IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 13TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/971/2021
MOTION NO.: M/3209/2021

BETWEEN:

ARTHUR NDIWE & CO. — **CLAIMANT/APPLICANT**

AND

1. **BETA FOUNDATION LTD**
2. **CHIEF (DR) RAMON A. ADEDOYIN** — **DEFENDANTS/RESPONDENTS**

RULING

This Ruling is on the application of the Claimant/Applicant for restraining orders against the Defendants/Respondents.

By way of a Motion on Notice brought pursuant to Order 42 (1) and (2) and Order 43(1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, the Claimant/Applicant seeks the following reliefs from this HonourableCourt:-

1. *An Order of interlocutory injunction restraining the Defendants/Respondents, their associates, officers, subordinates, workers, employees, ad-hoc staff, legal representatives, servants, agents or privies in whatever name called from harassing, disturbing or evicting the Claimant/Applicant from its rented*

property, Suite A8A Patsy (Beta Foundation) Plaza, No. 359 EbituUkiwe Street, Jabi, Abuja, subject matter of this suit pending the hearing and determination of the suit.

2. *An Order pursuant to Order 4 Rule 9 of the FCT High Court (Civil Procedure) Rules, 2018 restraining the Defendants/Respondents from taking any further steps in connection with the subject matter of this suit and/or maintaining status quo or staying all actions pending the determination of this suit.*
3. *And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.*

In support of the motion were a 24-paragraph affidavit deposed to by one Dominick Okafor, a written address and five exhibits marked as **Exhibit A, B, B, E** and **F**which are official cash receipt from KachiOkpara& Co. to Ndiwe Arthur as evidence of payment for rent and service charge for the year 2020/2021, notification of sale of property known as Patsy Plaza from AMCON to the tenants in the plaza, letter from Beta Foundation Ltd to Arthur Ndiwe& Co. dated 15th February, 2021, letter from Beta Foundation Ltd to the tenants in the plaza dated 19th February, 2021 and Notice of Owner's Intention to Apply to Recover Possession from Divine Grace Law Office to Arthur Ndiwe& Co respectively.

Briefly, the facts as stated in the affidavit in support of the application are as follows: the Claimant/Applicant was a tenant occupying Suite A8A Patsy Plaza now known as Beta Foundation Plaza, had so been since 2019 and had renewed its tenancy in October, 2020. Some time in February, 2021, the Assets Management Company of

Nigeria (AMCON), the previous owner of the property sold same to Oduduwa University. Shortly, after the sale, the 1st Defendant who claimed to be the new owner of the property issued a letter to the tenants urging them to renew their tenancy or risk eviction from the property. All efforts to engage the 1st Defendant proved abortive as the 1st Defendant through its Solicitors issued a Seven Days Notice of Owner's Intention to Apply to Court to Recover Possession. Since its rent was still running, it had approached this Honourable Court to restrain the Defendants from proceeding in their unlawful eviction.

In the written address in support of this application, the Claimant/Applicant formulated a sole issue for determination, to wit: "Whether having regards to the facts and circumstances of this case, this Honourable Court can exercise its discretion in favour of the Claimant/Applicant by granting the interlocutory orders sought." In his argument on the issue, learned Counsel for the Claimant/Applicant submitted that where a legal right existed, a party had the right to apply to Court for an order preserving the *res* pending the final determination of the suit. Pursuant to this settled principle of law, he asserted that the instant application sought to protect the legal right of the Claimant/Applicant over the property it lawfully rented and occupied as an annual tenant. He urged the Court to grant the application as not granting the application would render the judgment nugatory.

Citing a number of judicial authorities, Counsel distilled the conditions that must exist before a Court would grant an interlocutory injunction. Those conditions were the existence of a legal right, substantial issue to be tried, the balance of

convenience, irreparable damage or injury, conduct of the parties and undertaking as to damages. He insisted that all these conditions were present in the instant application in favour of the Claimant/Applicant. He therefore prayed this Honourable Court to grant the prayers sought in the application.

In support of his argument, learned Counsel cited and relied on the following cases: ***Ubani v. Ogolo (1997) LPELR-6303 (CA); Alcatel Kabelmetal Nigeria Plc &Ors v. Ojugbele (2002) LPELR-5240 (CA); Oyeyemi v. Irewole Local Government (1993) 1 NWLR (Pt. 270) 462 at 476; Nwosu v. Nnajiuba (1997) LPELR-6042 (CA); Kotoye v. CBN &Ors (1989) LPELR-1707 (SC); Temewei&Ors v. Benbai&Ors (2015) LPELR-25131 (CA); Gov. Ekiti State v. Ojo (2006) 17 NWLR (Pt. 1007) 125 paras F-G;*** and***Duwin Pharmaceutical and Chemical Co. Ltd v Beneks Pharmaceutical and Cosmetics Ltd &Ors (2008) LPELR-974 (SC)***.

