

**HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE BWARI JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 8 APO, ABUJA.  
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA**

SUIT NO: CV/0640/2018  
MOTION NO: M/1279/19

**BETWEEN:**

MR. DICKSON CHUKWU --- CLAIMANT/APPLICANT

**AND**

1. MR. OSAS GIWA OSOAIGIE

2. PERSONS UNKNOWN --- DEFENDANTS/RESPONDENTS

**RULING**

**DELIVERED ON THE 13<sup>TH</sup> DECEMBER, 2021**

Before me is a motion on notice dated 21<sup>st</sup> day of November, 2019 and filed by the Claimant/Applicant on the same day, pursuant to order 43 rules 1 and order 22 rules 1 & 7 of the high court of federal capital territory civil procedure rules 2018, section 6 (6)a) of the Constitution of Federal Republic of Nigeria (as Amended) and under the inherent Jurisdiction of this Honourable court. Imploring the Court to favour her with the under-listed reliefs:

1. **AN ORDER** of Interlocutory Injunction of this Honourable Court restraining the Defendants/Respondents either by itself, servants, privies, cohorts, representatives or any person deriving authority from the Defendants/Respondents acting in any capacity whatsoever from further collection of any Cost, Rent or any other Outgoings paid on the subject matter of this suit, situate aid lying at Plot No. M460, Kubwa Extension III Layout, Abuja pending the final determination of the substantive suit.

2. **AN INTERLOCUTORY ORDER** of this Honourable Court directing the Defendants/Respondents acting in any capacity as occupants of the Subject matter of this suit, situate and lying at Plot No. M460, Kubwa Extension III Layout, Abuja, to make payment of any further Cost, Rent or any other Outgoings by reason of their occupation of the subject matter of this suit into a designated interest yielding account on the direction of the Court's Registrar in compliance with the Rules of this Honourable Court pending the final determination of the substantive suit.
3. **AND FOR SUCH FURTHER ORDER(S)** this Honourable Court may deem fit to grant in the circumstances

Accompany the motion is a 17 paragraphs sworn affidavit by Mr. Dickson Chukwu, Male, Christian, Nigeria Citizen of Block 1, Flat 4, Area 1, Section 1, Umaisha Close, Garki, Abuja hereby make oath and state as follows:

1. I am the Claimant in this suit by virtue of which I am conversant with the facts herein deposed. The facts herein deposed to are facts within my personal knowledge except otherwise stated.
2. I am the beneficial and sole owner of all that land lying and situate at Plot No. M460, Kubwa Extension III Layout, Abuja, of about 800 square meters properly described and delineated in the Survey Plan with Right of Occupancy Number FCT/BZTP/LA/AB.495 by virtue of the Conveyance of Provisional Approval dated 15<sup>th</sup> of May, 2001. Certified True Copy of the said documents is hereby attached as Exhibit A & B respectively.
3. That the said Land was allotted to me by the Bwari Area Council, Abuja Nigeria through the Land, Planning and Survey Department.

4. Upon the land been allotted to me, I consequently applied for the regularization of title in file number AB 495 dated 15<sup>th</sup> May 2006 which application was acknowledged by the Federal Capital Territory Administration in its acknowledgment dated 12<sup>th</sup> January 2006. Certified True Copy of the acknowledgment is hereby attached as Exhibit C.
5. Since the allocation, I enjoyed quiet and undisturbed possession of the property without any hindrance until the 1<sup>st</sup> Defendant suddenly began to build on my land and continued despite warnings from me surreptitiously and without my consent and has now proceeded to rent it out to the present illegal occupants.
6. That upon my discovery of the 1<sup>st</sup> Defendant's activities on my property, I had immediately alerted him of his encroachment and also reported to the Bwari Area Council via a letter dated 10<sup>th</sup> July 2012 which was replied vide a letter dated 15<sup>th</sup> October 2012 to clarify any ambiguities and reaffirmed my title of my property. The council also immediately marked the illegal structure erected by the 1<sup>st</sup> Defendant on my property for demolition. Copy of the letters dated 10<sup>th</sup> July 2012 and 15<sup>th</sup> October 2012 are hereby attached as Exhibits D & E respectively.
7. Owing to entreaties from the 1<sup>st</sup> Defendant and the possibility of an amicable settlement as surreptitiously suggested by him ostensibly to resolve the dispute as indicated in Paragraph 5, I did not make further move to see to the demolition of the building erected by the 1<sup>st</sup> Defendant.
8. That the 1<sup>st</sup> Defendant had acknowledged and unequivocally admitted through his solicitors letter dated 27<sup>th</sup> March 2014 and on

