

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : SUIT NO: CV/1520/2020**

**DATE: :WEDNESDAY 8<sup>TH</sup> DECEMBER,2021**

**BETWEEN**

**1. MR. JOSEPH JIDE ALUKO } CLAIMANTS  
2. MRS. ALUKO ELIZABETH }  
OMOYEMI }**

**AND**

**1. PRINCE AND PRINCESS } DEFENDANTS  
PROPERTIES LTD. }  
2. PERSONS UNKNOWN }  
3. DIRECTOR DEVELOPMENT }  
CONTROL ABUJA METROPOLITAN }  
COUNCIL }  
4. HON. MINISTER, FCT. }**

# **RULING**

The Applicant vide Motion No. M/6763/2020 approached this court for the following;

1. An Order of Interlocutory Injunction Restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from erecting or constructing any building or structure on the open space car park beside the piece or parcel of land adjoining the Claimants properties shop CS 47 & 48 Drive 1 Prince and Princess Estate, pending the hearing and determination of the substantive suit before this Honourable Court.
2. An Order of Interlocutory Injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from trespassing or further trespassing on the sand piece or parcel, on open space/car park developed and improved

by the Claimants pending the hearing and determination of the substantive suit.

3. And for such further or other Orders as the Honourable court may deem fit to make in the circumstances.

In support of the motion is 8 paragraphs affidavit deposed to by Aluko Josephe Jide 1<sup>st</sup> Plaintiff/Applicant.

It is the deposition of the 1<sup>st</sup> Claimant/Applicant that he is the bona-fide owner/Allottee of shop CS 47 and CS 48. Letters of allocation of the shops are hereby attached as Exhibits “A” and “B”.

That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are making preparation to uproot and destroy all they have done by way of improvement of the open space/car park adjoining the shops CS47 and CS 48 of Drive 1,

Prince and Princess Estate, Duboyi District. Pictures are hereby attached as Exhibit “C1-4”.

That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have mobilized workers, diggers to excavate all the interlocking stones laid on the said piece or parcel of land as well as uproot all the garden flower planted by the Claimant on the said piece or parcel of land open space car park adjoining the Claimants shop CS 47 and CS 48, Drive 1, Prince and Princess Estate Duboyi District, Abuja. Photographs attached as Exhibit “D1” – “D2”.

It is further the deposition of the Claimant/Applicant that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on Saturday the 14<sup>th</sup> day of March, 2020 came to the Claimants shop CS 47 and CS48 and intimidated, harassed the Claimants staff members and other occupiers of the

Claimants' properties with armed policemen and bodyguards boasting that the whole open space car park and garden of flowers would be uprooted for the development they intend to carry out on the piece or parcel of land adjoining the Plaintiffs properties despite their two letters of protest to Defendants. The two letters are hereby attached as Exhibit "E1" – "E2".

That if the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are not restrained, an irreparable damage not quantifiable in monetary terms will be occasioned to the Applicants having physical and emotional attachment to the subject matter as a result of long number of about 10 (Ten) years on the property.

In compliance with the law, a written address was filed wherein court was urged to exercise his

discretion in granting the application in the interest of justice.

Upon service, the Defendant filed a counter affidavit of 15 paragraphs deposed to by Mr. Chukwuemeka Alphonsus, property management consultant.

2<sup>nd</sup> Defendant in his counter affidavit categorically stated that the averments of the Claimants/Applicants are all false.

He stated that he is the original person who was allotted shop No. CS 207 and shop No. CS 208. That due to his schedules, he always travel for months on projects that he did not know that the Claimants/Respondents had trespassed into his allocation placed interlocking stones.

2<sup>nd</sup> Defendant further counter – claim, that when he wanted to start developing the shop and he went to his allocation, he discovered that someone had trespassed into his property. That he made enquires in the area and no one owned up to the trespass and he had to continue with his development. That he was merely developing his allocated shops. Copies of his allocation letters for shop No. SC207 and shop No. CS208 are hereby Exhibited as “A” and “B”.

