

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI
THIS 12th DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A FASHOLA
SUIT NO.FC/CV/640/2020
MOTION NO.M/6471/2021

BETWEEN:

MISS HELEN IJI- - CLAIMANT/RESPONDENT

AND

FELIX AMOBI PAUL - DEFENDANT/APPLICANT

RULING

This is an application commenced by Motion Exparte brought pursuant to Order 43 High Court Of The Federal Capital Civil Procedure Rules 2018 the application is dated 5th of October, 2021 and filed on the same day. The applicant is praying for the following reliefs:

1. ***AN ORDER*** *granting leave to the Claimant/Applicant to effect service of all further processes that may be filed in this suit on the Defendant/Respondent by substituted means by pasting same on the wall and conspicuous places at a one Bedroom Flat, behind Catholic Church, Piwoyi, Airport*

Road, FCT Abuja, property jointly own by both the Claimant/Applicant and the Defendant/Respondent, which is the last known address of the Defendant/Respondent.

2. ***AN ORDER OF INTERIM INJUNCTION*** *restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the one bedroom flat lying and situate behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja, wherein the Claimant currently lives with their two children, and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable Courts*
3. ***AN ORDER OF INTERIM INJUNCTION*** *restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the two Bedroom Flat situate and lying at Piwoyi behind the Mosque, along Airport Road, FCT Abuja, belonging to both Defendant and the Claimant and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable Court.*
4. ***AND FOR SUCH FURTHER OR OTHER ORDERS*** *as this Honourable Court may deem fit to make in the circumstances.*

The grounds upon which this Application is predicated includes the following:

1. The Claimant/Applicant seek to effect service of all further processes that may be filed in this Suit on the Defendant/Respondent by substituted means.
2. That upon the service of the Originating processes in this suit on the defendant; the Defendant eloped and has refused to come to court to defend this case.
3. The Claimant/Applicants seek to restrain the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the one bedroom flat lying and situate behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja, wherein the Claimant currently lives with their two children, and the two Bedroom Flat situate and lying at Piwoyi behind the Mosque, along Airport Road, FCT Abuja, belonging to both the defendant and the Claimant and both of which formed parts of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable Court.

In support of the application is a 3 paragraphs affidavit deposed to by one Miss Helen Iji the Applicant/Claimant herein and annexed to the said affidavit are exhibit 1 and 2. Equally filed along the Motion Exparte is a written address wherein learned

counsel to the Claimant/Applicant formulated a lone issue for determination of this Honourable Court to wit.

“Whether it is in the interest of justice for this Honourable Court to exercise its discretion in favour of the Claimant/Applicant, particularly in the circumstances of the facts disclosed”.

Learned Counsel in arguing the lone issue raised above cited the following authorities.

1. Azul v. Union Bank of Nigeria Plc (2004) 14 NWLR (PART 893) 402,415 D – E.
2. Central Bank of Nigeria v. System Application Products Nigeria Limited (2005) **3 NWLR (PART 911)152, 199 C H.**
3. Kotoye v. Central Bank of Nigeria (1989) 1 NWLR (Part 98) 419.
4. Obeya Memorial Hospital v. Attorney General, Federation (1987)3 NWLR (Part 60)325.
5. Ejhiofor v. Emujulu (2008) Limited (2008)17 BWKR (Part 1117) 459, 467 – 468 H – A.
6. Group Danone v. Vltic (Nigeria) Limited (2008)7 NWLR (Part 1087)637, 674 G – H

Learned Counsel for the Applicant/Claimant submits that this Honourable Court is sized with jurisdiction not only to entertain this application but also to grant same. That the instant case is one that invokes the discretionary powers of this Honourable court. That where a court is called upon to exercise its discretion, it ought to exercise same judicially and judiciously, a party who

furnishes the court with sufficient materials is entitled to the favourable exercise of the court's discretion. Counsel relied on the case of **Azul v. Union Bank of Nigeria Plc (2004) 14 NWLR (PART 893) 402,415 D – E. Central Bank of Nigeria v. System Application Products Nigeria Limited (2005) 3 NWLR (PART 911)152, 199 C – H.**