several occasions that he illegally albeit erroneously built on my land and that the land he purchased was another land entirely which he have now identified but he failed, neglected and refused to either desist from further trespass to my land or seek a lasting solution. Copy of the said letter is hereby attached as Exhibit F.

9. That Rather than the 1<sup>st</sup> Defendant to see to the amicable settlement as suggested by him, he proceeded to complete the building as indicated in Paragraph 5, let them to its supposed tenants and has since been receiving rents from my property without rendering accounts to me.
10. The 2<sup>nd</sup> Defendants are not my tenant as I neither gave consent/authorization nor issued any tenancy agreement for them to take possession of my property in any way. The 1<sup>st</sup> Defendant and any other persons in possession of my property are occupying my property illegally without my consent.
11. That it is because the 1<sup>st</sup> Defendant is still reaping benefits from the property that he has tactically and diplomatically continued to delay trial in this suit.
12. That it is pertinent that the rents accruing from the property be paid into an interest yielding account upon the direction of the Registrar of this Honourable Court pending the determination of this suit to secure the seriousness of the Defendant in defending this suit.
13. That it will be unjust for the Defendants to continue to reap the benefits from the property in dispute and enriching itself unjustly thereby while this suit is still pending before this Honourable Court.
14. That it is this fact that has made the Defendant display laxity and a lackadaisical attitude towards this defence of this suit.

15. That the Defendants will not be prejudiced by the grant of this application.
16. That it is in the interest of justice to grant this application pending the determination of this suit.
17. That I make this affidavit in good faith, conscientiously believing its contents to be true and correct and in accordance with the Oaths Act 2004.

The Applicant filed a motion on notice praying an order of this Honourable Court that all rents, cost and outgoings sums accruing from the property in dispute be paid into an interest yielding account of this Honourable Court pending the determination of this suit. The application is supported by a 17 paragraph Affidavit deposed to by the Claimant/Applicant in person. He shall be relying on all the paragraphs of the said affidavit and the exhibits attached thereto. This Written address is filed in compliance with the rules of this Honourable Court to present clear argument in support of this Application.

The Defendant raised a sole issue for determination that is relevant for the court's determination in this present application is:

**Whether in the circumstance of the facts of this suit as laid out in the Affidavit in support of this Application, the Claimant/Applicant is entitled to the reliefs sought in this application?**

### **ARGUMENT ON THE SOLE ISSUE**

It is the submission of the Claimant/Applicant counsel that the primary purpose of an interlocutory injunction is the preservation of the subject matter or 'res' of the suit or the maintenance of the status quo pending the

determination of the suit. Such order places both parties on their toes as none of them is taking benefit of the res during the pendency of the suit to the detriment of the other party.

Counsel refer the court to the case of ALHAJ1 RUFA1 AGBAJE & ORS V. MRS W.A ADELEKAN & ORS- (1989) SC 6 wherein the Applicants prayed for an Order of the Honourable Court granting an injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents and/or any other member of the Agbaje family from collecting rents on the property, subject-matter of the suit or otherwise dealing with the said property and appointing a receiver or receivers to administer the said estate and to collect rents on the said property pending the final determination of the suit. The Court in granting the application of the Applicants stated thus:

“...Furthermore, I am granting this injunction because it is merely an interim measure to preserve the “Res” of the subject-matter pending the final determination of the substantive action. When this case is finally decided, the successful party, if necessary, will again assume control of the property in question. I hereby appoint the Administrator and Public Trustee, in the Ministry of Justice, to take over the management of the property enumerated hereunder from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents between today and the 18<sup>th</sup> day of January, 1988 and thereafter to administer the property pending the final determination of this suit. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents and/or any other members of Agbaje family are hereby restrained from collecting rents or otherwise dealing with the said property until the final determination of this suit...”

