IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISON
HOLDEN AT HIGH COURT MAITAMA – ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE

COURT CLERKS:	**JAMILA OMEKE & ORS**
COURT NUMBER:	**HIGH COURT NO. 25**
CASE NUMBER:	**SUIT NO. FCT/HC/CV/2890/20**
DATE:	**7TH OCTOBER, 2021**

BETWEEN:

1. AGHADINULO IKECHUKWU CLEMENT
2. ABNDULRAHMAN SANI
3. OKORO FRANCISCA EZINNE KALU
4. OBI CHARLES
5. ONYEKABA THADDEUS
6. ANOKE AMAECHI FABIAN
7. CHIKWADO EZENWONYE
8. SOLOMON UGWU
9. IKENNA OBI
10. SAGIR SHEHU

.....CLAIMANTS

AND

1. MR. CHIBUZOR K. OKOYE
2. CHINEDU OKORO
3. CHIMAOBI NWOSU
4. MUSTAPHA
5. JIDE WELL
6. MOSES IHEOMA
7. OSITA UMEH
8. OLA OMOANIFOWOSHE
9. R. ANTHONY EMEKA OKPALA
10. THE INCORPORATED TRUSTEES OF NEW PLAZA TRADERS ASSOCIATION AREA 1, ABUJA

.....DEFENDANTS

APPEARANCES:
Oscar C. Nnadi Esq for the Claimants.
Ifeanyi Ugwu Esq for the Defendants.

RULING

By a Motion on Notice dated 29th day of March, 2021 and filed on 30th day of March, 2021, brought pursuant to Order 43 Rules 1 and 8 of the Rules of this Honourable Court and the inherent jurisdiction of the Honourable Court. The Applicants herein prayed this Honourable Court for the following reliefs: -

> ***"(1). AN Order of Interlocutory Injunction restraining the Defendants either by themselves, servants, privies, agents howsoever called or and in connivance or liaison with the Abuja Municipal Area Council and/or Nigeria Police Force:***
>
> > ***(i). Constitute a Caretaker Committee or and cause any other person or persons to usurp and takeover the functions and duties of the 1st – 6th Claimants/Applicants pending the determination of the suit.***
>
> ***(2). AND such Orders or further Orders the Honourable Court shall deem fit to make in the circumstances."***

Filed in support of the motion is an Affidavit of five (5) paragraphs deposed to by one Mr. Isaac Mazo, a clerk in the law firm of Karina Tunyan (SAN) & Co, solicitors to the Claimants/Applicants. Attached to the supporting Affidavit are annexures marked as Exhibits1, 2, 3 and 4 respectively.

In compliance with the rules of Court, the Applicants filed a Written Address in support of the motion dated the 29th day of March 2021.

In the said Written Address, learned Counsel to the Applicants, Oscar C. Nnadi Esq formulated a lone issue for determination thus: -

"Whether the Claimants/Applicants have satisfied the conditions necessary for the grant of this application."

In arguing the issue, learned Counsel submitted that it is well established that the essence of the grant of injunction is to protect the existing legal right of a person from unlawful invasion by another. Counsel cited the cases of ***KOTOYE V CBN (1987) 1 NWLR (Pt. 98) 419; ADMINISTRATOR & ANOR V ARO (1991) 2 LRCN 435 at 443.***

Furthermore, on the factors to be considered by the Court in an application for Interlocutory Injunction, Counsel referred the Court to ***AKAPO V HAKKEEM-HABEEB (1992) 6 NLR (Pt. 247) 266 at 287 – 288*** and stated that the Writ of Summons pending before this Honourable Court is evident of a subsisting action.

In another submission, Counsel stated that the Writ of Summons and the Statement of Claim has disclosed the legal rights of the Claimants/Applicants which is worthy of protection. Reference was made to the Exhibits attached to the supporting Affidavit and the case of ***GLOBE FISHING INDUSTRIES LTD V COKER (1990) 11 – 12 SC 80 at 93.***

On whether the Applicants have shown that there is a serious question or substantial issue to be tried, Counsel submitted that the declaratory and Injunctive Orders as sought in the substantive suit worthy for determination, shows that serious questions or substantial issues have arisen to be tried or determined, hence it is pertinent that the res should be protected pending the determination of the substantive action.