Learned Counsel contended that "*Case law has stipulated the conditions which an applicant for either or both for an application ex parte must satisfy before it can successfully establish his entitlement to the exercise of the court's discretion in its favour by the court both reliefs being subject of equity and discretionary. These conditions are:*

- (a) That there is a real urgency but not self induced urgency;
- (b) In an interlocutory or interim injunction, until a certain day, usually, the next motion day by which time to other side should have been put on notice.
- (c) When the court considers on a prima facie view that all otherwise irreparable damage may be done to the plaintiff before an application for an interlocutory injunction can be heard after notice has been given to the other party.
- (d) When it is necessary to preserve the res which is in danger or imminent danger of being destroyed;
- (e) Although it is made without notice to the other party, there must be a real impossibility of bringing the application for such injunction on notice and serving the other party"

Learned Counsel argued that the above conditions are present in the instant case as the affidavit discloses real urgency. Irreparable damage will be done to the Claimant/Applicant before the determination of the substantive suit, the grant of this Application is necessary to preserve the res (the two property) which are in danger of being sold, whereas, the said properties formed substantial part of the subject matter of this suit. Learned Counsel argued that if an interim order of injunction is not granted in view of the urgency of the issues involved the claimant/applicant will lose completely. Counsel relied on the case of **Ejiofor v. Emujulu (2008) Limited (2008)17 BWKR (Part 1117)459, 467 – 468 H – A** while urging this Honourable court to exercise its discretion in favour of the Plaintiff/Applicant.

I have carefully perused the application before me, the Motion Exparte, the accompanying affidavit, the Exhibits annexed and the written address of counsel. I have equally listened to the oral submission of counsel wherein he urged the court to grant the prayers. it is my humble legal view that this application raises a lone issue for determination to wit:

1. Whether the Claimant/Applicant is entitled to the grant of an Interim Injunction?

On the lone issue above, it is a well established principle of law that for an interim injunction to be granted, certain conditions must be met by the applicant. This principles was well laid in the case of **C.B.N VS SAP. (NIG) LTD (2005) 3 NWLR (PT 911) 752 Ratio 20**. As follows:

1. That there is a real urgency but not self induced urgency.
2. Until a certain day, usually, the next motion day by which time the other side should have been put on notice.
3. When the court considers on a prima facie view that an otherwise irreparable damage may be done to the plaintiff before an application for an interlocutory interim injunction can be heard after notice has been given to the other party.
4. When it is necessary to preserve the res which is in danger or imminent danger of being destroyed.
5. Although it is made without notice to the other party there must be a real impossibility of bringing the application for such injunction on notice and serving the other party. See the case of **Kotoye vs CBN (1989) 1 NWLR (PT 98) Pg 419**

A diligent perusal of the application and the affidavit in support thereof, particularly paragraphs 2 i, ii, iii, iv, v, vi, vii, viii in my humble legal opinion shows urgency, and injury or likelihood of it to the Claimant/Applicant. Pursuant to the above,

IT IS THEREFORE ORDERED AS FOLLOWS:

1. Leave is hereby granted to the Claimant/Applicant to effect service of all further processes in this suit by substituted means by pasting same on the wall and conspicuous places at the one bedroom flat behind Catholic Church Piwoyi, Airport Road FCT Abuja.
2. An interim order is hereby granted restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the one bedroom flat lying and situate behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja, wherein the Claimant currently lives with their two children,

and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable Courts

3. An Interim order is hereby granted restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the two Bedroom Flat situate and lying at Piwoyi behind the Mosque, along Airport Road, FCT Abuja, belonging to both Defendant and the Claimant and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable Court.

Appearances:

Parties: Claimant in court

B. I Ogar with T.K Igohia for the Claimant applicant

Signed
Hon. Presiding Judge

12th/10/2021