It is trite law that Injunctions are equitable remedies and consequently discretionary. The discretion must however be exercised judicially and judiciously in the interest of justice. He therefore urge this court to exercise its discretion judicially and judiciously in order that the subject matter of this suit be preserved. It is also on this strength, having satisfy all the conditions precedent to bringing this application and having established before this Honourable Court that the Claimant/Applicant is entitled to the reliefs sought that the Claimant/Applicant herein most respectfully apply that the court grants all our prayers as prayed on the face of our Motion Paper.

In conclusion the Applicant council submitted that:-

Having shown to this Honourable Court from his legal argument above, it is the Claimant/Applicant's contention that to prevent the Respondent from continue in its fraudulent act of unjust enrichment and benefiting from its own wrong, it is both proper and expedient that this Honourable Court steps in decisively and grants the reliefs sought on the motion paper by making an Order in compliance with the spirits and letters of Order 22 Rule 1 and Rule 7 on payments into and out of Court and grant the Applicant's prayers herein to secure the res and set the Defendants/Respondents on their feet to defend this suit.

He most humbly urged the Court to exercise its discretion judiciously in favour of the Applicant in the interest of justice in order to ensure that the subject matter of this suit is preserved.

In reply to the Applicant Motion on Notice the Defendant/Respondent filed a counter affidavit to the Motion and a written address in opposition to the application and prayer sought by the Applicant thus:-

I Josiah Phanuel Ebenezer, male, Christian, Nigerian citizen of No. 9 Port Harcourt Crescent, Area 11, Garki Abuja do hereby make oath and state as follows that:

1. I am a staff of Messrs TOKILEGAL, Counsel to the 1st Defendant/Respondent by virtue of which I am conversant with the facts deposed to herein. I depose to this Counter Affidavit with the knowledge and consent of the employers and of the 1<sup>st</sup> Defendant/Respondent.
2. I have read the Motion on Notice, the Affidavit in Support and the Written Address dated and filed on 21<sup>st</sup> November, 2019 by the Claimant and together with my boss, Mr. Soji Toki, I have related the content to the 1st Defendant/Respondent.
3. The facts deposed to by me in the following paragraphs of this counter affidavit, where not within my personal knowledge, are facts which I verily believe to be true as related to me by the 1st Defendant/Respondent via telephone conversation (after we related the filing of NO M/1279/19 to him) and by Mr. Soji Toki at No. 9 Port Harcourt Crescent Area 11, Garki, Abuja on Sunday, 24 November, 2019 around 2pm, and also from my perusal of the case file.
4. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Affidavit of the Claimant in support of the Motion NO. M/1279/19 are false.
5. The 1<sup>st</sup> Defendant is a responsible Nigerian who is currently working in Germany and did not at all trespass on the property of the Claimant/Applicant as deposed to in paragraphs 5 and 6 of the Affidavit of the Claimant in support of the Motion NO. M/1279/19.

6. The Claimant does not own any land in Kubwa as deposed to in paragraphs 2, 3 and 4 of the Affidavit of the Claimant in support of the Motion NO. M/1279/19.
7. In answer to paragraphs 1, 2, 3 and 4 of the Affidavit of the Claimant in support of the Motion NO. M/1279/19 the correct position is that;
  - a. The 1<sup>st</sup> Defendant's predecessor-in-title, one Anu Simon, is the daughter of Mrs. Janet Adeshina.
  - b. Mrs. Janet Adeshina is a former staff of the Federal Capital Development Authority (FCDA) and a former colleague of the Claimant herein.
  - c. Mrs. Janet Adeshina acted on behalf of Anu Simon applied for land from FCDA sometime in the year 2001.
  - d. Plot M456 was allocated to her by the 2<sup>nd</sup> Defendant on record at Kubwa Extension III Layout.
  - e. She took possession of the land, processed all the documents and also obtained TDP on the land.
  - f. When the FCDA called for verification and recertification of all land title documents in FCT, she submitted her title documents to FCDA and an Acknowledgement was issued to her.
  - g. Sometime in 2005, she sold the property to the 1<sup>st</sup> Defendant.
  - h. The 1<sup>st</sup> Defendant in conjunction with Anu Simon and Mrs. Janet Adeshina applied for approval to build from the relevant authorities which was granted. The 1<sup>st</sup> Defendant made necessary payments before and after the approval.
  - i. With stage by stage supervisions and approvals by the 2<sup>nd</sup> Defendant on record and the Department of Development Control of FCDA, the 1<sup>st</sup> Defendant built a story building on the land.