In their response, the Defendants/Respondents filed a 50-paragraph affidavit deposed to by Chief (Dr) Ramon AdegokeAdedoyin, the 2nd Defendant/Respondent in this suit and supported by four exhibits, namely: the handover notes from AMCON which contains the list of tenants in the Plaza marked as **Exhibit 1**; a letter dated 15th of February, 2021 to the tenants urging them to regularize and renew their tenancies with the Defendants marked as **Exhibit 2**; receipts of 10 out of 70 tenants who have fully paid their rents marked as **Exhibit 3^{A-E}** anddocuments of incorporation of Oduduwa University marked as **Exhibit 4**.

After denying certain portions of the affidavit in support of the application, the deponent went on to aver that he was the founder and Chancellor of Oduduwa University, Ipetumodu, Osun State, the largest shareholder thereof, the founder and Chairman, Board of Directors of BETA Foundation Plaza; and that he purchased the plaza formerly known as "Patsy Plaza" from Assets Management Corporation of Nigeria (AMCON) on the 16th of December, 2020 through his university and renamed it "BETA Foundation Plaza" as naming it 'Oduduwa University Plaza' could give the impression that the university was operating a satellite campus in Abuja. He further stated that he appointed the 2nd Defendant/Respondent to manage the plaza for himself and the University.

He added that when he studied the hand-over notes, he saw that many of the tenancies, including that of the Claimant/Applicant whose tenancy ran from 14th of February, 2020 to the 13th of February, 2021, had expired. This, he further averred could be seen from Exhibit 1 annexed to the counter-affidavit. He confirmed that he issued a Notice of Owner's Intention to Apply to Recover Possession to the Claimant/Applicant. In conclusion, he urged this Court to discountenance the application of the Claimant/Applicant.

In the written address, Counsel for the Defendants/Respondents formulated two issues for determination; namely: (a) Whether from the facts and circumstances of this case, the Claimant/Applicant is entitled to an Order of Interlocutory Injunction against the Defendants/Respondents; and (b) Whether this suit is not pre-emptive

and an abuse of the processes of this Honourable Court to overreach the Defendants/Respondents?

In his joint argument on the issues formulated, learned Counsel began same by urging this Honourable Court to strike out paragraphs 15, 17, 18, 19 and 21 of the affidavit in support of the application of the Claimant/Applicant. According to him the said paragraphs contained legal arguments and conclusions, thereby contravening the provisions of section 115(1), (2) and (3) of the Evidence Act, 2011 as amended. He pointed out that interlocutory injunction was an inequitable relief grantable at the discretion of the Court and that for this reason, the Claimant/Applicant had a duty to disclose all the material facts before he would be entitled to the reliefs.

After citing the conditions that an applicant for an interlocutory injunction must fulfill before they would be entitled to same, learned Counsel for the Defendants/Respondents maintained that the Claimant/Applicant had not fulfilled any of the conditions. He argued that the application of the Claimant/Applicant was a ploy to deny the Defendants/Respondents the fruits of their labour by occupying the premises illegally without payment of rent. He also insisted that the suit was an abuse of court process as it was pre-emptive of the legal process already set in motion by the Defendants/Respondents via the service of the Notice of Owner's Intention to Apply to Recover Possession. In conclusion, he urged the Court to dismiss the application.

For all his arguments on the two issues formulated, learned Counsel cited and relied on the cases of ***Bamaiyi v. The State (2001) FWLR (Pt. 46) 956; Nigeria LNG Limited v. African Development Insurance Co. Ltd (1995) 8 NWLR (Pt. 416) 677 at 701 – 702; Mohammed v. Umar (2009) All FWLR (Pt. 267) 1510 at 1523 – 1524 paras H – D; Akinpelu v. Adebore (2008) All FWLR (Pt. 429) 413 at 420 Ratio 7; Kotoye v. CBN (1989) 1 NWLR (Pt. 98) 149; Dongtoe v. CSC, Plateau State (1995) 7 NWLR (Pt. 408) 448 at 459*** and ***Africa Re-Insurance Corporation v. JDP Construction Nig. Ltd (2003) NWLR (Pt. 838) 609 at 635***.

