

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 12th JULY, 2021

FCT/HC/CV/3081/20

BETWEEN

AIR CDRE ADESOJI ABRAHAM BADERINWA-----CLAIMANT

AND

OGBONNAYA PETER O-----

DEFENDANT

RULING

This is motion on notice no M/1911/2021 dated and filed on the 26th February, 2021 brought pursuant to order 42 rule 8 of the High Court of the FCT Civil Procedure Rule 2018 and under the inhering jurisdiction of the Court where in the claimant is praying the court for the following:-

- 1) An order of interlocutory injunction restraining the defendant either by themselves, servant, privies, agents workers howsoever called from continuous entering into and committing act of trespass on plot 507 ,Phase AA3 Layout Kuje Abuja measuring about 2000 square meter pending the determination of the substantive suit.

2) And for such further order (s) as this court may deem fit to make in the circumstance, attached to this application is a 1a paragraph affidavit deposed to by Claimant application exhibits marked A-4 and a written address in support the facts averred to in the exhibit include inter alia that he is the lawful owner of plot no 504 phase AA3 layout Ku je Abuja measuring about 2000 square meter, the land in case which he purchase from original allottee, tibrin sale sometime in 2010 for N2,000,000.00.

-That document concerning the said land are marked as exhibits A-E.

-That application erected a dowry fence around the land and had over 500 molded blocks on the land.

-That the defendant and his agent flattened the said dowry fence destroyed and carted away with the molded blocks and erected a new fence.

-That FCDA marker "stop work" on the fence erected by the Defendant.

-That the Defendant required to stop work thereby exposing the land to the danger of revocation by the government.

-That claimant reported the matter to the police who cautioned both claimant and Defendant.

-That the draft went back to the land meant for residential purpose and is using same for purpose; selling of beer and other alcoholic drinks which in turn could cause the appropriate authority to relocate the land allocation.

-That the claimant will suffer irreparable loss which the Defendant is not in a position to compensate the land is revoked.

-That if the defendant is not restrained he may continue with such development on the land that may be very costly to remove if this case is concluded in the claimant favour.

In claimant written address, he submit that an interior injunction is an equitable remedy granted by the court before the substantive question raised in the case is finally determined see ***U.T.B LTD VS DOLMETSH PH (NIG)LTD (200) 16 NWLR (pt 1061) 520 of 545*** paragraph E-F, ***MILLING GERMOR OF LAGOS STATE VS OJUKUN (1986)2 NWLR (PT18)610. OBEYA MEHO VS A.G FED (1987)3 NWLR (PT60)325.***

Claimants submits that the principles usually considered to grant an interim injunction all align with the claimant.

That paragraph 3-7 of application affidavit in support of motion clearly states that the Applicant was allotted the plot

of land by the minister of the FCT in 2010, that applicant took possession and created a dowry fence claimant opined that these facts are clear proof that the claimant has a right known to law and same is being threatened see

KOTOYE VS CBN (1989)1NMLR (pt98)419.

-That the claimant also wishes this court to restrain the defendant from doing an act capable of causing serious injury to the claimant property.

-That by claimant paragraph 4-8 of the affidavit in support of motion the status quo that existed was the dowry fence and iron gate before the unlawful entry by the defendant on the said land.

-That by claimant paragraph 11-16 of affidavit in support, damages cannot adequately compensate the applicant as what the Defendant is doing on the land now fundamentally different from what the claimant intends to do the land.

-That by claimant paragraph 11-17 of affidavit in support the Claimant will suffer more if the application is not granted. See

AFRICAN CONTINENTAL BANK LTD VS ANAGBORO (CI91)2 NWLR (PT 176)711 and urged the court to grant the

claimant application Defendant filed counter affidavit to Claimant motion dated and filed on the 13th March, 2021 deposed to by one

Raphael Emeka James un indentified. The said deponent denied paragraph 1-19 of claimant affidavit in support.