- j. While the construction was on going, the Claimant/Applicant was visiting the 1<sup>st</sup> Defendant's site and was wishing him well.
  - k. During one of his visits to the construction site of the 1<sup>st</sup> Defendant and after the completion, the Claimant/Applicant told the 1<sup>st</sup> Defendant's mother that he also has a plot of land not far from where the 1<sup>st</sup> Defendant's is. He actually took her to the land and she prayed for him.
  - l. Sometime around the year 2012, after the 1<sup>st</sup> Defendant has finished building and occupied same, the Claimant visited and told the 1<sup>st</sup> Defendant's mother that the 2<sup>nd</sup> Defendant on record detected error in numbering the plots in the layout.
8. Upon further enquiries by the 1<sup>st</sup> Defendant's representative and the Claimant/Applicant, they discovered that;
- a. Where the 1<sup>st</sup> Defendant built his house with approval was in the original layout called Plot MF 456 while that of the Claimant was called Plot M460
  - b. After the Claimant and the 1<sup>st</sup> Defendant have settled on their respective lands, the 2<sup>nd</sup> Defendant on record renumbered the plots without informing the occupants.
  - c. In renumbering the plots, where the Claimant has been for decades is now called Plot 456 while where the 1<sup>st</sup> Defendant (and through his predecessor in title) has been for decades is now called Plot 460.
  - d. The renumbering affects only these two plots in the Layout.
  - e. The location and sizes of the two lands did not change but the numbering only.
9. In further response to paragraphs 1 to 17 of the Affidavit of the Claimant in support of the Motion NO. M/1279/19;

- a. The Claimant has never occupied the portion upon which the 1<sup>st</sup> Defendant built his house.
- b. The Claimant has been occupying the other land and erected a dwarf fence on it.
- c. The 1<sup>st</sup> Defendant commenced and completed his building with the knowledge of the Claimant and he was visiting as a neighbor.
- d. It was sometime around 2012 after the 1<sup>st</sup> Defendant has packed into his completed building that the Claimant discovered the anomaly in the renumbering of the two plots.
- e. The Claimant agreed with the 1<sup>st</sup> Defendant's representative that they will jointly approach the 2<sup>nd</sup> Defendant on record to correct the anomaly.
- f. While they were working on correcting the anomaly, sometime in the year 2013, a third party trespassed on the land occupied by the Claimant and filed the Suit Number FCT/HC/CV/4133/2013. The Claimant herein and the 1<sup>st</sup> Defendant representative deposed to statements on oath as witnesses against the 3<sup>rd</sup> party/trespasser and successfully defended the suit.
- g. The Claimant suddenly became greedy and began to make untoward demands from the 1<sup>st</sup> Defendant. He termed it as the 1<sup>st</sup> Defendant's problem.
- h. The Claimant used his position as a former staff of the FCDA to instigate the authority (which gave the 1<sup>st</sup> Defendant approval to build) to threaten to demolish the 1<sup>st</sup> Defendant's house. This prompted the 1<sup>st</sup> Defendant's Counsel to write several letters to the relevant authorities explaining the factual position.