The Claimant/Applicant also filed a 20-paragraph further affidavit and reply on point of law to the Defendants/Respondents counter-affidavit. It denied the averments in the counter-affidavit and insisted that its rent ran from 14th October, 2020 to 13th October, 2021.

In his reply on points of law, Counsel for the Claimant/Applicant contested the argument of the Counsel for the Defendants/Respondents that certain paragraphs were against the provisions of section 115(1), (2) and (3) of the Evidence Act, 2011. He further argued that the Claimant/Applicant was entitled to the reliefs sought because the Notice of Owner's Intention to Apply to Recover Possession was a clear indication that the Defendants/Respondents were determined to evict it from the property in spite of the fact that its tenancy was still subsisting. He maintained, in conclusion that the suit of the Claimant/Applicant was not an abuse of Court process.

For all his arguments in the Claimant/Applicant's reply on points of law, Counsel cited and relied on ***Bamaiyi v. State, 2001, supra; Agwu&Ors v. Julius Berger (Nig) Plc (2019) LPELR-47625 (SC); Adeleke&Ors v. Lawal&Ors (2013) LPELR-20090 (SC); Ojo&Ors v. Olawore&Ors (2008) LPELR -2379 (SC); Scheep& Anor v. The MV "S.Araz" & Anor (2000) LPELR-1866 (SC);*** and***NJC v. Agumagu&Ors (2015) LPELR-24503 (CA)***.

The above are the cases and legal arguments for the parties in respect of this application. Clearly, what this Court is invited to determine is this issue: ***"Whether the Claimant/Applicant is entitled to the relief sought in this application."***

Before I treat this issue formulated herein, it is necessary to dwell briefly on the subject of the competency of paragraphs 15, 17, 18, 19 and 21 of the affidavit in support of the application. Counsel for the parties joined issues on this subject in the written address in support of the counter-affidavit and the reply on points of law. Section 115 (1) and (2) provides that,

(1) Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

(2) An affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion.

The test in determining an affidavit satisfies the requirements of a valid affidavit was laid down by the Supreme Court in the case of Bamaiyi v. The State (2001) 8 NWLR (Pt. 715) 270 at 289 in this lucid dictum:

"The test … is to examine each of the paragraphs deposed to in the affidavit to ascertain whether it is fit only as a submission, which counsel ought to urge upon the court. If it is it, then it is likely to be either an objection or legal argument; which ought to be pressed in oral argument; or it may be conclusion upon an issue, which ought to be left to the discretion of the court either to make a finding or to reach a decision upon through its process of reasoning. But if it is in the form of evidence, which a witness may be entitled to place before the court in his testimony on oath and legally receivable to prove or disprove some facts in disputes, then it qualifies as a statement of facts and circumstances, which may be deposed to in an affidavit. It therefore, means that prayers, objection and legal argument are matters that may be pressed by counsel in court and are not fit for a witness either in oral testimony or in affidavit evidence; while conclusions should not be drawn by witnesses but left for the court to reach."

Applying the periscope of this dictum to the disputed paragraphs of the Claimant/Applicant, I have no doubt in my mind that indeed, paragraph 15 of the affidavit in support of the application is a legal argument. It is immaterial that the deponent prefaced the averment with the clause "I know that …" It is a legal argument nonetheless. Paragraph 17 is a conclusion. It is not in the place of the deponent to conclude that the Notice of Owner's Intention to Apply to Court to

Recover Possession was “unwarranted and constitutes trespass to the claimant’s enjoyment of its demised property.” It is for the court to decide, and, even, it is a question that is fit for determination at the hearing of the substantive suit. Though learned Counsel for the Defendants/Respondents described paragraph 18 as a legal argument, it is my considered view that it is more of a prayer than a legal argument. All the same, it is an extraneous matter. Paragraph 19 is a conclusion. It is not for the deponent to conclude that the Defendants/Respondents would lose nothing; it is a finding the court has to make in the determination of this application on the criteria of balance of convenience and irreparable damage or injury. Lastly, paragraph 21 is a legal argument.

For the above reasons, I agree with learned Counsel for the Defendants/Respondents that paragraphs 15, 17, 18, 19 and 21 of the affidavit in support of the application run afoul of the provisions of section 115(1) and (2) of the Evidence Act, 2011. They are accordingly struck out. Consequently, they will not be considered in the determination of the issue I have formulated herein.