-That sometime in October 2018 the Defendant/depose indicated interest to buy plot 507 AA3 layout through his brother Eze who took him to the defendant Emmanuel Elahoter for negotiation but before payment they made confirmation and verification at the kuje Area council and FCDA. Where it was confirmed the name of the Defendant as the valid and lawful allottee.

-That upon confirmation of the plot the sum of ~~N~~6,500.00 was paid to Mr. EMIL Elahator who bought the land from one Mr. Sunday A Audu who bought directly from the Defendant being the original allottee and the document were transferred to the Defendant/Respondent deponent and same took possession immediately and started development.

-That the property was bought with a fallen dowry fence at the site and defendant never demolished any fence.

-That the claimant offer investigating was unsatisfied with his finding and complain at the Police Station Kuje where after investigation, it was revealed that the plot of land belongs to the Defendant Obonnaya Peter O.

-That the development on plot 507 had long been made before investigation and there are existing structures already on the land and the Defendant workers live on it.

-That part of the area was leased to 2 additional workers who roast fish and sell drinks and food.

-That grant of such an injunction would cause additional and untold harm and continued suffering to the defendant and his agents.

In his written address the defendant raised the issue for detention where he submits that by paragraphs 13-18 of his counter affidavit the land in question has already been erected or built and submit that an order of interlocutory injunction is not more a remedy for an act which has already been carried out see ***BUHARI VS OBESNYO (VO11) (2004)LWRN 2 at paragraph 20, JOHN HOLT VS HOLT WORKER (1963)1ALL NLWR 379.***

-That the balance of convenience is in favour of the defendant as the Claimant has not attached any use or property interest to the land other than merely stating ownership to the land. In paragraphs 16, 18-20 of his counter affidavit the respondent states that he and his workers live and rent out part of the land.

The defendant states that the applicant has no legal right whatsoever in respect of the plot in question and urged the court

to refuse the application attached to the Defendant canter affidavit and written address are unmarked annexure.

Claimant filed a further affidavit in support of defendant and filed on the 16th June, 2021 deposed to by one Peace Idiong a legal practitioner in the law firm of cause to the Claimant/Applicant where in deponent avers that the defendant canter affidavit does not deny or contradict the issue in the claimant affidavit experring the issue of illegal act of the Defendant and the negative consequence on the claimant. Claimant denies paragraph 5-13 of defendant canter affidavit that paragraph 14 of canter affidavit is clearly false as the make slifi structures were recently completed as the defendant took advantage of the prolonged delay of over a year in reassignment of this case to another judge and rushed to erect these illegal structures on the land there by necessity this suit by the claimant.

-that paragraph 15-17 of defendants canter affidavit are admission that he erected or illegal structures on the land.

-that the law and equity do not protect a completed act which is slrunded in illegality as the admission by the defendant in his canter affidavit that he erected same illegal structures on the disputed land is a brazen display of above the low attitude which can only be name by the court.

In the claimant written address in support of his further affidavit he submit that a completed act contemplated by the law is such that is not tainted with illegality as the defendant supposed completed act is shrouded in illegality and the law and equity will refuse to any form of illegality. See ***NWOFU VS APP(2021)16 NWLR (PT 7749)28 at 62paragraph B, see also GEORGE VS DOMINION FLOUR MILLS LTD (1963)1 ALL NLR 71 at 74*** Claimant submits that by his paragraph 10-12 Defendant erected make shifts/illegal structures on the land in dispute without approval of development control and equally selling drinks and altering the land use from residential to commercial purpose and that the likely category of the illegally acts of the defendant is that the land may be revoked by the appropriate authority.

-that defendant rather than deny these facts and produce building approval the Defendant has arrogantly supplied the court with photograph of his illegal structure as seen in defendant paragraph 15 to 18 of counter affidavit.