On whether the Claimants/Applicants have shown in the Affidavit in support that the balance of convenience is in their favour. Counsel referred the Court to the case of ***ADESINA V AROWOLA & 2 ORS (2004) 6 NWLR (Pt. 870) 601, 618 Paras A –C.***

The learned Counsel submitted further that damages cannot be adequate compensation for the Claimants/Applicants should the Defendants continue to truncate their tenure.

It is also the submission of the Counsel that there is no delay on the Claimants/Applicants in bringing the application, that this application is timely. Moreso, that the Applicants have undertaken to pay damages. Reliance was placed on the cases of ***COLITO (NIG) LTD V DAIBU (2010) 2 NWLR (Pt. 1178) 213 at 271 – 272, Paras G – C; DEKIT CONSTS. CO. LTD V ADEBAYO (2010) 15 NWLR (Pt. 1217) 590 at P. 612, Paras B – C.***

Finally, Counsel submitted and urged the Court to exercise its discretion in favour of the Claimants/Applicants having satisfied the requirements for the grant of this application.

In opposing the application, the Defendants/Respondents filed a Counter Affidavit of 28 paragraphs deposed to by one Mr. Ifeanyi Ugwu, a litigation officer in the law firm of Charles Ezeogu & Co. Attached to the Counter Affidavit are annexures marked as Exhibits A1 to F(v).

Filed also in opposition to the motion is a Written Address dated 5th day of April, 2021.

In the said Written Address, learned Counsel to the Defendants/Respondents Joe Abonyi Esq formulated a lone issue for determination to wit: -

> ***"Whether considering the facts and circumstances of this case this Court ought not to refuse the grant of Interlocutory Injunction."***

In arguing the issue, learned Counsel submitted that it is the position of the law that an Order of Interlocutory Injunction is granted upon the exercise of the discretionary power of the Judge in his equitable jurisdiction. That the discretionary power must be exercised judicially and judiciously on the facts placed before him. Reference was made to the cases of ***EZEBILO V CHINWUBA (1997) 7 NWLR (Pt. 511) 108 at 109, Paras; NWANNEWUIHE V. NWANNEWUIHE (2007) 16 NWLR (Pt. 105) 1 at 17; BELLO V A.G LAGOS STATE (2007) 2 NWLR (Pt. 1017) 115 at 139.***

On whether there is existing established legal right capable of being protected, Counsel submitted that the Applicants do not have any existing

legal or equitable rights they want protected by an Injunction. Reference was made to Exhibits A, B and C(i) to C(viii) respectively.

On whether the act has been completed, the learned Counsel submitted that it is the position of the law that a Court cannot grant an injunction over a completed act. Counsel placed reliance on the cases of ***PETER V OKOYE (2002) 3 NWLR (Pt. 755) 519 at 551, Paras B – F; FBN PLC V NDARAKE & SONS LTD (2009) 13 NWLR (Pt. 1164) 406 at 416.***

Consequently, Counsel stated that the action which the Applicants wish an injunction granted against had been completed since 2018 as such the equitable remedy of injunction cannot be granted over a completed act. Reference was made to paragraphs 14, 15, 16, 22, 23 and 25 of the Counter Affidavit as well as Exhibits Di and Dii respectively.

As such, Counsel urged the Court to discountenance this application as it is geared to stop an action concluded since 2008 and dismiss same with substantial cost against the Applicants.

On whether damages would be adequate compensation, Counsel submitted that it is the position of the law the once damages is adequate compensation, an Interlocutory Injunction cannot be granted. Reference was made to paragraph 4xii of the Applicants Affidavit in support. Reliance was equally placed on the cases of ***ADESINA V AROWOLA (2005) ALL FWLR (Pt. 245) 1123 at 1140 B – D; SARAKI V KOTOYE (1990) 4 NWLR (Pt. 143) 144; BELLO V. A.G. LAGOS STATE (2007) 2 NWLR (Pt. 1017) 115 at 138.***

Therefore, Counsel submitted that the rights of the Claimants can be protected by damages if they ever win the main suit.

