and removed the documents of title of the aforementioned properties; that the Defendants/Respondents forcefully took control of the management and control of the aforementioned properties without the consent of the Claimant/Applicant and are attempting to sell the said properties; and that the Defendants/Applicants have been intimidating, harassing, attacking and assaulting the Claimant/Applicant over the ownership and control of the aforementioned properties.

The application was supported by a 25-paragraph affidavit to which were annexed five exhibits, to wit, the certificate of death of the late Anumudu Moses, the deceased husband of the Claimant/Applicant and father of the Defendants/Respondents, a police extract of loss of documents in relation to the documents of title of the aforementioned properties, a letter written to the Solicitor to the Claimant/Applicant by the Defendants/Respondents, a letter of demand from the Claimant/Applicant's Solicitor to the Defendants/Respondents demanding a release of the documents of title and a halt in their interference with the estate of the deceased and attack on the Claimant/Applicant and, lastly, the certificate of marriage between the Claimant/Applicant and her deceased husband and father of the Defendants/Respondents. Also filed in compliance with the Rules of this Honourable Court is a written address which embodied the legal argument of the Claimant/Applicant in support of her application.

Briefly, the facts which support the application as deposed to in the affidavit can be summed up as follows: that the husband of the Claimant/Applicant and father of the Defendants/Respondents died intestate on the 4th of June, 2020 and, subsequent upon his death, a tussle ensued between the Claimant/Applicant and the Defendants/Respondents over the ownership, control and management of the properties listed in the motion papers and

which the Claimant/Applicant claimed were either her personal properties or were jointly and severally owned by her and her late husband. According to the Claimant/Applicant, in their bid to wrestle control and management of the properties from her, the Defendants/Respondents invaded her matrimonial bedroom, took the bag containing the documents of title to those properties and have been representing themselves to the tenants on those properties as the persons with the lawful authority over the properties. In addition to the above facts, the Claimant/Applicant asserted that the Defendants/Respondents have been harassing her, assaulting her and attacking her in furtherance of their objective to consolidate their control over the properties.

In the written address in support of the application, the learned Counsel for the Claimant/Applicant formulated a sole issue for determination, to wit: “whether the Claimant/Applicant has satisfied the threshold for this Honourable Court to exercise his discretion in her favour in granting this application.” In his argument on the issue, learned Counsel submitted that the Court was under an obligation to make an injunctive order wherever there is a legal right to protect and where the subject matter of the substantive suit would be dissipated before the final determination of the suit. While conceding that interlocutory injunctions are not granted as a

matter of course but at the discretion of the Court, learned Counsel submitted that such discretion must, however, be exercised judicially and judiciously.

Citing the cases of *Kotoye v. CBN &Ors* (1989) LPELR-1707 (SC) and *Temewei&Ors v. Benbai&Ors* (2015) LPELR-25131 (CA), learned Counsel contended that the Courts over the years have established certain conditions as irreducible minimum for the grant of an interlocutory injunction. Those conditions were existence of a legal right, substantial issue to be tried, balance of convenience, irreparable damage or injury, conduct of the parties and undertaking as to damages. He submitted that the Claimant/Applicant in the instant application had satisfied all the conditions listed above. He therefore urged this Honourable Court to grant all the reliefs sought in the application.

In support of his argument on the sole issue he formulated, learned Counsel for the Claimant/Applicant cited and relied on the following cases: *Ubani v. Ogolo* (1997) LPELR-6303 (CA); *Alcatel Kabelmetal Nigeria Plc &Ors v. Ojugbele* (2002) LPELR-5240 (CA); *Governor of Ekiti State v. Ojo* (2006) 17 NWLR (Pt. 1007) p. 125 paras F-G; *Duwin Pharmaceutical and Chemical Co. Ltd v. Beneks Pharmaceutical and Cosmetics Ltd &Ors* (2008) LPELR-974 (SC);

In response to the Claimant/Applicant's Motion on Notice, the 2nd Defendant/Respondent filed a Counter-Affidavit. The Counter-Affidavit was filed on the 30th day of March, 2021. The learned Counsel for the 2nd Defendant/Respondent presented the Counter-Affidavit of the 2nd Defendant/Respondent and adopted the written address in support of the counter-affidavit thereof on the 24th of June, 2021. In so doing, he pointed out to the Court that since none of the averments in the Counter-Affidavit was challenged by the Claimant/Applicant, the Court should deem same admitted by the Claimant/Applicant.