- i. As a result of the letters written on behalf of the 1<sup>st</sup> Defendant, the authority realized their mistake, stopped the threat of demolition and called for several meetings (especially by the Department of the Development Control) to resolve the issue but the Claimant refused to attend any of them.
10. The Claimant who could not do anything tangible on his land until after the 1<sup>st</sup> Defendant has completed his building made attempt to use his connection (as a former staff of the FCDA) to claim the 1<sup>st</sup> Defendant's building.
11. The Claimant has to 2 TDPs (the 1<sup>st</sup> one before the renumbering and the 2<sup>nd</sup> one after renumbering) in respect of the two lands and the 1<sup>st</sup> Defendant was also issued 2 TDPs in respect of the two lands (the 1<sup>st</sup> one before the renumbering and the 2<sup>nd</sup> one after renumbering). The 2<sup>nd</sup> Defendant on record has 2 layout drawings for the area (the 1<sup>st</sup> one before the renumbering and the 2<sup>nd</sup> one after renumbering). The 4 TDPs and the two layout drawings have formed part of the record of this Honourable court.
12. I have seen the documents filed in respect of this matter which include Statement of the Defence of the 1<sup>st</sup> Defendant in Suit No. FCT/HC/CV/4133/2013 (including the three witness statements on oath and the bundle of documents attached to it which include Acknowledgement dated 09/13/06 with file No. OY 352; Conveyance of Provisional Approval from the 2<sup>nd</sup> Defendant dated 15/5/2001; Receipts Numbers 031926, 004281, 004282 from the 2<sup>nd</sup> Defendant, pictures of the buildings, the two TDPs, the receipt dated 8/8/2006, Settlement of Building Plans Approval for Development Plan dated 31/07/2006, Approval of Setting Out and Commencement of Construction dated

12/02/2007, Settlement of Setting-Out Bill dated 17/01/2007 and Power of Attorney granted by Anu Simon to the Is' Defendant and Kubwa Extension III layout.

13. The problem was created by the 2<sup>nd</sup> Defendant on record but the Claimant/Applicant who is fully aware of the error wants unjustly enrich himself with the 1<sup>st</sup> Defendant's property.

14. I was further informed by Mr. Soji Toki on the same date, time and venue that the 1<sup>st</sup> Defendant has been diligent in defending this suit whereas the Claimant/Applicant has not been diligent with the prosecution of his case and in answer to paragraphs 1, 12, 13 and 14 of the of the Affidavit of the Claimant in support of the Motion NO. M/1279/19 that;

- a. Before the Claimant instituted this case, his lawyer called Mr. Toki (the 1<sup>st</sup> Defendant's lawyer) and said that he wanted to know what happened in Suit No. FCT/HC/CV/4133/2013 and that he wanted to see the file. Mr. Toki told him everything and gave him the file and allowed him to make photocopies of all that he v anted from the file. These are the information and documents he used in filing this suit.
- b. Upon being served with the originating process, the 1<sup>st</sup> Defendant/Respondent filed his Defence and Counter Claim promptly within the time allowed by the Rules of this Honourable court since March, 2018.
- c. The Claimant went to sleep and did not do anything tangible to ensure that the matter was reassigned after the former Judge was elevated for about one year.

d. The 1<sup>st</sup> Defendant's Counsel has not been absent on any of the days the matter came up in court when he was served with the Hearing Notice.

15. The Claimant's application is not in good faith, not in the interest of justice but rather vexations, speculative and an attempt to reap where he did not sow and same should be dismissed with punitive cost.

16. I depose to this counter affidavit consciously, believing same to be true and in accordance with the Oaths Act.

The 1<sup>st</sup> Defendant/Respondent in opposition to the application filed a 16 paragraph Counter Affidavit deposed to by Josiah Phaniel Ebenezer. He rely on all the paragraphs of the Counter Affidavit. The 1<sup>st</sup> Defendant/Respondent also rely on the processes filed before this court especially, the Statement of Defence of the 1<sup>st</sup> Defendant and the front loaded documents. The 1<sup>st</sup> Defendant/Respondent is the owner of Plot M456 at Kubwa Extension III Layout and has been in possession directly since 2005 but through his predecessor in title since 2001. He has all the relevant title documents which are not in dispute. With stage by stage supervisions and approvals by the 2<sup>nd</sup> Defendant on record and the Department of Development Control of FCDA, the 1st Defendant built a story building on the land sometime around 2010. This was to the knowledge of, and good wishes from the Claimant/Applicant.