Furthermore, on whether the Applicants delayed in bringing this application, the learned Counsel to the Defendants/Respondents contended that there has been a long delay by the Applicants. That it took the Applicants more than two years since 2018 to 2020 to realize that they have a right to seek and then decide to seek for an Injunction too.

To this end, Counsel urged the Court to reject this application and urge the Applicants to establish their legal rights before the Court. Reliance was placed again on the case of ***PETER V OKOYE (SUPRA) at Page 552.***

On whether the balance of convenience is in favour of the Applicants, Counsel stated that a look at the depositions of the Applicants show that there is nothing the Applicants will lose if the application is not granted. That about 350 members of the 10th Defendants shall suffer greatly if this application is granted. Reference was made to paragraphs 16, 17, 18, 19, 20, 21, 22, 23 and 26 of the Counter Affidavit.

Finally, on whether the Court will decide the principal claim of the Applicants, Counsel contended that a look at the claims of the Applicants in their Writ of Summons thereto will show that they are seeking the same claims like the injunctive claim they are seeking in this motion and that once the injunction is granted, there will be nothing more for this Honourable Court to determine in the substantive suit.

That an award of such order shall be prejudicial to the main suit and urged the Court to refuse this application with substantial cost against the Applicants. Counsel placed reliance on the cases of ***SHELL PET. DEV. COY. (NIG) LTD V OMU (1998) 9 NWLR (Pt. 567) 672 at 682; OLANIYI V AROYEHUN (1991) 5 NWLR (Pt. 194) 652.***

I have carefully perused the Motion on Notice, the reliefs sought, the grounds upon which same is predicated, the supporting affidavit together with the annexures attached therewith as well as the Written Address in support of the motion.

I have equally gone through the Counter Affidavit in opposition to the Motion on Notice, the annexures attached to the Counter Affidavit and the Written Address in opposition to the Motion on Notice.

Therefore, in my humble view the issue for determination is whether the Applicants herein have made out a case for the grant of this application.

It is important to note at the onset that the law is well settled that the grant and/or refusal of an Interlocutory Injunction is at the discretion of the Court

which must be exercised judicially and judiciously. This position of law was reinstated in the case of ***DEKIT CONSTRUCTION CO. LTD & ANOR V. ADEBAYO & ORS (2010) LPELR -4030 (CA) at Pages 16-17. Paras E – F*** *where it was held thus: -*

> "***The law is settled that the grant or refusal of an application for Interlocutory Injunction is discretionary. In the exercise of its discretionary powers the Court must act judicially and judiciously."***

The Court is guided on the principles to be considered in granting or refusing an application for Interlocutory Injunction. These principles were clearly spelt out in the case of ***SOLID UNIT NIG. LTD & ANOR V GEOTESS NIG. LTD (2013) LPELR – 20724 (CA) per JUMMAI HANNATU SANKEY JCA at Pages 42 – 46, Paras A – A*** where the Court held thus: -

> ***"The Principles for the grant of an Interlocutory Injunction have been well stated and restated in decisions of the highest Court of our land time and again, enough to make them now a matter of judicial recognition. An Interlocutory Injunction is procedurally between an interim injunction and a perpetual injunction, and it is granted pending the determination of the case. The locus classicus is KOTOYE V CENTRAL BANK OF NIGERIA (1989) 1 NWLR (Pt. 98) 419. In that case, the Supreme Court held as follows: (a)"That the Applicant must show that there is a serious question to be tried, i.e. that the Applicant has a real possibility, not a probability of success at the trial, notwithstanding the Defendant's technical defence (if any), (Obeya Memorial Specialist Hospital V A.G. Federation (1987) 3 NWLR (Pt. 50) 325 followed). (b). That the Applicant must show that the balance of convenience is on his side, that is that more justice will result in granting the application than in refusing it, MISSINI V BALOGUN (1958) 1 ALL NLR 318 referred to. (c) That the Applicant must show that damages cannot be an adequate compensation for his damage or injury, if he succeeds at the end of the day. (d) That the Applicant must show that his conduct is not reprehensible for example that he is not guilty of***

any delay. (e) 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. (f) Where a Court of first instance fails to extract an undertaking as to damages, an Appellate Court ought normally to discharge the Order of Injunction on appeal."