Learned Counsel for the Claimant/Applicant in his reply on points of law, referred this Court to the provisions of Order 43 Rule 1 (3), Order 49 Rules 4 and 5, and Order 56 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018. He submitted, pursuant to the provisions of the Rules aforecited that since the 2nd Defendant/Respondent filed his Counter-Affidavit out of time and did not seek for and obtain the leave of Court to file same out of time; nor did he pay the penalty stipulated under the Rules for late filing of processes, there was nothing before the Honourable Court for the Claimant/Applicant to deny or, even, respond to for that matter. He therefore urged this Honourable Court to discountenance in its entirety the Counter-Affidavit of

the 2nd Defendant/Respondent and treat the affidavit in support of the Claimant/Applicant's Motion on Notice as unchallenged and uncontroverted.

Before I delve into the meat of my Ruling, I have to consider the provisions of Order 43 Rule 1 (3), Order 49 Rules 4 and 5, and Order 56 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 within the context of a party's constitutional right to fair hearing. This is to enable this Court consider whether it is proper to treat the affidavit in support of the Claimant/Applicant's Motion on Notice as unchallenged.

Order 43 Rule 1 (3) provides thus:

“Where the other party intends to oppose the application, he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter-affidavit.”

Order 49 Rules 4 and 5 stipulate as follows:

Rule 4: “The Court may, as often as he deems fit and either before or after the expiration of the time appointed by these rules or by any judgment or order of the court, extend the time or adjourn for doing any act or taking any proceedings.”

Rule 5: “Any party who defaults in performing an act within the time authorized by the Court or under these rules, shall pay to the Court an additional fee of ₦200.00 (Two Hundred Naira) for each day of such default at the time of compliance.”

Order 56 Rule 1 specifies that

“Where any party defaults in filing any court process other than a memorandum of appearance within the time prescribed under the provisions of these rules, such party shall pay the sum of ₦200 Naira Only for each day of default.”

I have carefully perused the contents of the case file and the endorsements on the processes filed therein. The Claimant/Applicant’s Motion on Notice was dated and filed on the 26th of October, 2020 – the same date the Writ of Summons was dated and filed. The Defendants/Respondents were served with the Motion on Notice on the 25th of February, 2021. By virtue of Order 43 Rule 1(3) the Defendants/Respondents, if they intended to challenge the Motion on Notice, should have filed their Counter-Affidavit on or before the 3rd of March, 2021.

The 2nd Defendant/Respondent filed his Counter-Affidavit on the 30th of March, 2021. That was twenty-seven (27) days after the date he was

required under the Rules of this Honourable Court to file his Counter-Affidavit. Order 49 Rule 4, under such circumstances, allows the Court, upon an application to that effect, to enlarge the time for doing any act permitted under the Rules subject to terms imposed under the Rules. Order 49 Rule 5 and Order 56 Rule 1 stipulate that where an act is to be done outside the time frame allowed under the Rules and pursuant to an Order of Court to that effect, the party in default shall pay the sum of ₦200.00 (Two Hundred Naira) only at the time of compliance for each day he is in default. The 2nd Defendant/Respondent, having been in default since the 4th of March, 2021, should have sought for and obtained the leave of this Honourable Court to file his Counter-Affidavit out of time. Upon the leave being granted, the 2nd Defendant/Respondent should have paid the sum of ₦200.00 (Two Hundred Naira) only per day from the 4th of March, 2021 till the 30th of March, 2021.

I have carefully checked both the record of proceedings of this Honourable Court and the all the processes filed therein. There is nothing to indicate that an application for extension of time to file his Counter-Affidavit was ever made by the 2nd Defendant/Respondent. There is nothing in the record of this Court to show that the 2nd Defendant/Respondent paid the penalty stipulated by the Rules of this Court.