Defendants on the whole, filed written address to the counter affidavit wherein court was urged to dismiss the application to enable the court consider the substantive suit.

## **COURT**

On the part of court, after a very careful review of the affidavit in support of the application for

interlocutory injunction and the annexures therein, on one hand, and the response of the Defendant/Respondent who is vehemently opposed to the grant of the said relief of interlocutory injunction, on the other hand, I have formulated our issue for consideration, i.e whether there is any legal right to be protected or preserved.?

Let me refresh our minds that the following conditions must be met by Applicant to approach the court for an Order of interlocutory injunction before the court shall grant same:-

- a. Applicant must have a legal right in the subject matter which he seeks to prevent by the conduct of the Defendant to violate.
- b. There must exist serious or substantial issue or case to be tried.



- c. The preservation of the Res which is the subject matter of the suit.
- d. Balance of convenience, the opposite of balance of inconvenience.
- e. The Applicant must show by evidence question of real urgency and not caricature of it.
- f. The gravity of injury and the fact that the loss is irreparable.

**See *UNIVERSAL TRUST BANK LTD & ANOR VS DOLMERCH PHARMACY (NIG.)LTD (2007) ALL FWLR (Pt. 385) 434 at 454 – 455 Paragraphs H-D (SC).***

Claimant/Applicant clearly stated in paragraphs 3, 4, 5 and 6 of the affidavit in support of motion on notice for interlocutory injunction that he is the

bona-fide owner/Allottee of shop CS 47 and CS 48 and that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are making preparations to uproot and destroy all they have done by way of improvement of the open space/car park adjoining the shops CS47 and CS48.

Let me state here that Interlocutory Injunction is a stop – gap measure. It is granted usually at an early but critical stage in the life and pendency of the substantive cause before the court has had opportunity to fully hear and weigh the evidence and determine one way or another the case of parties.

Of importance to note is that the jurisdiction of court to grant interlocutory injunction is equitable, the manner of the exercise of the discretion depends upon the precise nature of the particular rights which is sought to be protected and upon all the materials

and circumstances. This is so because relief for interlocutory injunction, like most other reliefs, is punitive and therefore should be granted after due process of the law which involves given parties fair hearing, as done in the instance case.

See ***RANSTON PROPERTIES LTD VS FBN PLC. (2007) ALL FWLR (Pt. 392) 1954 at 1965 – 1986 C-D.***

The power to grant or refuse an interlocutory injunction is discretionary but as discretionary but as discretionary as it is to a judge, it must be exercised judicially and judiciously, bearing in mind the competing interest of parties and the circumstances of each case.

It has been decided in plethora of cases that all an Applicants need to prove in an application for an

interlocutory injunction is the existence of a legal right which ought to be protected.

Defendant/Respondent stated in their affidavit that the Claimants do not have any legal right over the area known as shop No. CS 207 and CS 208 which belongs to one Mr. Chukwuemeka Alphonsus.

What then constitute legal right in law?

Legal right was defined by ***SC IN A.G LAGOS STATE VS A.G FEDERATION (2004) 18 NWLR (Pt. 9041) 1 per Niki Tobi JSC (as he then was) to mean “a right recognized in law. It means a right recognized by law and capable of being enforced by the Plaintiff.***

***It is a right of a party recognized and protected by the Rule of Law, the violation of which would be a***

*legal wrong done to the interest of the Plaintiff, even though no action is taken.*

*The determination of the legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action.”*

On the whole, after a careful study of both the affidavit in support of the motion on notice and counter affidavit and on the sound reasoning, I have come to a conclusion that the Claimant/Applicants has not established a case for an Order of Interlocutory Injunction to be granted.

Accordingly, M/6763/2020 is hereby dismissed.

*Justice Y. Halilu*

*Hon. Judge*  
*8<sup>th</sup> December, 2021*

**APPEARANCES**

BETSY A., Esq. – for the Plaintiff.

Defendants not in court and not represented.