**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION**
**HOLDEN AT ABUJA**
**ON 2ND DAY OF NOVEMBER 2021**
**BEFORE THE HONOURABLE JUSTICE A. A. FASHOLA**

**SUIT NO. FCT/HC/CV/1102/2021**
**MOTION: NO. M/3502/2021**

**BETWEEN:**

**DR. AJAH ELECTUS---------- CLAIMANT/APPLICANT**

**AND**

1. **AVASTONE GLOBAL SERVICES LTD** } **DEFENDANTS/**
2. **PETER TOBECHUKWU OKAFOR** } **RESPONDENTS**

**RULING**

By a motion on notice dated and filed on 16TH day of June 2021. Brought pursuant to Order 43 Rule 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 Application is praying for the followings Orders.

1. **AN ORDER OF INTERLOCUTORY INJUNCTION** Restraining the Defendants acting either by themselves or through their agents, privies, servants or any other person(s) acting or purporting to act on the defendants behalf or instruction; or otherwise whosoever fromtaking

any step or making any arrangement to take over, selling demolishing or interfering with the Claimant's right to own and occupy the afore described House known as House Number PO4, Plot 323, 4 Bedroom Detached Duplex located at Porsche Terraces Estate Karmo Distract, Abuja pending the hearing and final determination of the substantive suit.

2. **AND FOR SUCH FURTHER ORDER(S)** as this Honourable Court may deem fit to make in the circumstances of this case.

Grounds upon which the application is brought:

1. That there is a need to preserve the res in this suit pending the hearing and the determination of this suit.
2. That the Defendants are making frantic effort to forcefully take over and sell the Claimant's Property and confiscate the proceeds.
3. That such takeover would result in an irreparable loss to the Claimant/Applicant.
4. That this Honourable Court has the inherent powers to preserve the res pending the hearing and determination of this suit.

In support of the interlocutory application is a 53 paragraphs affidavit deposed to by one Mrs. Celine Amuzie A. Annexed to the affidavit are exhibits attached marked as exhibits A to K respectively.

The Claimant/Applicant avers in his affidavit that he applied to the defendants for the purchase of a 4 Bedroom Detached Duplex located at Porche Terraces Estate, Karmo District, Abuja, after filing the completion of the client registration form and submitting same to the defendant. That upon receipt of the registration the defendant issue to the Claimant /Applicant a letter of Allocation dated 11th July, 2017 for House A 302 STR Plot 72 after payment of the sum of N6,000,000.00 (Six Million Naira) as indicated on the offer letter dated 11th July 2017, wherein the same letter also acknowledged the receipt of the said sum of N6,000,000.00 (Six Million Naira) remaining a balance of N14,000,000.00 (Fourteen Million Naira) the Claimant avers that they agreed that the life span of the construction work by the Defendants shall be within 17 months from 13th of March, 2017, he further avers that the total payment made for the purchase of the House is the sum of N15,000,000.00 (Fifteen Million Naira), the Claimant/Applicant stated that earlier this year 2021, it was discovered that the acquisition of the land by the Defendants from the original

owners were not completely paid off by the Defendants. That the original land owners after several demand of payment to the Defendants decided to come to the Estate and block all the construction work and closed the site, and that the defendant breach the agreement.

The Claimant avers that his workers were working on completion stage when the defendants sent thugs to disrupt the work, they also went ahead to remove and destroyed the doors and windows that were mounted by the claimant. The thugs went ahead to scrap and remove the plasters on the walls of the interior of the house done by the claimant as part of the completion works of his house, the claimant workers were wounded and forcefully pushed out of the property. The Claimant also avers that the act of the defendants stopping the claimant's workers amounts to a breach of contract that they have entered. He stated further that the defendants will not be prejudiced by the grant of this application as it is only to preserve the res.