Therefore, it is of paramount importance in applications of this nature that an Applicant, seeking to stop the actions of an opposing party by the Injunctive powers of the Court, must show that he has sufficient interest in the reliefs sought. To put it in other words, before an Applicant can be entitled to an Order of Injunction against the Respondent, it must be established that he has a legal right capable of being protected by such an Order. In this respect, see the case of ***ENWEZOR V WITHECH INDUSTRIES LTD & ORS (2008) LPELR – 4193 (CA) per SIDI DAUDA BAGE, JCA as pages 29 -30, Paras F – B*** where it was held thus: -

"The grant of an Interlocutory Injunction which is equitable in nature is at the discretion of the Court. It is a fundamental rule that the Court will grant an Interlocutory Injunction only to support a legal right".

At this juncture, the question that comes to mind is, have the Applicants herein established their legal right capable of being protected?

The Applicants deposed in their supporting affidavit particularly paragraph 4(vi), (vii) and (viii) as follows:

"Paragraph 4 (vi): -

"An election for the respective offices of the 10th Defendant/ Respondent was conducted in accordance with the Constitution of the 10th Defendant/Respondent on the 4th July 2018. The 1st – 6th Claimants contested and won the elections. Their respective forms used for the conduct of the election by the 7th – 10th Defendants are here marked as Exhibit 1."

Paragraph 4 (vii): -

> ***"The FORMS contain our requisite information, particularly of the 1st – 6th Claimants/Applicants."***

Paragraph 4 (viii): -

> ***"1st – 6th Claimants/Applicants contested and won the respective offices constitutionally provided for. After the election the 7th – 9th Claimants the electoral committee members of the 10th Defendant/Respondent duly declared 1st – 6th Claimants/Applicants elected and that they were sworn in with other executive committee members."***

It is not the intension of the Court however to delve into substantive issue at this interlocutory stage, nor make any finding on issues which touch on the main claims in the substantive suit. However, for the purpose of this application as gleaned from the paragraphs quoted above, it is clear in my humble view that the Applicants have established the existence of a legal right capable of being protected as envisaged by law. In addition, it is averred for the Claimants/Applicants in the supporting Affidavit, particularly paragraphs 4xiii have made undertaking as to damages, and in paragraph 4xx (20) thereof is averred that damages will be adequate compensation on the sufferings and/or loss the Claimants/Applicants have suffered and would still suffer.

Moreso, a careful perusal of Exhibit 1 titled: Area 1 Shopping Complex Association of Nigeria Garki FCT Abuja Contestant's Form and Exhibit A titled: New Area 1 Shopping Plaza Traders Association Certificate of Return to the office of the Chairman will further show that the Applicants have legal rights to be protected in respect of the position they deposed to have contended and won. I equally so hold.

As earlier held, I think I cannot go beyond this stage in order to avoid descending into the arena of substantive suit at interlocutory stage which the law frawns at. This position of law was re-echoed in the case of ***GLOMITE (NIG) LTD V SHELLBORN MARINE CO. (NIG) LTD (2003) LPELR-7243 (CA) (PP:14, Paras. B)*** where it was held thus: -

"…The law is that the Court should refrain from deciding the substantive suit at the interlocutory stage, so as to not to go into merit of the case. It is trite law that has been judicially approved in a plethora of cases by this Court and the Apex Court.

See also the case of: ***NAUAKWA V. NWEKE (2007) LPELR-8092 (CA) (PP.8, Paras C)."***

In the circumstance and in the light of the above, I hereby resolve the issue for determination in favour of the Claimants/Applicants against the Defendants/Respondents and hold that the Claimants/Applicants have made out a case for the grant of this application.

To that extent and without further ado, this application is hereby granted as prayed. I equally order for the accelerated hearing of the substantive suit in the interest of justice. No order as to cost.

Signed:

Hon. Justice Samirah Umar Bature
7/10/2021.