In resolving this issue, I must begin by pointing out that the relief sought in this application is an equitable relief which lies within the purview of the discretionary powers of the Court. An injunction, whether interim or interlocutory, is usually granted to preserve the *res*, that is, the subject matter of the suit. It is also granted to restrain a party or all the parties in the suit from taking further steps in respect of the subject matter of a pending action so that by their action they do not render nugatory the judgment of the Court in the suit.

Since injunctions are equitable reliefs, they come within the discretionary powers of the Court; and the Court, in granting or refusing to grant an order for injunction, must consider what is fair and just to all the parties before it. In its consideration of what is fair and just, the Court must exercise this equitable jurisdiction and its discretionary powers judiciously and judicially. In ***Owerri Municipal Council &Ors. v. Onuoha&Ors (2009) LPELR-8422(CA)***, the Court of Appeal held that ***"An order of interlocutory injunction is granted upon exercise of discretionary power of the Judge in his equitable jurisdiction. Like with all other discretions, the Judge must act judicially and judiciously on the facts placed before him."*** In ***Adeleke v. Lawal, (2014) 3 NWLR (Pt. 1393) 1 at pages 17 – 20***, the Supreme Court, per Aka'ahs, JSC, reiterated this position that an injunction is an equitable remedy which lies within the discretion of the Court to grant. See also ***Adenuga v. Odumeru (2001) 2 NWLR (Part 696) 184 at 185 per Karibi - Whyte JSC***.

Two questions, then, must be answered. These are, first, what is the *res* that this application seeks to fulfil and, second, has the Claimant/Applicant fulfilled the conditions for the grant of these reliefs? With regards to the first question, it is immediately obvious from the facts in the affidavit in support of the application and the facts in the counter-affidavit that the *res* in this application is the Claimant/Applicant's occupation of the Suite A8A Beta Foundation Plaza, formerly known as Patsy Plaza. While the Claimant/Applicant claims that its tenancy is still running, the Defendants/Respondents contend that its tenancy has terminated by effluxion of time. Having taken radical steps towards evicting the

Claimant/Applicant, the Claimant/Applicant has approached this Court to restrain the Defendants/Respondents from dissipating the *res*. But, has the Claimant/Applicant satisfied the requirements for the grant of the relief sought in this application?

In ***Adeleke v. Lawal, supra***the Supreme Court distilled six conditions which must exist together before the Court could make an order of interlocutory injunction. Those conditions are: (1) existence of a legal right; (2) substantial issue to be tried; (3) balance of convenience; (4) irreparable damage or injury; (5) conduct of the parties; and (6) undertaking as to damages.

In ***Adeleke v. Lawal, supra*** the Supreme Court merely restated the guiding principles for the grant of interlocutory injunctions as laid down in a long line of cases such as ***Ladunni v. Kukoyi (1972) LPELR-1739;American Cynamid Co. v. Ethicon Ltd (1975) A.C. 396; Obeya Memorial Specialist Hospital v. Attorney-General of the Federation & Anor (1987)3 N.W.L.R. (Pt.60) 325;Kotoye v. Central Bank of Nigeria(1989) 1 NWLR (PT.98) 419; Saraki v. Kotoye(1992) 9 NWLR (Pt. 264) 156;Onyesoh v. Nnebedum(1992) 3. NWLR (Pt.229) 315; Buhari v. Obasanjo(2005) 13 NWLR (Pt.941)1*** among others. The question is: has the Claimant/Applicant been able to satisfy these requirements?

From the facts in the affidavit and counter-affidavit, it is evident that there isthe existence of a legal right. There is also a substantial issue to be tried. In ***Akapo v. Hakeem-Habeeb (1992) 6 NWLR (Pt. 287) 266 at 289 para E,***Karibi-Whyte, JSC,

held that ***"The claim for an injunction is won and lost on the basis of the existence of competing legal rights."***These competing legal rights are the subjects that will occupy this Court in the substantive suit. To ensure that the proceeding is not rendered nugatory, there is therefore the need to preserve the *res* through an order of interlocutory injunction.

With regards to the other conditions, that is to say, balance of convenience, irreparable damage or injury, conduct of the parties and undertaking as to damages, it is my considered view that they inure, in this application, in favour of the Claimant/Applicant. Who will suffer the more if this application was not granted? I hasten to answer that it is the Claimant/Applicant who be rendered homeless, albeit unjustly, if, upon the hearing and determination of the substantive suit, it was found that, indeed, its tenancy was still running. In that case, would damages be enough to assuage the humiliation, embarrassment, psychological trauma, emotional distress and reputational disruption it and its minders would suffer?