Equally filed along the application is a written address dated 16th day of June, 2021. Learned counsel to the Claimant/Applicant formulated a sole issue for determination to wit:

***"WHETHER THE CLAIMANT/APPLICANT HAS SATISFIED THE CONDITIONS FOR THE GRANT OF AN***

***INTERLOCUTORY INJUNCTION PENDING THE DETERMINATION OF THE SUBSTANTIVE SUIT".***

In respect of the lone issue for determination raised the Claimant / Applicant's counsel learned silk argued that, it is trite law that the grant of an interlocutory injunction is discretionary and it's not a matter of course, the learned counsel stated that there are laid down principles guiding the grant or refusal of an interlocutory injunction, which governs the discretion of the court. The learned silk referred this court to case of **KOTOYE V. CBN (2000) 16 WRM 71 AND OBEYA MEMORIAL V. AGF )2000(24 WRN 138.**

The learned silk relied on the above cited authority that an Applicant that desires the court to exercise its discretion in his favour by granting the Interlocutory Injunction sought, must fulfil certain conditions which govern the discretion of the court, the conditions are as follows:

1. *The existence of legal right to be protected;*
2. *That there must be a serious question to be tried;*
3. *That the balance of convenience is on his side.*
4. *The damages cannot be adequate compensation for his damage or injury if succeeds;*
5. *That his condition is not reprehensible; and*

*6. That he is willing and able to give undertaking as to damages in the event of a wrongful exercise of the courts discretion in granting the Injunction.*

In respect of 1st condition, the learned SAN, argued that the legal right of the applicant in this suit has been violated by the acts and conduct of the Defendants/Respondents and their privies, agents, the learned SAN further argued that the Claimant/Applicant has existence right in the subject matter in dispute and that the right is being threatened by the acts of the Defendants/Respondents and their privies and agents as in the instance case, the learned SAN pray the court to grant applicant's application to restrain the Defendants/Respondents by the themselves, or any persons acting or purporting to act on the respondents' instruction pending the final determination of the substantive suit, the learned silk referred this court to paragraphs 6 to 14 of the Applicant's affidavit and Exhibit B and C

In respect of the 2nd condition the learned SAN argued that the Applicant by his affidavit in support of this Application in paragraphs 6 to 52 particularly in paragraphs 34 to 50 exhibit "A" to "K" has shown that there is serious issue to be tried.

The learned silk referred this court to the case of **KOTOYE V. CBN (SUPRA) Ratio 13** where the court held as follows:

"On the hearing of an application for Interlocutory Injunction, the court, after avoiding all the controversial issues, including:"

1. The strength of the Applicant's case. A long time ago, the plaintiff was required to show a strong prima facie case that he was entitled to the relief. However, since the decision of the House of Lords in **America Cyanamid Co. V.Ethicon Ltd.**
2. It has been held that what the Applicant needs to show is only a real possibility, of success at the trial that there is a serious question to be tried once the plaintiff satisfies the requisite standard in this respect, the order will still be made even though the defendant has a technical defence", the learned SAN submitted that there is a serious question to be tried.

In respect of the 3rd condition the learned SAN also argued that, the Application for Interlocutory Injunction must satisfy the court that the balance of convenience on his side the learned silk referred the court to the decision in the case of **A.C.B. V.**

**AWOGBORO (1991)2 NWLR (Pt. 176) page 711 at 719-720 paras** H-A NIKI TOBI J.C.A. (as he then was) held that:-

> "*The balance of convenience between the parties is a basic determining factor in an application for an Interlocutory injunction". In determination of this factor, the law requires some measurement of the scales of justice to see where the pendulum tilts, while the law does not require a mathematical exactness, it is the intention of the law that the pendulum, should really tilt in favour of the Applicant. In other words, there should be enough evidence that the Applicant will suffer more inconvenience if the Application is refused".*

The learned SAN relied on the facts deposed to in the affidavit in support of the motion on notice which alluded to steps that the Respondents and their agents have taken on the subject matter; learned SAN argued that the Applicant will suffer more inconvenience if this application is refused. The learned SAN referred this court to paragraphs 6 to 51 particularly paragraphs 38 to 44 of the Applicant's Affidavit.

In respect of the 4th condition, which borders on the insufficiency of pecuniary damages. The learned SAN stated that an applicant for an order of Interlocutory Injunction must satisfy the court that

pecuniary or monetary damages will not compensate him for the injury or damage that may be occasioned by the actions of the Respondent if not restrained by the court. He referred the court to paragraphs 45 to 47 of the applicant deposition. He also referred the court to the case of **ITA V. NYONG (1994)1 NWLR (Pt. 318) page 56 at 70** paragraphs C-D where the court held.