The learned counsel submit that another condition for grant of an interlocutory injunction is to preserve the res. The "res" in this suit is not the rent from the building. The rent from the building is not part of the Claimant's claim, so its preservation cannot form the basis of the application. The status quo which has existed from 2001 is that the 1<sup>st</sup>

Defendant and his predecessor in title have been on the land where he erected his building. The Claimant agreed that the 1<sup>st</sup> Defendant has been on the land since, at least 2012. He did not do anything until 2018 when he filed this suit. There is no threat to the res, he submit.

The only ground for this application by the Claimant (as shown in paragraphs 11, 12, 13 and 14 of his Affidavit in Support) and his written address is to "... set the Defendants/Respondents on their feet to defend this suit". But the fact of this case, the record of this Honourable court and the attitudes of the parties will clearly show that the 1<sup>st</sup> Defendant has been diligent in the defence of this suit while the Claimant has not been diligent. He refer the court to paragraph 14 of our Counter Affidavit where we put the record straight to the effect that before the Claimant instituted this case, his lawyer called Mr. Toki (the 1st Defendant's lawyer) and said that he wanted to know what happened in Suit No. FCT/HC/CV/4133/2013 and that he wanted to see the file. Mr. Toki told him everything and gave him the file and allowed him to make photocopies of all that he wanted from the file. These are the information and documents he used in filing this suit.

Upon being served with the originating process, the 1<sup>st</sup> Defendant/Respondent filed his Defence and Counter Claim promptly within the time allowed by the Rules of this Honourable court since March, 2018. The Claimant went to sleep and did not do anything tangible to ensure that the matter was reassigned after the former Judge was elevated for about one year. The 1st Defendant's Counsel has not been absent on any of the days the matter came up in court when he was served with the Hearing Notice.

The Claimant just made abared allegation of non-diligent defence without substantiating same. Nowhere in his affidavit did he state what the 1<sup>st</sup> Respondent did that he was not supposed to do, or what he did not do which he was supposed to do. The Claimant did not state that he is entitled to the rents from the property or what will happen to the rents after the conclusion of the case. This further shows that the application is not in good faith.

Counsel urged court to hold that the 1<sup>st</sup> Defendant has not done anything contrary to law to warrant the grant of this application. Rather, it is the Claimant who has not been diligent. The Claimant also in his written address (with no facts in support in his affidavit) accuses the 1<sup>st</sup> Respondent' of fraud. But the facts of this case obviously show that the Claimant is the person who wants to fraudulently and unjustly enrich himself and reap where he has not sown. The Claimant could not do anything on his land since 2001 until he retired from service. Now that there is no money coming in for him, wants to take over the 1<sup>st</sup> Defendant's property. He humbly refer the court to paragraph 9 of his Counter Affidavit where he deposed to the facts that:

The Claimant has never occupied the portion upon which the 1<sup>st</sup> Defendant built his house The Claimant has been occupying the other land and erected a dwarf fence on it. The Is Defendant commenced and completed his building with the knowledge of the Claimant and he was visiting as a neighbor. It was sometime around 2012 after the 1<sup>st</sup> Defendant has packed into his completed building that the Claimant discovered the anomaly in the renumbering of the two plots. The Claimant agreed with the 1<sup>st</sup> Defendant's representative that they will jointly approach the 2<sup>nd</sup>

Defendant on record to correct the anomaly. While they were working on correcting the anomaly, sometime in the year 2013, a third party trespassed on the land occupied by the Claimant and filed the Suit Number FCT/HC/CV/4133/2013. The Claimant herein and the 1<sup>st</sup> Defendant representative deposed to statements on oath as witnesses against the 3<sup>rd</sup> party/trespasser and successfully defended the suit.

The Claimant suddenly became greedy and began to make untoward demands from the 1<sup>st</sup> Defendant. He termed it as the 1<sup>st</sup> Defendant's problem. The Claimant used his position as a former staff of the FCDA to instigate the authority (which gave the 1<sup>st</sup> Defendant approval to build) to threaten to demolish the 1<sup>st</sup> Defendant's house. This prompted the 1<sup>st</sup> Defendant's Counsel to write several letters to the relevant authorities explaining the factual position. As a result of the letters written on behalf of the 1<sup>st</sup> Defendant, the authority realized their mistake, stopped the threat of demolition and called for several meetings (especially by the Department of the Development Control) to resolve the issue but the Claimant refused to attend any of them.