Besides, this application was brought timeously – within eleven days after the date on the Notice of Owner's Intention to Apply to Recover Possession. There is nothing tardy or reprehensible about the conduct of the Claimant/Applicant. This is notwithstanding the argument of learned Counsel for the Defendants/Respondents that the application was an abuse of court process since, according to him, it sought to overreach the Defendants/Respondents. By admitting that, indeed, the Defendants/Respondents did, indeed, serve the Claimant/Applicant with the said Notice of Owner's Intention to Apply to Recover Possession, it becomes all the

more imperative to preserve the *res* pending the hearing and determination of the substantive suit. Moreover, the Claimant/Applicant has, in paragraph 20 of its affidavit in support of the application, made an undertaking as to damages.

At this juncture, I must state that implicit in an application for an order of interlocutory injunction is the need for parties to maintain *status quo*. In ***Adeleke v. Lawal, supra***, the Court held that it is trite law that the purpose of the application for interlocutory injunction is to keep the parties to an action in *status quo*, in which they were before the judgment or act complained of. See ***Globe Fishing Industries Ltd &Orsv.. Chief Folarin Coker (1990) NWLR (Pt.162) 265; (1990) 11-12 SC 80***. In ***Buhari v. Obasanjo, supra***, the Supreme Court, in laying down the conditions that must exist before an order of interlocutory injunction may be granted, held *inter alia* that because of the existence of a substantial issue to be tried, the *status quo* must be maintained pending the hearing and determination of the substantive suit. See also ***Onyesoh v. Nnebedum, supra.*** In ***GTB v. Garba (2015) LPELR-41656(CA)***, the Court of Appeal adopted the definition of *status quo* provided in ***Fellows v. Fisher (1975) All E.R. 843*** where *status quo* was defined as the position of things prevailing when the Defendant embarked upon the activities sought to be restrained.

Also, in ***Military Governor of Lagos State V. Ojukwu (1986) 1 NWLR (Pt. 18) 621***, the Supreme Court defined *status quo* thus: ***"Status quo presupposes the existence of an actual peaceable uncontested position of things preceding the pending controversy as distinguished from a status quo effected by the***

wrong doer before the institution of the suit, thus the aim of status quo is to preserve the position of things that existed before the pending controversy." See also ***Ayorinde v. A.-G. and Commissioner for Justice, Oyo State &Ors (1996) LPELR-685 (SC); Dieli& Anor v. Commissioner for Environment, Solid Minerals and Cooperatives, Abia State &Ors (2018) LPELR-45115 (CA)***.

As to what amounts to the *status quo ante bellum* in this case, it is my considered view that, flowing from the definitions provided in the above judicial authorities, the *status quo ante bellum* in this case was the state of affairs that was in existence before the Defendants/Respondents took the steps that propelled the Claimant/Applicant to institute this suit and to file this application. The first step, in this case, is the service of **Exhibit B** attached to the affidavit in support of the application, that is, the letter of 15th February from the 1st Defendant to the Claimant/Applicant urging it to renew its rent within seven days or risk eviction, a step which set in motion a series of othersteps culminating, ultimately, in the service of the Seven-Day Notice of Owner's Intention to Apply to Court to Recover Possession dated the 18thof March, 2020. This ultimate step puts it beyond all vestiges of doubt that the Defendant/Respondent is intent on ejecting the Claimant/Applicant from Suite A8A, Beta Foundation Plaza, formerly known as Patsy Plaza, located at Plot 359 EbituUkiwe Street, Jabi, Abuja. This Court therefore has the responsibility to preserve the *res* of this suit by ensuring that parties herein maintain the *status quo ante bellum* pending the hearing and determination of the substantive suit.

For the reasons set out above, I find merit in this application and, therefore, hasten to grant the reliefs sought therein as follows:-

1. **That an Order of interlocutory injunction is hereby made restraining the Defendants/Respondents, their associates, officers, subordinates, workers, employees, ad-hoc staff, legal representatives, servants, agents or privies in whatever name called from harassing, disturbing or evicting the Claimant/Applicant from its rented property, Suite A8A Beta Foundation Plaza, formerly known as Patsy Plaza, No. 359 EbituUkiwe Street, Jabi, Abuja, the subject matter of this suit pending the hearing and determination of the suit.**
2. **That all the parties herein are hereby ordered to maintain the status quo ante bellum in respect of Suite A8A Beta Foundation Plaza, formerly known as Patsy Plaza, and to refrain from taking any further steps in connection with the subject matter of this suit pending the determination of this suit.**

This is the Ruling of this Honourable Court delivered today, the 13th of October, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
13/10/2021