> *"If damages in the measure recoverable of law would be adequate, no injunction should normally be granted. The balance of convenience is in favour of the Applicants as the Defendants would have nothing to lose if this Application is granted;*

He submitted that all the paragraphs of the Applicant's affidavits clearly recounted the real urgency in the facts surrounding this Application.

In respect of the 5th condition undertaking as to damages, the learned SAN stated that, the Applicant in this case in paragraph 48 of the affidavit in support of this motion has undertaken to pay damages to the respondents if in the likely event that this application is found to lack merit and ought not to have been granted in the first place.

He referred this court to the case of KOTOYE V. CBN (Supra) RATIO 24, where the court held that

> *"it is my view that a necessary corollary to the fact that an undertaking as to damage is the price that an Applicant has to pay for the order of interlocutory injunction, failure to give the undertaking leaves the order, without a quid pro quo and so should be ground for discharging the order".*

The learned SAN urged, this honourable the court to hold that the Claimant/Applicant has satisfied the condition of willingness and ability to furnish an undertaking as to damages, and pray the court to grant the Application.

The following were annexed as Exhibits to the application

1. *Exhibit "A" is a client registration Form of Avastone Global Services Ltd in name of Ajah Electus dated 8th of August 2016*
2. *Exhibit "B" is a letter of provisional allocation of Global Services Ltd to Ajah Electus dated 11th July, 2017.*
3. *Exhibit "C" stated in paragraph 14 of the applicant's application but did not annexed on the process.*

4. *Exhibit "D" is a letter of complaint R; purchase of House by Mr. Electus Ajah to Avestone Global Services Ltd dated 12th July 2017.*

5. *Exhibit "E" is a letter of R: gross violation of agreement and the consequences by Dr. Electus Ajah (claimant) to Avastone Global Services Ltd dated 2nd September, 2020.*

6. *Exhibit "F" is a letter of completion plan for unit PO4 on Plot 323 Karmo district by Avastone Global Services Ltd to Ajah Electus 12th October, 2018.*

7. *Exhibit "G" stated on the affidavit but is not annexed on the process.*

8. *Exhibit "H" is a cost variation letter by Avastone Global Services Ltd to Ajah Electus dated 22nd May, 2020.*

9. *Exhibit "I" is a letter of Re: your purported cost variation by Dr. Ajah Electus to Avastone Global Service Ltd dated 8th June, 2020.*

10. *Exhibit "J" is a letter of Re: Reallocation/Refund advice by Avastone Global Service Ltd to Ajah Electus dated 17th March 2021*

11. *Exhibit "K" is a letter of Response to Re-allocation/Refund advice by Ajah Electus to Avastone Global Service Ltd dated 24th March, 2021.*

The Learned Counsel to the Claimant/Applicant cited the following the cases in support of his application.

1. KOTOYE V. CBN (2000)16 WRN 71
2. OBEYA MEMORIAL V. AGF (2000)24 WRN 1383. A.C.B. V. AWOGBORO (1991) 2 (NWLR) (PT. 176) PG 711 AT 719-720 paras H.A.
3. ITA V. NYONG (1994)1 NWLR (318) pg 56 at 70 paragraphs C-D.
4. A.C.B Vs AWOGBORO (1991) 2 NWLR (Pt 176) Pg 711 at 719-720

In response to the application, Learned Counsel to the Defendants/Respondent filed a 49 paragraphs Counter Affidavit dated 5th August, 2021 deposed to by one Raymond Bemdo Abagu, Facility Manager of the defendant's company and exhibits attached to the Counter Affidavit are Exhibits AV1 to AV6,

Filed along the Counter Affidavit is a Written Address dated 27th day of July 2021 wherein learned Counsel to the

Defendant/Respondent formulated a sole issue for determination to wit:

***"WHETHER THE CLAIMANT/APPLICANT HAS SATISFIED THE CONDITIONS FOR THE GRANT OF AN INTERLOCUTORY INJUNCTION PENDING THE DETERMINAITON OF THE SUBSTANTIVE SUIT?"***

In respect of the lone issue for determination raised by the Defendants/Respondents' counsel, He stated that the law governing the grant of an interlocutory injunction is now fairly well settled. In considering the application a court looks out for main considerations which are:

1. The applicant must have legal right to protect.
2. The need to maintain the Res and Status Quo.
3. Whether there is serious issue to be tried.
4. Adequacy of damages and undertaken as to damages.
5. Balance of convenience and
6. Conduct of parties.