-That the uncontroverted facts averred by the claimant in paragraph 11 of affidavit in support that the fence work on the land was marked since 2018 by development central because there was no approval and while a civil case relating to the land in issue was pending in court and trial was delayed following the

demise of the presiding judge the Defendant rushed and erected illegal structure on the land and is selling alcohol drinks and other illicit activities on a land meant for residential purpose while seeking protection of a Court of justice to continue illegality. On the balance of convenience, Claimant submits that the Defendant does not have anything to lose and does not care whether or not the land is revoked by the authorities that is why after the fence was marked to be removed for lack of approval the Defendant still put up structure during the pendency of this suit in Court.

Balance of convenience is not measured by hardship or inconvenience but is measured inter alia by whether damages in the form of monetary values will adequately compensate the Respondent in the institution of a particular case. See ***WAIL VS AMAEFULE (2014) 12 NWLR (Pt 1421) 259 at 331 paragraphs f-g.***

That allowing the Defendant to remain on the land in the face of illegality admitted by him will amount to allowing the Defendant to foist upon the Court a fait accompli see ***EZEBU VS F.A.T. B LTD (1992) NWLR (pt 220) 699- 725 paragraphs A-B.***

That the admission made by the Defendant in his counter affidavit shows that the illegal activities which are threatening and

are capable of causing the provocation of the land in issue are ---
- acts which requires a temporal judicial restraint or order from
the Court to preserve the res from being revolved in dealing with
an interlocutory application the Court will confide itself strictly to
the point which it is called upon to decide see **SARELI VS
KOTOYE supra see also HALS BURYS LAW OF ENGLAND
3RD EDITION VOL1 21 page 369 at 773.**

In an application for the interlocutory injunction the Applicant
must establish a probability or a strong prima facie case that he is
entitled to the right of whose violation he compliments and
subject to this being established, the governing consideration is
the maintenance of the status quo pending the trial it is well
established that in deciding whether the matter shall be
maintained in status quo regard must be heard to the balance of
convenience and to the extent to which any damage to the
Plaintiff by the granting of an injunction of course the burden of
proof lies on the Applicant see **LADUNNI VS KUKOYI & ORS
(1972) 1 ALLWLR (PT1) 133 and also OBEYA MEMORIAL
HOSPITAL VS A.G FEDN. (supra)** while going through this file
it becomes imperative to find out who is the Defendant in this
case. On the face of the file before the Court same contained no.

FCT/HC/CV/3081/2020 between AIR COMMANDER ADESOJI ABRAHAM BADERINWA VS OGBONNA PETER O.

All the processes, hearing notices served through the Defendant Counsel memorandum of appearance, has the name of the Defendant as Ogonnaya Peter O.

However the counter affidavit to the Claimants motion was deposed to by one Raphael Emeka James who in paragraph 5 of the Counter affidavit refer to himself as Defendant/Deponent. Assuming, that by the Deponent paragraph 6 where he list some people who gave power of attorney firstly from Ogonnaya Peter to Sunday A. – Audu to Emmanuel Ekater and then to Raphael Emeka James and his wife, should not his counter affidavit state that Ogonnaya Peter O. who listed as the Defendant in this case and by virtue of that is conversant with the facts and information the deponent at a particular place and time?

Section 115 (1) (3) (4) of the Evidence Act provides:-

1. Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness deposed either of his own personal knowledge or from information which he believes to be true.
2. When a person deposes to his belief in any matter of fact, and his belief is derived from any ---- other than his own personal

knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

3. When such belief is derived from information received from another person, the name of his informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and circumstances of the information. See ***WAECO LTD VS FURMITURE INTL OIL LTD ORS (2020) LPELR 49884 CA.*** however the case before the Court no wherein the Defendant's Counter affidavit has the deponent Raphael Emeka James. He did not disclose the source of his information and knowledge of averment. He has not been joined as a party to this suit. Neither is his name listed as the Defendant in the suit. The Defendants counter affidavit offences section 115 of the Evidence Act. I have gone through the file completely I have not come across any fact or transaction or evidence that shows that at anytime the Claimant had contact or any transaction with the Defendant Ogbonnaya Peter O. throughout the claimants affidavit in support, he refer to the Defendant which ordinarily one would assume is Ogbonnaya Peter O. There is no counter affidavit deposed to by Ogbonnaya Peter O. The name Defendant in Claimants paragraph 13 of affidavit in support he avers.

