

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

**BEFORE: HIS LORDSHIP HON. JUSTICE JUDE O. ONWUEGBUZIE
COURT 31 APO
SUIT NO: FCT/HC/M/1980/2021**

RULING

BETWEEN:

GETFIT TECHNOLOGIES LTD-----CLAIMANT/APPLICANT

AND

ABUJA ELECTRICITY DISTRIBUTION } DEFENDANT/RESPONDENT
COMPANY PLC----- (AEDC) }

By a motion on notice dated 26th February, 2021 with motion **No: M/1980/2021**, brought pursuant to section 6(6) A and B of the Constitution of the Federal Republic of Nigeria 1999 (as amended) Order 43 Ruler 1(1), 3(1) and 9 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018, and Under the Inherent Jurisdiction of this court. The applicant prays for the following orders:

- (1) **An Order of Interlocutory Injunction or Mandamus** compelling the defendant and or its servant's agents or privies to restore electricity back to the claimants prepaid metre number **04174220139** at **No. 8, Portnovo Street, Wuse II, Abuja** pending the hearing and determination of this suit.

- (2) **An Order of Interlocutory Injunction** restraining the defendant and/or its servants, agent or privies from further disconnecting the Claimant's Electricity cable or tempering with the Claimant's electricity supply to the prepaid meter number **0417220139** at No. 8, Portново Street Wuse II Abuja pending the hearing and determination of this suit.
- (3) **And for such other further order or orders** as this Honourable Court deem fit to make in the circumstance of this application.

The application is supported by a 28 paragraph affidavit deposed to by one **Dibia Jude Isioma** a financial accountant and staff in the office of the Claimant/Applicant.

The deponent averred that the Claimant/Applicant is a private company registered and doing business in Nigeria while the defendant is a private company carrying on the business of electricity distribution in its office in Abuja. The deponent stated that the Claimant/Applicant depends on electricity to carry on its business. He added that when the Claimant/Applicant moved into occupation of its present address of No. 8 Port-novo Street Wuse II Abuja in 2019, it inherited the Defendant's issued prepaid metre number **04174220139** in the name of Alh. Ibrahim Sudan and that it has been recharging it with credit unit ever since.

The deponent further averred that between September and November 2020, the Claimant/Applicant purchased unit of electricity light worth ₦ 500,000 = to avoid incessant disruption of its business activities due to exhaustion of credit unit. The deponent added that prior to this time it consumes about ₦ 40,000 = worth of electricity per month and that after the tariff increment in September 2020, by the Defendant/Respondent then the consumption rose sharply to ₦ 70,000 = per month and that when the tariff increment was reversed in October 2020, the

Claimant has purchased about 400,000 = worth of electricity, He attached some of the purchase receipt as exhibits. The deponent further averred that the Claimant/Applicant shutdown for festive period and for end of the year 2020, and later resumed on 11/01/2021. He added that the Claimant/Applicant operates full day on Mondays to Fridays and half day on Saturdays. The deponent stated that the Claimant/Applicant has no heavy gadgets that consume electricity and that nobody sleeps overnight in Claimant/Applicant's office and that whenever the Claimant/Applicant closes for the day, it changes its light to neutral to avoid overnight consumption of any form.

Furthermore, the deponent averred that it was rather a rude shock and highly provocative that on or about the 15/01/2021, the Defendant served the Claimant/Applicant a bill which the Defendant tamed **RECOVERY NO.200260379015**" in the crazy sum of #229,252.44) purporting same to be bill for the period of 16/12/2020.

The deponent further stated that the said bill is Illegal, wrongfully fraudulent and unjustifiable as it is aimed at running the Claimant/Applicant out of business.

The deponent also deposed the particulars of fraud. He further deposed that since the service of the said bill, various staff of the Defendant have been on daily basis invading the Claimant/Applicant's premises, disrupting its business activities and demanding for immediate payment of the sum of • **229,252.44** = He further stated that this made the solicitors to write the Defendant a letter of complaint and copied the Nigeria Electricity Regulatory Commission, which later wrote back, informing the Claimant/Applicant that it is investigating the matter.