In respect of the first condition, learned counsel to defendants/respondents argued that it's a well settled principle of law that the reason for the grant of interlocutory injunction is to

protect the existing legal right of a person from unlawful invasion by another.

Therefore where an applicant has no legal right or fails to show that he has one, the court has no power to grant an injunction. He referred this court to the case of **AKPO VS HAKEEM-HABEEB (1992)6 NWLR (pt.247) 266. ATTORNEY GENERAL, ABIA STATE VS ATTORNEY GENERAL OF THE FEDERATION (2005) 12 NWLR (PT.940)452 at 514 PARA. A. DANTATA VS. C.S. LTD (2005) ALL FWLR (PT.280)1474 at 1491 PARA. D.**

He stated that it is also an essential requirement that the evidence must disclose that the applicant has a legal right to bring the substantive action on which the application is based.

Counsel referred to this court to the case of **ONYESOH VS. NNEBEDUM (1992)3 NWLR (PT. 229)315 AT 339 PARAGRAPH E.**

He submitted that the applicant does not have legal right or disclose any substantial interest in the property. He stated that **Exhibit B** attached in support of the Applicant's Motion on Notice is mere **Offer Letter** which was predicted and or subject to **Exhibit AV1.**

In respect of the Second condition, the learned counsel to the defendants/respondents argued that the applicant must show the court that there is a serious or substantial issue to be tried at the hearing.

He referred this court to the case of **AMERICAN CYNAMID VS. ETHICON LTD (1975) AC. 396 AT 407,** which was followed by the Supreme Court in **OBEYA MEMORIAL HOSPITAL VS. ATTORNEY GENERAL OF THE FEDERATION** the Nigerian Courts no longer requires an applicant to show a prima-facie case or a strong prima-facie case as a condition for the grant of his application an order of interlocutory injunction.

It is enough for the court to be satisfied that the claim is not frivolous or vexatious. He referred this court to the case of **AGBOMAGBO VS. OKPOGO (Supra).**The learned counsel submitted that the applicant does not disclose any substantial issue to be determined in this application and the very interest in the said property has not validly pass on the Applicant as envisaged on **EXHIBIT AV1.**

In respect of the Third condition the learned counsel argued that the court must ask itself the question – who will suffer more inconvenience if the application is granted and who will suffer

more inconvenience if the application is refused? He also referred this court to the case of **NWANKWO VS. ONONOEZE-MADU (2005)4 NWLR (PT.916)470 at 486.**

Learned counsel submitted that, it is the duty of the trial judge to provide answer to the above questions from the facts contained in the affidavit evidence before court. If available evidence shows that the applicant will suffer more hardship if the application is refused, then the balance of convenience is in his favour. Counsel further argued that the burden is always on the applicant for injunction to establish by evidence that the balance of convenience tilts in his favour. He referred this court to the case of **AYANTUYI VS. GOVERNOR, ONDO STATE (2005)14 WRN 67 AT 99-100.**

Learned counsel submitted that Defendants/Respondent will suffer greater injury including multiplicity of actions against them, the property has been sold by a bonafide third party who has fully paid for it and is already in possession. He referred this court to **Exhibit AV4** in support of his counter affidavit.

In respect of Fourth condition the learned counsel to the defendants/respondents argued that the applicant for an order of interlocutory injunction must satisfy the court that he suffers

irreparable damage or injury if the acts of the defendants are not restrained by such an order.

That irreparable injury meant an injury which is substantial and cannot be adequately remedied or atoned for by damages or cost. He referred this court to the cases of **SARAKI VS. KOTOYE) 1990(4 NWLR (PT.143) AT 187. BELLO VS. ATTORNEY GENERAL OF LAGOS STATE (2007)2 NWLR (PT. 1017)155 AT 138, PARAS D-E**

Counsel argued that an applicant must show the court that the award of monetary damages would not be adequate compensation from the injury which he would suffer from the violation of his right, if the application is refused and he eventually succeeds in the main action.