In **FBN Plc v. TSA Industries Limited (2010) 15 NWLR (Pt. 1216) 247** the Supreme Court per Adekeye, JSC held that:-

“Rules of Court are to regulate matters in court and help parties in the presentation of their case within a procedure made for the purpose of a fair and quick dispensation of justice in the suit. The rules of court are designed to ensure that justice is obtained by parties with ease and certainty...”

In **SegunAkinsuwa v. The State (2019) 13 NWLR (Pt. 1688) 161**, the apex Court held inter alia that ***“The rules of court, like orders of court, are not made for fun. They are meant to be obeyed and/or complied with. A party who ignores or disobeys the rules or orders of court does so to his own detriment.”***

This Court cannot close its eyes to the non-compliance by the 2nd Defendant/Respondent with the mandatory provisions of the Rules of this Court. In view of the foregoing, therefore, I have no hesitation in holding that the failure of the 2nd Defendant/Respondent to comply with the mandatory provisions of the Rules of this Court is not an oversight that will be treated as an irregularity; it is fundamental defect that goes to the root of the competency of the counter-affidavit.

The implication is that the counter-affidavit of the 2nd Defendant/Respondent filed on the 30th of March, 2021 is incompetent. It is not only incompetent but also insupportable in law as there is nothing to hold it up. In other words, there is counter-affidavit before this Honourable Court. The depositions in the affidavit in support of the Motion on Notice of the Claimant/Applicant are, therefore, unchallenged and will be treated as such by this Honourable Court.

In in the case of *Akin Adejumo & 2 Others v. Ajani Yusuf Ayantegbe (1989) 6 S.C. 61 at page 89 or (1989) 3 NWLR (Pt. 110) 417 Ratio 19 at page 424 or 435*, the Supreme Court per Nnaemeka-Agu JSC held that ***“Any evidence not challenged or contradicted ought to be accepted as there is nothing on the other side of the balance.”***In *Ajomale v. Yadaut & Anor (1991) LPELR-306 (SC)* the *locus classicus* on this subject, the Supreme Court per Nnaemeka-Agu JSC held that

“It is, of course trite law that when, in a situation such as this, facts are provable by affidavit and one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary if he disputes the facts. When as in the instant case, such a party fails to swear to an affidavit to controvert such facts, these facts may be regarded as duly established.”

For the Court to act on such unchallenged affidavit evidence, however, such uncontradicted affidavit evidence must be cogent and compelling and capable of grounding the reliefs sought. In ***Ogojeifo v. Ogojeifo (2006) LPELR-2308 (SC)***, the apex Court held that ***“...It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words, the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant.”***

I have carefully considered the facts deposed to in the affidavit in support of the application. I have also adverted my mind to the reliefs sought in the application. Principally, the application is seeking for preservative orders of this Court in respect of the *res* specifically identified in the application. It has been settled beyond contestations that injunctions are remedies which are grantable at the discretion of the Court. In making preservative orders, whether contested or unchallenged, the Court is guided by the concern to exercise its equitable jurisdiction and its discretionary powers judiciously and judicially. In ***Owerri Municipal Council &Ors. v. Onuoha&Ors (2009) LPELR-8422(CA)***, the Court of Appeal held that ***“An order of interlocutory injunction is granted upon exercise of discretionary***

power of the Judge in his equitable jurisdiction. Like with all other discretions, the Judge must act judicially and judiciously on the facts placed before him.”See also ***Adeleke v. Lawal(2014) 3 NWLR (Pt. 1393) 1 at pages 17 – 20***and ***Adenuga v. Odumeru (2001) 2 NWLR (Part 696) 184 at 185 per Karibi - Whyte JSC.***

In a long line of judicial authorities, such as ***Adeleke v. Lawal, supra, Ladunni v. Kukoyi (1972) LPELR-1739; AmericanCynamid Co. v. Ethicon Ltd (1975) A.C. 396; Obeya Memorial Specialist Hospital v. Attorney-General of the Federation & Anor (1987)3 N.W.L.R. (Pt.60) 325;Kotoye v. Central Bank of Nigeria(1989) 1 NWLR (PT.98) 419; Saraki v. Kotoye(1992) 9 NWLR (Pt. 264) 156;Onyesoh v. Nnebedum(1992) 3. NWLR (Pt.229) 315; Buhari v. Obasanjo(2005) 13 NWLR (Pt.941)1*** among others, the courts have laid down the conditions that must exist before an application for interlocutory injunctions can succeed. These conditions are: (1) existence of a legal; (2) substantial issue to be tried; (3) balance of convenience; (4) irreparable damage or injury; (5) conduct of the parties; and (6) undertaking as to damages. Learned Counsel for the Applicant also adverted the mind of this Court to these conditions in his written address in support of the application.