That I reported the matter to the police at Kuje and the police cautioned the Defendant and I to maintain peace by staying away from the land pending their investigation the deponent paragraph 10 of the Defendant counter affidavit reads:-

That at the Kuje Police Station parties were invited, statements were obtained and demanded various title documents from the parties for investigation and order everyone to stop pending the outcome of the investigation. This uncontroverted fact from Claimants paragraph 13 of affidavit in support and deponents paragraph 10 of Defendants Counter affidavit made me think that the Claimant was dealing with the deponent as the Defendant. In ***GREEN VS GREEN (1987) NSCC paragraph 115*** at page 121 parties in a case is defined as persons whose name appear on the record as Plaintiff or Defendant in the case of ***FAWENLIN VS NBA (NO1) 1989 2 NWLR (PT 105) PG 494 at pg 550.***

A party to an action is a person whose is designated on record as Plaintiff or Defendant the term "party" refers to that person(s) by or against whom a legal suit is sought whether natural or legal persons but all others who may be affected by the suit in directly or consequently are persons interested and not parties see ***BELLO VS INEC & ORS (2010) LPELR 767(SC).***

In this case who is the legal suit being sought against? Is it Ogbonnaya Peter O. who is listed as the Defendant, whom notice of hearing has been served on through his Counsel, who has entered a memorandum of appearance but yet has not deposed to a counter affidavit not informed another to depose on his behalf or is the suit against Raphael Emake----- who is not listed as a Defendant anywhere in the Courts record but has deposed to the only Counter affidavit and named himself deponent /Defendant (see Defendants paragraph 5 of but has not stated anywhere the --- of his knowledge of this case and how he acquired such knowledge thereby offence section 115 of the Evidence Act.

The law is trite, an action or suit commenced by wrong or improper parties cannot be instituted in law. Same would be struck out for being incompetent.

Therefore any action, whether an originating one or an Appellate one , if commenced or initiated by wrong or improper parties would be incompetent in law. I find support from the aforesaid proposition of principles' of law see ***ADAELAKAN VS ORUKU 92006) 11 NWLR (pt 992) P 625 Q 646 see also TILLY GYADO & CO. NIG. LTD & ANOR VS AMCON 92014) LPELR 22518 CA.***

It is not the Courts duty to determine and fish out who the defendant in this case is. The Defendant did not endorse or mark his exhibits and this is highly deprecated . Counsel is expected indeed it is expedient that Counsel endorses on the documents annexed as exhibits.

It is not the function of parties to identify exhibits by marking same see ***OGUNBABO VS FRN & ORS (2013) LPELR 20551 (CA).***

Having substantially analyzed the position of both the Claimant and the Defendant. I am strongly of the view that the counter claim which ipos factor officio see 115 34 and 8 of the Evidence Act made me to completely this regard same accordingly same is hereby struck out.

Equally having failed to file the application appropriately is it my ----- of the principle of law that the application is incompetent and same is hereby refused. The reasons state above as well as the judicial authorities and the cases cited made me to hold so.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
12/7/2021

Appearance

Peace Idiong:- For the Claimant

Peace:- The matter is for ruling.. we are ready subject to
Courts convenience

Court:- Ruling read in open Court

Linus Basseyy :- For the Defendant

Linus Basseyy:- We are grateful for the ruling. May we take a
date for hearing.

Peace Idiong:- We are grateful.

Court:- This matter is adjourned to the 20th
September, 2021 for defence/ hearing.

Sign
Judge
12/7/2021