He further stated that where damages recoverable at law would be adequate remedy for the applicant for injunction and the defendant would be in financial position to pay such damages, then no interlocutory injunction should ordinary be granted. The courts are however enjoined not to grant injunction where greater hardship will be visited on the respondent than the good to the applicant.

Learned counsel submitted that in any contract of sales, damages has also been the readymade remedy for any breach thereof.

In respect of the Fifth condition, learned counsel to the defendants/respondents argued that in order to succeed on the application for an interlocutory injunction, an applicant must show that his conduct is not reprehensible i.e. he is not guilty of delay. This is because an interlocutory injunction is an equitable relief which requires the court to consider the conduct of the parties both before and at the time the application is made. He referred this court to the case of **FADIMA VS. VEEPEE INDUSTRIES LTD (2000)5 WRN 131 at 135-136.**

Learned counsel stated that an applicant for the equitable remedy of Interlocutory Injunction must fail if he is guilty of delay. This is because delay defeats equity. To succeed in the application, the applicant must act timeously so as not to over reach his opponent. He referred this court to the case of **PETER VS OKOYE (2002)3 NWLR (PT.755)529 at 552.** And exhibit AV1, AV2, AV3 attached to the respondents counter affidavit and Exhibit I of the claimant affidavit.

In respect of the Sixth condition, learned counsel to the defendants/respondents argued that where a court grants an order of interlocutory injunction, the effect is to restrict the activities of the defendant in relation to the action before that court. This restriction may lead to the defendant suffering some damage or loss. Where the plaintiff who obtained an order of interlocutory injunction as a result of which the activities of the defendant are restricted, fails in his claim at the end of the proceedings, the defendant would have suffered loss unfairly. It is in order to take care of situation as this that the applicant is required to give an undertaking as to damages as a condition for the grant of interlocutory injunction. By this undertaking the plaintiff binds himself to be liable for any damage which the defendant may suffer as a result of the order of injunction in the event that the plaintiff loses the action. He also referred this court to the case of **LEASING CO. (NIG.) LTD VS, TIGER INDUSTRIES LTD (2007)14 NWLR (PT. 1054) 345.**

The defendant may also offer an undertaking not to perform the act complained of in lieu of an injunction until the conclusion of the trial.

Where no undertaking is given by the applicant the order of interlocutory injunction is liable to be set aside. He referred this

court to paragraph 42 and 43 of the counter affidavit were the respondents undertook to pay damages if the applicant succeeds in the substantive suit.

Attached to the Counter Affidavit are Exhibits AV1 to AV6,

1. *Exhibit AV1 is a payment plan description offer of N20,000,000 from Avastone Global Service Ltd to Electus Ajah dated 8 of August 2016.*
2. *ExhibitAV2 is a cost variation letter from Avastone Global Services Ltd to Ajah Electus dated 22nd May, 2020.*

3. *Exhibit AV3 is a letter of Re-Reallocation/Refund advice from Avastone Global Services Ltd to Ajah Electus dated 17th March, 2021.*
4. *Exhibit AV4 is a provisional letter of Allocation of 4 Bedroom (Detached Duplex) at Karmo district from Avastone Global Services Ltd to Togahaven Limited dated 13th April, 2021.*

5. *Exhibit AV5 is a letter of Notice of Breach of contract and Revocation of letter of Allocation from Christus Imperat Attorneys to Ajah Electus dated 1st May, 2021.*

6. *Exhibit AV6 is a cheque play to Ajah Electus dated 14th April, 2021.*

Learned counsel to the Defendants/Respondents cited following cases in his written address