There is no doubt that the facts as disclosed in the affidavit more than ably ground the reliefs sought in the application. Those facts, too, established the fulfilment by the Claimant/Applicant of those prerequisites for the grant of applications of this nature. I have also considered the reliefs sought in the substantive suit. It is my considered belief that granting the reliefs sought in this interlocutory application will not jeopardise, in any way, the substantive suit.

In view of the foregoing, therefore, the reliefs sought in the Motion on Notice of the Claimant/Applicant with Motion Number FCT/HC/M/11152/2020 are hereby granted as follows:-

1. AN ORDER of interlocutory injunction restraining the Defendants by themselves, their agents, servants, privies and any other person acting on their behalf in whatever name, from selling, mortgaging, alienating or parting with the title in whatever means over the properties of the Claimant/Applicant and her late husband pending the determination of this suit, including the following:-

- i. Shop at Block 4, 23 Old Market Road, Festac Town, Lagos which the Claimant bought in 1996.**

- ii. **House in the Claimant's hometown at Nwokolobia, Umuelelrete, in Owerri West LGA, Imo State, which was given to the Claimant by her family (the Ojjiemesi) in 1983.**
- iii. **Uncompleted fuel filling station at OkokoNwikoOgbaku, along Owerri to Onitsha express road, Mbaitoli, Owerri, Imo State, which belongs to the Claimant.**
- iv. **The 13 plots of land situate and lying at Ugwuala, UmuduruEshimeshi, Ohii in Owerri West LGA, Imo State, belonging to the Claimant.**
- v. **House at No. 284, Apo Mechanic Village, Apo, AMAC, Abuja belonging to the Claimant/Applicant's late husband.**
- vi. **House at SP 616, Apo Mechanic Village, Apo, AMAC, Abuja, belonging to the Claimant/Applicant's late husband.**
- vii. **House at No. 318 with Reference No. FHA/82/LEM/LUGS318, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.**
- viii. **House at No. 453 with Reference No. FHA/82/LEM/LUGS453, 1 R 5 Road, Federal Housing Lugbe,**

issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.

- ix. House No. 319 with Reference No. FHA/82/LEM/LUGS319, 1 R 5 Road, Federal Housing Lugbe, issued by Federal Housing Authority, which is jointly owned by the Claimant/Applicant and her late husband.
- x. Shop at Gudu Tire Plaza, Apo owned by the Claimant/Applicant's late husband.
- xi. House in the village, Ugwuala, EshimeshiOhii, in Owerri West LGA, Imo State owned by the Claimant/Applicant's late husband.
- xii. The bank books, share certificates, insurance and pension documents belonging to the Claimant/Applicant's late husband.

2. AN ORDER of mandatory injunction directing the Defendants to forthwith deliver and submit to the Registrar of this Court, all the original title documents in their custody relating to the properties of the Claimant/Applicant and her late husband SP

AnumuduEkechi Moses as aforementioned, pending the final determination of this suit.

3. AN ORDER of interlocutory injunction restraining the Defendants by themselves, their agents, servants, privies and any other person acting on their behalf in whatever name, from further intimidating, harassing, attacking and assaulting the Claimant/Applicant in their desperate bid to forcefully takeover ownership and management of the aforesaid properties, pending the determination of this suit.

4. With regards to Relief No. 1 sought by the Claimant/Applicant, I am of the opinion, and I so order, that Counsel for both parties should sit down with their clients and work out a temporary modality for the control and management of all the afore-listed properties pending the hearing and determination of the substantive suit. This modality should be filed on or before the next adjourned date.

This is the Ruling of this Honourable Court delivered today, the 15th day of September, 2021.

HON. JUSTICE A. H. MUSA

JUDGE
15/09/2021