The deponent also averred that surprisingly on the 22/02/2021 while the Claimant/Applicant was awaiting the outcome of the promised investigation by the

NERC, the Defendant's staff came and forcefully remove its prepaid metre number **04174220139**, which is under investigation, but its staff prevented them. However the next day 23/02/2021, the Defendant staff came and disconnected the service cables supplying electricity to its premises from the transformer. The deponent added that the Defendant even boasted that the Claimant/Applicant cannot do anything and not even the court can. He added that at the time the Defendant wrongfully and without formal notice disconnected the Claimant/Applicant's electricity supply, the Claimant/Applicant's prepaid metre **0417422039** was in a perfect working condition and had enough credit units that can take the Claimant/Applicant for at least another one year as it installed electronic gadgets are not the type that consume electricity. After the Defendant disconnected the Claimant/Applicant's from electricity the Claimant/Applicant has been using generator for its business at a very high and excruciating economy cost. The deponent stated further that the disconnection of its electricity supply is malicious, vindictive and /or done in bad faith and calculated to cause it damages. The deponent added that the Claimant/Applicant earnings have reduced drastically as a result of the disconnection and that the Defendant has remained adamant despite all entreaties to reconnect the Claimant/Applicant's cable.

The deponent finally averred that it is in the interest of justice to grant this, application in the Claimant/Applicant's adopted written address in support of this applications, the learned counsel to the Claimant/Applicant formulated a lone issue for determination:

“Whether, in the light of the affidavit in support of this application and the circumstances of this suit, the Claimant has made out a case justifying grant of interim interlocutory injunction pending the determination of the substantive suit.”

Arguing this issue, learned counsel submitted that the Claimant/Applicant's affidavit together with the accompanying exhibits have supplied grounds for this court to exercise its discretion in favor of the Claimant/Applicant he added that the Claimant/Applicant's metre was in a perfect working condition and that the Defendant forcefully disconnected it without formal notice and has refused to reconnect it despite all entreaties. He cited **Udo v I.T.C. (MCTC) (2010) all PWLR (pt. 507) at 88.**

Learned counsel submitted that the main purpose of this application is to protect the Claimant/Applicant against injury or further injury which may be caused to it if the Defendants are allowed to continue to violate the Claimant/Applicant's right. He cited **U.T.B LTD V. DOLMETSH PHARM (NIG) LTD (2007) 16NWHR 520 At 545 OYEYEMI VS. IREWOLE L.C.T. 1 (1993), NWHR (pt. 271)462, CITED UNITED SPINNERS VS. CHARTERED BANK (2001) 7 NSCQR123.**

Counsel submitted that where the subject matter of litigation may be permanently destroyed, distorted or defaced then an order of injunction would be granted to maintain the *status quo antebellum* and not the *status quo antem litem*. He cited **ADEWALE V. C TOVEMOREKITI STATE (2007) ALL FWHK (PT. 383) 130, MESSINI & OR VS. BALOGUN (1968) ALL NHR 318.** The counsel submitted that the pertinent question for this court to ask is what the peaceful state of affairs was before forceful, illegal and wrongful disconnection began. Leaned counsel submitted that the state of affairs was that there was electricity supply to the claimants prepared metre number **04174220139**. Counsel added that the disconnection was wrongful, illegal and without justification. Learned counsel further submitted that there are serious issues to be tried in this suit bothering on illegal and wrongful disconnection.

Leaner counsel finally urged this court to resolve the issue formulated in favor of the Claimant and hold that in the circumstance the applicant has made out a case justifying grant of interim injunction pending the determination of the substantive suit.

In this instant application, the Defendant/Respondent was duly served with the Motion on Notice on the 22nd day of March 2021, but failed to file any counter in opposition. The implication of this is that where a party is served with processes and fails to react within time prescribed by the Rules of court, that party is deemed to have accepted those facts as true. The court in such circumstances can accept the facts as true and correct once found credible and act on it. See **CBN VS IGWILO (2007) PT 1054 PG 393 @ 406; AFRIBANK NIG LTD VS MOSLAD ENT. LTD (2008) ALL FWLR (PT. 421) 879 @ 894**. However, such unchallenged evidence must be credible and weighty enough to sway the court to accept it as true. See **KONWEI VS I.G.P. (2007) ALL FWLR (PT. 169) 1710 – 1711 Para A – B**.