2. AKAPO VS HAKEEON – HBEEB (1992) 6 NWLR (PT. 247)
3. DANTANTA VS. C.S. LTD (2005) ALL FWLR (PT. 280)1474 AT 149, PARA. D.
4. OBEYA MEMORIAL HOSPITAL VS. ATTORNEY GENERAL OF THE FEDERATION (1987)3 NELR (PT. 60)325.
5. B. OJO VS. U.B.T.H.M. B. (2006)47 WRN 163 AT 187 TO 188.
6. NWANKWO VS. ONONOEZE (2005)4 NWLR )(PT. 916) 470 AT 486.
7. AYATUYI VS GOVERNOR, ONDO STATE (2005)14 WRN 67 AT 99- 100.
8. BELLO VS ATTORNEY GENERAL OF LAGOS STATE (2007)2 NWLR (PT.1017)155 AT 138, PARA D-E
9. PETER VS OKOYE (2002)3 NWLR (PT. 755)529 AT 552.
10. ONYESOH VS. NNEBEDUN (1992)3 NWLR (PT. 229) 315 AT 344-345.

In response to the counter affidavit the Learned SAN, counsel to the Claimant/Applicant filed a further and better affidavit dated

on 6th of September 2021, with 6 Six paragraphs deposed to by one Celine Amuzie A, a litigation secretary in the Law firm of Counsel to the Claimant/Applicant and a reply on points of law filed on the same date.

The learned SAN stated in paragraphs 4 of the further and better affidavit that the payment of N15,000,000.00 (Fifteen Million Naira) made on 2016 and 2018 out of 20,000,000.00(Twenty Million Naira), that this payments gives the claimant/applicant the legal right to this application. Learned SAN argued that another evidence of legal right of the Claimant /Applicant are the series of letters of allocation issued by the Respondent's to the applicant. The letter of allocation dated 11th July 2017 mark as exhibit ''B" another letter of allocation dated 13th February 2017 and the one dated 12th July 2017 captured in paragraph 15 in the motion on notice, all the letters of allocation gave possession to Claimant/Applicant since the allocation of the property, he further stated that the Respondents admitted all the delays experienced by the Claimant /Applicant in completing the house, being that the respondents send series of apologist letters to the Claimant/Applicant dated 12th October, 2016 attached to the motion on notice as exhibit **''F''** and the second one dated 22nd May 2020 attached to motion mark as exhibit ''**H''.** The learned

silk stated that there is no agreement between Claimant/Applicant and the Defendants/Respondents to suspend the allocation or to refund the purchase price for the house. He stated that the Applicant never received Respondents' letter nor cheques dated 1st May, 2021, the learned silk urged the court to grant the application.

In his reply on point of law the learned silk stated that the Claimant\Applicant's legal right is derived from the payment of the sum of N15,000,000.00 (Fifteen Million Naira) of the total sum of N20,000,000.00 (Twenty Million Naira) purchase price as consideration, the payment was made as summarized on the 6th August 2020 attached to the witness statement on oath and no 6 of the list of document. All the parties are in agreement regarding the payments, He referred this court to the case of **MNI LOGE LIMITED &1 ORS V. CHIEF OLUKA OLAKA NGEI &1 ORS (2009)18 NWLR PART 1173,PAGE 258 ,** Where the supreme court held as follows :-

*"In the contract for sale of property, where part-payment was made, the contract for purchase has been concluded and is final, leaving the balance outstanding to be paid. The contract for the sale and purchase is absolute and complete for which each party*

*can be in breach for non-performance and for which an action can be maintained for specific performance".*

The learned SAN argued from the above issue of possession and ownership of the property has been put to rest as pronounced by the Supreme Court of Nigeria in the above case.

He also referred this court to the case of

1. **MBAPAREGHBIYO VSMRS. VICTORIA AKU (1996) 1 NWLR, PART 422, PAGE 1-PAGES 43**

2. **MNGUNENGEN GEGE VSVERONICA NANDE & 1 OTHER (2006) 10 NWLR PART 988, PAGE 256- 296.**

Learned SAN stated that, the next question raised is whether compensation will be adequate for the claimant /Applicant to effect the granting of this application. Learned SAN submitted that, financial compensation is not adequate in law in this circumstance. This is due to the fact that payment of consideration for the purchase of landed property whether full or part-payment concludes the sale transaction making an order for specific performance the only remedy and such as compensation is inadequate and out of the way in the case. He also placed reliance on the above cited three cases.