He humbly refer the court to the Statement of Defence of the 1<sup>st</sup> Defendant and the attached documents.

Interlocutory injunction is an equitable relief to be granted or refused at the discretion of the court. Like any other equitable relief, it is for the diligent with a clean hand and these descriptions do not fit the Claimant/Applicant. The Claimant/Applicant became aware of the facts leading to this application since 2012 (according to him). He waited until the Respondent completed the building. He joined the Respondent in 2013 to defend Suit No.FCT/HC CV/4133/2013. He agreed with the Respondent

to jointly correct the error of the 2nd Respondent on record, he filed the suit in 2018, he did nothing for about one year and suddenly wake up to ask for this injunction.

On Order 22 Rules and 1 and 7 of the High Court of FCT (Civil Procedure) Rules 2018, referred to by the Claimant, he submit that there is nothing before the court to show that the 1st Defendant herein envisages an intention to pay money into court in respect of the proceeding..." and so the Rule does not apply to this case.

**On whether this application is competent and same ought to be struck out?**

Counsel submit that this Honourable court has no jurisdiction to hear this application for inclusion of non-party and exclusion of a proper party.

The parties in this Motion No. M/1279/19 are not known to Suit No. FCT/HC/CV/640/2018. The purported 2<sup>nd</sup> Defendant/Respondent is/are not a party/parties to Suit No. FCT/HC/CV/640/18. The parties on record in Suit No. FCT/HC/CV/640/2018 are not fully stated in this Motion No. M/1279/19. For instance, Bwari Area Council which is the 2<sup>nd</sup> Defendant on record in Suit No. FCT/HC/CV/640/2018 is not in this Motion No. M/1279/19. The 2<sup>nd</sup> Defendant/Respondent on record in Suit No. FCT/HC/CV/640/2018 is not served with this application with Motion No. M/1279/19.

The Claimant Applicant cannot unilaterally join "Persons Unknown" to Suit No. FCT/HC/CV/640/2018 without the order of the Honourable court. This Honourable court cannot make an order against the "Persons Unknown"

who are not parties to this suit. He urged the court to dismiss this application for being incompetent.

The Claimant's reasons for this application are to preserve the res and to make the Defendant diligent to defend the case but the "res" is not in danger, the Claimant (not the 1st Defendant) has been the one not diligent with the prosecution of the case. The Claimant has no legal interest in the subject matter of this application. He urged the court to dismiss this application.

In conclusion having carefully perused the submission of both Applicant/Respondent counsel, I equally studied the cases cited therein and their reasons as set out in their respective written addresses.

Its my humble view that, hence there is dispute between the parties which affect the RES, and to be able to treat this issue before me as conversed by the parties, more effectively i.e. to be fair to both, it is better to make an Order preserving the Res pending the hearing and determination of the substantive suit in the interest of fair hearing and Justice of the matter, issue shall be resolved one way or the other.

To this end the Order sought by the Applicant as captured/stated on the face of the Motion paper 1 & 2 are allowed and granted pending the determination of the substantive suit thus:-.

1. That the Defendants/Respondents either by itself, servants, privies, cohorts, representatives or any person deriving authority from the Defendants/Respondents acting in any capacity whatsoever are restrained from further collection of any Cost, Rent or any other Outgoings paid on the subject matter of this suit, situate and lying at

Plot No. M460, Kubwa Extension III Layout, Abuja pending the final determination of the substantive suit.

2. That the Defendants/Respondents acting in any capacity as occupants of the Subject matter of this suit, situate and lying at Plot No. M460, Kubwa Extension III Layout, Abuja, to make payment of any further Cost, Rent or any other Outgoings by reason of their occupation of the subject matter of this suit into a designated interest yielding account on the direction of the Court's Registrar in compliance with the Rules of this Honourable Court pending the final determination of the substantive suit.
3. All the parties shall continued to keep the peace till the end of this suit accordingly.

I so hold.

**APPEARANCE**

V. O Omolaolu Esq. for the Claimant.

Adesoji Adebola Esq. for the 1<sup>st</sup> Defendant.

Sign

Hon. Judge

13/12/2021