The case of the Applicant in summary, is that the Applicant has a legal right to protect, therefore humbly prays the Court to protect the Claimant/Applicant against injury or further injury which may be caused to it if the Defendant is allowed to continue to violate the claimant's right.

Having carefully considered the affidavit evidence, and the attached Exhibits, the submission of counsel, including the judicial authorities cited, the court finds that there is only one (1) issue for determination;

“Whether or not the Applicant has placed sufficient facts to sway this court to consider the grant or otherwise of the reliefs sought”.

An Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue on the case is finally determined. Its objects is to keep the matter in status quo, while the case is pending, for the purpose of preventing injury to the Applicant, prior to the time the court will be in a position to either grant or deny relief on the merit. See **YUSUF VS I.I. T.A (2009) 5 NWLR (PT.1133) PG 39 PARA A – B.**

In an application for Interlocutory Injunction, it is not necessary that an Applicant must make out a case as he would on the merit, it is sufficient that he should establish that there is a substantive issue to be tried. It is unnecessary to determine the legal rights to a claim at this stage, as there can be no determination, because the case has not been tried on the merit. Consequently, for an Applicant to be entitled to the grant of an application of this nature, the affidavit evidence must disclose cogent facts. On the nature of the grant of the kind of application, the court in the case of Mohammed Vs Umar (2005) ALL FWLR (PT. 267) Pg 1510 @ 1523 – 1524 at Para A – D stated thus:-

“Interlocutory Injunction is not granted as a matter of grace, routine or course. On the contrary, the Order of Injunction is granted only in deserving cases based on the hard law and facts”

The principles guiding the grant of an Order of Interlocutory Injunction has been stated in Pletorial of authorities in the Akinpelu Vs Adegboire (2008) ALL FWLR (PT 429) Pg 413 @ 420, it was stated as follows:-

- (1) There is serious question to be tried, that is, the Applicant has a real possibility with probability of success at the trial notwithstanding the Defendant technical defence (if any).

- (2) The balance of convenience is on his side, that is, more justice will result in granting the application than in refusing it.
- (3) Damages cannot be adequate compensation for his damages or injury, if it succeeds at the end of the day.
- (4) His conduct is not reprehensible.
- (5) No Order for an Interlocutory Injunction should be made on Notice unless the Applicant gives a satisfactory undertaking as to damages save in recognized exceptions.....”

On whether there are triable issue at the main trial, the law is that, all the courts need to establish, or consider, whether the claim is not frivolous or vexatious. From the facts stated in Paras 5 – 26 and the attached Exhibits, clearly shows that there are issues to be tried. The success or otherwise of it, is not the function of the court to resolve at this stage, but for the main trial.

From Paragraphs 5 – 27, particularly paragraph 24 of the supporting affidavit and the claim before this court, the Applicant has stated their predicaments which is the subject matter of this application.

In all of these the Defendant/Respondent who was duly served with the processes on 22nd day of March, 2021 did not react to the motion. The court having earlier stated the position of the law, shall accept the facts which remained unchallenged and uncontroverted, as true and correct. The position of the law was restated in the case of *The Nigerian Army Warrant Officers Vs Bunmi Yakubu* (2013 LPELR – 2008 S.C., where Fabiyi JSC, Stated thus;

“It is basic that unchallenged evidence stands. The court should accept same and act on it”.

In conclusion and having considered the unchallenged and uncontroverted evidence, and in line with the law, the court finds that the application has merit and should be allowed.

Accordingly, the application succeeds.

It is hereby Order as follows:-

1. **An Order of Interlocutory Injunction or Mandamus** compelling the Defendant/Respondent and or its servant’s agents or privies to restore electricity back to the Claimants prepaid metre number **04174220139** at **No. 8, Portnovo Street, Wuse II, Abuja** forthwith, pending the hearing and determination of the substantive suit.
2. **An Order of Interlocutory Injunction** restraining the Defendant/Respondent and/or its servants, agent or privies from further disconnecting the Claimant’s electricity cable or tempering with the claimant electricity supply to the prepaid metre number **04174220139** at **No. 8, Portnovo Street, Wuse II, Abuja** pending the hearing and determination of the substantive suit.
3. This Order shall be served on all the Defendant/Respondent in this suit.

Hon. Justice Jude O. Onwuegbuzie