1. **MINI LODGE LTD VS NGEI (supra)**
2. **MBAPAREGHBIYO VSMRS. VICTORIA (supra)**
3. **MNGUNENGEN GEGE VSVERONICA NANDE & 1 OTHER, (supra)**

The learned silk further stated that another evidence of the legal right of the claimant/Applicant are the series of letters of Allocation issued by the Respondent's to the Claimant/ Applicant, the Respondents admitted all the delays experienced by the claimant /Applicant in completing the house, on that the respondents wrote apologies letters to the Claimant/Applicant that contained in the Respondent's letters: dated 12th October, 2016 from the Respondent to the claimant/Applicant attached to this motion as **EXHIBIT "F"**

Learned SAN contended further that there is no evidence showing the right of the Respondent/ Defendants to refund the claimant the purchase price for the house.

Learned SAN canvassed that, the Respondent/Defendants in paragraph 13 of their counter affidavit purportedly reallocated the claimant's purchased property to one Toga Haven Limited.

The learned SAN submitted that this reallocation vide their averment in paragraph 13 of their counter Affidavit letter dated

15th April, 2021, and is no evidence of receipt of the Respondent letter dated 1st may, 2021 written by their solicitor "Christus Imperat Attorneys" together with copies of some cheques allegedly attached.

I have considered the submissions of the parties to this application. The issue for determination in this application is simply

***WHETHER THE CLAIMANT HAS MADE OUT A CASE FOR GRANT OF INTERLOCUTORY INJUCTION WHICH HE SEEK AGAINST THE DEFENDANT.***

In the case of **BUHARI & ORS. V. OBASANJO & ORS. (2003)17 NWLR (PT. 850) 587,** the supreme court categorically spelt out the guiding principles for the grant of Interlocutory Injunction, stating that the applicant must prove as follows:

1. *Existence of a subsisting action;*
2. *The Existence of a legal right which the applicant seeks to protect.*
3. *That there is a serious question or issue to be tried necessitating that status quo be maintained pending the determination of the substantive action.*

4. *That the balance of convenience is in favour of granting the application.*
5. *That there has been no delay in bringing this application on the part of the applicant in bringing the application.*
6. *That damages cannot be adequate compensation for the injury he wants the court to protect.*
7. *That the applicant must make an undertaken as to damages in the event of wrongful exercise of the court's discretion. In granting the application. See the case of* ***ADELEKE & ORS. LAWAL & ORS(2013) LPELR – 20090 (SC)AKADO V. HAKEEM – HABEEB (1992) NWLR (PT. 247)266.***

With regards to the first requirement, it is evident that there is a substantive suit No. Pending the determination of which the plaintiff/applicant has made this application for Interlocutory Injunctions against the Defendant.

On the second requirement relating to the existence of a legal right, it is noteworthy that this is determined by the court by examining the statement of claim of the plaintiff and not the defence as put forward by the defendant see the case of ***UNION BANK PLC V. ROMANUS C. UMEODUAGU (2004)13 NWLR***

***(PT. 890)352.*** Where it was held per KAIGO, JSC at page 8-9 paras G-A.

*"To proceed to examine the defence could amount to determining the case pre-emptorily on the state of the pleadings before trial and without taking evidence. What is required at this stage is for the court to see whether on the face of the statement of claim the plaintiff has shown the existence of a legal right which he seeks to protect."*

In this instant case, the Claimant/applicant in paragraph 6-41 of the supporting affidavit, the claimant herein averred that the claimant applied to the defendant for the purchase of a 4 Bedroom Detached Duplex at Porsche Terraces Estate, Karmo. He completed client registration form on the 8th August, 2016. The defendant upon receipt of the registration issued to the Claimant a letter of allocation dated 11th July, 2017 for a House A 302 Str PLOT 72 after payment of the sum of N6,000,000.00. The send plot 79, House No. MT 01 STR. That the defendant acknowledged the receipt of the sum of N6,000,000 with remaining balance of the sum of N14,000,000. The parties agreed at a meeting that the life span of the construction work by the defendants shall be witting 17 months from 13th March, 2017.

