

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1296/2021

BETWEEN:

MR. SUNDAY DARE.....CLAIMANT/APPLICANT

VS

BASH ALL.....DEFENDANT/RESPONDENT

RULING

By a Motion on Notice dated 25/10/2021 and filed same day, with Motion No: M/7146/2021, brought pursuant to Order 7 Rule 11 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court. The Applicant prays the court the following reliefs;

(1) An Order of this Honourable Court restraining the Defendant from further publishing denigrating material about the Claimant with respect to his position as the Honourable Minister of Youths and Sports Development pending the determination of this suit.

(2) And the Omnibus relief.

The grounds upon which the Applicant seeks the reliefs are;

- (a) That the subject matter of this suit is the alleged publication of defamatory material by the Defendant against the Claimant.
- (b) That despite the pendency of this suit before this Honourable Court, the Defendant has continued to publish further defamatory material against the Claimant in utmost disregard and disrespect for the process of this Honourable Court.
- (c) That it will meet the ends of justice if this application is granted.

In support of this application is a 4 Paragraph affidavit deposed to by one Kenneth Umeh an Assistant in the law firm of Applicant's Counsel, with one (1) Exhibit attached and marked Exhibit "A". In compliance with the Rules of Court Applicant filed a Written Address and adopts same as oral argument in urging the court to grant the relief sought.

The processes were served on the Defendant/Respondent by substituted means to wit: by pasting at a conspicuous space of Suit D58 Area 11 Shopping Mall Garki Abuja being the last known address of the Respondent vide a court order made on 27/10/2021. Despite service on him the Defendant/Respondent failed to react to the processes. The implication of this is that the application before the court stands unchallenged and uncontroverted. In *Gana Vs FRN* (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

"Where an affidavit does not attract a counter-affidavit, the facts deposed to therein have been admitted and must be taken as true"

See also the case of *CBN Vs Igwilo* (2007) 15 NWLR (PT. 1054) @ 406.

In the Written Address of the Applicant, Applicant's Counsel formulated a sole issue for determination, that is;

“Whether the Applicant is entitled to the reliefs sought in view of the fact and circumstances of this case”

In summary, the submission of Claimant/Applicant's Counsel is that the grant of this application is at the discretion of court, which should be exercised judicially and judiciously. Refer to Ogbonna Vs Ukaegbu (2005) 17 NWLR (PT. 954) 432 Ratio 10 @ 438 and Corporate Affairs Commission Vs Ayedun (2005) 18 NWLR (PT. 95) 391 @ Ratio 7 398.

Submits further that, it is trite that once parties have submitted themselves to the jurisdiction of the court, they ought to desist from taking any further steps that will further jeopardize the res or undermine the integrity of the court. Refer to Iwuji & Ors Vs Governor of Imo State & Ors (2014) LPELR 22824 (CA) submits that the Respondent have continued to publish denigrating materials against the Claimant despite the pendency of this case, which amounts to resorting to self-help and absolute disrespect to the court and calls on the court to deprecate the conduct of the Respondent.

Finally, urge court to exercise its discretion in favour of the Applicant and grant the Applicant's application in the interest of justice.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibit marked “A”, the submission of Counsel as well as the judicial authorities cited, the court finds that, there is only one (1) issue that calls for determination which is;

“Whether or not the Applicant has placed sufficient facts for the grant of the relief sought”

The Applicant seeks an Interlocutory order from the court, an Interlocutory Injunction is an equitable remedy granted by the Court before the substantive issue in the case is finally determined. The objects is to keep the matter in status quo, while the case is pending, for the purpose of preventing injury to the Applicant, prior to the time the court will be in a position to either grant or deny permanent relief on the merit. See Yusuf Vs I.I.TA (2009) 5 NWLR (PT. 1133) 39 Para A-B.

In an application for Interlocutory Injunction, it is not necessary that the Applicant must make out a case as he would on the merit. It is sufficient that he should establish that there is a serious issue to be tried. It is unnecessary to determine the legal right to a claim since at that stage there can be no determination, because the case has not been tried on the merit.

This application calls for the exercise of the discretion of court which the court is bound to exercise judicially and judiciously. It is on this basis the court will consider this application.

In Kotoye Vs CBN (2001) All FWLR (PT. 49) 1567 @ 1576 the Supreme Court set out certain guidelines to be followed by the court in deciding whether or not to grant Interlocutory Injunction amongst these factors to be considered are;

- (1) Whether there are triable issues at the trial of the substantive suit?

- (2) Whether the balance of convenience is on the side of the Applicant?
- (3) Whether the Applicant have a right to be protected?
- (4) Whether the Applicant shall suffer irreparable damages if the order of Interlocutory injunction is not granted pending the determination of the main suit. See also Yusuf Vs I.I.TA (Supra); Owerri Municipal Council Vs Onuoha (2010) All FWLR (PT. 538) 896 @ 898.

In the instant application, it is the contention of the Applicant as stated in his supporting affidavit that; the subject matter of this suit is the alleged publication of defamatory material by the Defendant against the Claimant. Despite that, the Defendant has continued to cause to be published further defamatory material against the Claimant in utmost disregard and disrespect for the process of the Honourable Court. That the defamatory material was caused to be published in a widely read Newspaper known as Aljazeera Nigeria attached as Exhibit "A". I have taken a considered look at the said Exhibit "A" vis-a-vis the deposition in the affidavit in support of the Motion as well as the grounds for the relief sought and I find that the Newspaper where the alleged defamation was published is dated April 26 – May 2, 2021, whereas this suit was filed on 25/6/2021, therefore the publication could not have been said to have been made when the suit is pending to warrant the grant of the order as prayed by the Claimant/Applicant.

Furthermore, the Claimant/Applicant seems to be raising the issue for determination at the substantive suit. The position of the law is settled that the court should not determine or make pronouncement on matter at Interlocutory stage, if done it would be tantamount to deciding the issues before trial. See C.G.C Nigeria Ltd Vs Alh Hassan Baba (2005) All FWLR (PT. 515) @ 530 – 531. Also the Applicant failed to depose to any fact to satisfy the court of the conditions for the grant of an Interlocutory Injunction prescribed in the case of Kotoye Vs CBN (2001) All FWLR (PT. 49P 1567 @ 1576.

In the light of the above and having considered the unchallenged and uncontroverted evidence and the positions of the law, the court finds that the Claimant/Applicant have failed in making a case deserving of the reliefs sought. This application lacks merit and should fail. Consequently the relief of the Applicant for an order of this court restraining the Defendant from further publishing denigrating material about the Claimant with respect to his position as the Honourable Minister of Youth and Sport Development pending the determination of this suit is hereby dismissed.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

8/3/2022

APPEARANCES:

BODE OLANIKPEKUN (SAN) FOR THE CLAIMANT/APPLICANT WITH
FESTUS UKPE, ADELANI AJIBADE.

NO APPEARANCE FOR THE DEFENDANT/RESPONDENT