That the total money paid for the purchase of the house was N15,000,000, inclusive of N50,000,000 as legal fees and N100,000 as infrastructural levy. At the close of Business the defendant after issued the claimant Relocation Refund Advice. He attached Exhibits A-K. The defendant in his counter affidavit averred that the applicant entered into a contract to purchase a four bedroom detached duplex at Porsche terraces Estate, Karmo District, Abuja. He commenced payment and paid the total Sum of N15,000,000. In three instalments. That as a result of unanticipated delay largely because of delayed payment from subscribers including the applicant, disputes between land owners and the developer, protracted delay by government agencies in issuing cite Approval plan and other documents the applicant was reallocated 3 different times under the same terms and conditions which the applicant did not object to.

I observe that the defendant contended in their written submission that the applicant has no legal right to the property.
In his further affidavit, the claimant had countered and maintained that the payment of the Sum of N15,000,000 by the Claimant herein to the defendant gives the claimant the legal right to this application. That series of letters of allocation by the

defendant to the claimant gives the claimant legal right in this action.

As mentioned earlier in this ruling, the courts is at this stage enjoined to take a look at the claimant's statement of claim and not the statement of defence of the defendant or any defence by way of affidavit flowing from the defence. See the case of ***UNION BANK V.*** **ROMANUS C. UMEDUAGU(Supra)**.

From the totality of the processes before this Honourable Court, it is my considered legal opinion that the claimant has shown a recognisable right over the House Know as Number PO4, Plot 323, A 4 Bedroom Detached Duplex located at Porsche terraces Estate Karmo District, Abuja. See the Case of ***SARAKI V. KOTOYE (1989)1 NWLR (PT. 98)419 AT 441.***

On the issue whether the claimant can be compensated by damages, it is the position of the law that in an application for Interlocutory injunction such as this, the court may require undertaken of the plaintiff or the defendant; as the case may be if the justice of the case demands, in order to compensate the person temporarily restrained for damages he has suffered should it turn out that the restraining order ought not to have been made.

In ***AFRO CONTINENTAL (NIG)LTD V. AYANTUYI (1996)9 NWLR (PT. 420)411***, the Supreme Court laid down the following principles on the issue of given an undertaking as to damages:

1. *That it is not on all cases that Extraction of an undertaking as to damages is necessary;*

2. *That the trial court has a discretion on the question whether or not to order an undertaking as to damages.*

3. *The absence of the order as to damages will not of itself lead to setting aside the order made.*

4. *That where the trial court failed to extract an undertaking as to damages an appellate court can vary the order to include an undertaking by the plaintiff to pay damages. See the case of* ***AFRO CONTINETAL (NIG) V. AYANTUY, (supra)***

In this instant case, learned Silk, counsel to the applicant made undertaking as to Damages. Given the Circumstances of this case; it is my considered view that such an undertaking as to Damages to Compensate the Defendant in the event it turns out that the injunctive order ought not to have been made.

Consequently in line with the decision in ***AFRO CONTINENTAL (NIG) LTD V. AYATUYI (Supra)*** this court hereby direct that the plaintiff to make and file an undertaking to pay damages to the Defendant.

On the issues of Balance of conveniences, is a question of who will stand to lose if the status quo ante is restored and maintained till the final determination of the suit. See the case of **AYORINDE V. A.G. OYO STATE (1996)2 SCNJ 198** in the instant case, averments in the Plaintiff/Applicant's affidavit shows that the balance of convenience in the instant action lies in favour of maintaining the status quo in respect of the property know as number PO4, Plot 323, A4 porsche Terrace Estate Karimo District, Abuja.

From the foregoing therefore, I hereby resolve the only issue in this application in the affirmative and hold that the plaintiff have made out a case for the preservation of the Res and maintenance of status quo with regards to the House known as number PO4, Plot 323, A4 Porsche Terrance Estate, Karimo District Abuja. Subject to the Plaintiff/applicant filing an undertaking to pay damages should the order hereunder be found to be unwarranted, it is hereby ordered that the injunctive orders sought by the plaintiff are granted as prayed for in the motion

paper, pending the hearing and determination of the substantive suit.

**Appearances:**

P.O Okolo SAN with A.J Okolo and K.U Udemba for the Claimant.

J.N Hassai holden the brief of Temia and Co for the defendant

Ruling read in open court

**Signed**

**Hon. Judge**

**02/11/21**