

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT COURT NO. 7 APO, ABUJA.
BEFORE HIS LORDSHIP: HON. JUSTICE O. A. MUSA.**

SUIT NO. FCT/HC/CV/188/2019

BETWEEN:

PASTOR JOSEPH IBITOMISIN

(Suing through His Lawful Attorney

Mr. Mathew Omolere Omojun) CLAIMANT/APPLICANT

AND

1. JOHN IDOKO

2. PERSON UNKNOWN DEFENDANTS/APPLICANTS

RULING

DELIVERED ON 10TH FEBRUARY, 2022

By the Applicant application brought pursuant to order 42 Rules 2, 3 and 4 of High Court (Civil Procedure) rules of FCT 2018 and under the inherent jurisdiction of this Honourable court. The Applicant is praying the court for the following reliefs:-

1. An order of interlocutory injunction restraining the Defendants from further entering Plot No. BD/67 Cadastral Zone 07-05, Dutse Alhaji District Bwari Area Council, Federal Capital Territory, Abuja and/or further erecting structure(s) on

the subject matter pending the determination of substantive suit.

2. And for such other or further order(s) as this court may deem fit to make in this suit.

The application is supported by a 18 paragraph Affidavit deposed to by one Mr. Mathew Omolere Omojun, the Applicant's Attorney. The Applicant relies on the whole paragraphs of the said affidavit together with the accompanying exhibits A1-A3.

The Applicant's counsel raises a sole issue for determination thus:-

Whether the Applicant is entitled to an order of interlocutory injunction in circumstances of this case.

In arguing the sole issue for determination, counsel submitted that the grant of the order for substituted service and/or interim injunction is a discretionary power of this Honourable court. The discretion on the other hand ought to be exercised judicially and judiciously. Hence, the exercise of judicial discretion is squarely exercised according to the peculiar facts of each case. He referred the court to *Olasauja JCA in Institute of Chartered Accountant of Nigeria & anor Vs.*

Attorney General of the Federal & 2ORS (2004) 3 NWLR (pt. 859) especially at pages 211-212 held that:-

“The exercise of judicial discretion is so wide and only limited by the court itself but with the rule of law, that however wide the discretion, no interlocutory order is used as precedent in a subsequent case in matter of discretion, each case or application is considered on its peculiar facts and circumstance”.

Counsel stated that it is settled law that the aim of interlocutory injunction, as sought by the Plaintiff/Applicant in the instant application, is to protect the legal right of the Applicant with the object of keeping matters in status quo pending the determination of the main suit. He cited the case of Ogunro & Ors vs. Duke (2006) 7 NWLR (Pt. 978) 130 @ 142.

It is counsel submission that the Applicant in his affidavit in support of the application chronologically and clearly set out the facts upon which the application is predicated thus:-

Firstly, that the Applicant is the owner of the land in dispute and seeks to protect such legal right from being interfered with or violated by the Respondent through the

instrumentality of this application in line with the law. He referred the court to the case of Obeya Memorial Specialist Hospital Limited Vs. Attorney General of the Federation (1987) 2 NSCC 961, the supreme court held that the reason for the grant of an interlocutory injunction is to protect a legal right.

Secondly, that the Applicant deposed that he would suffer greater hardship in view of the fact that he (i.e the Applicant) unlike the Respondent would suffer great and heavy financial and psychological blow if the application is refused. He referred the court to the case of Kotoye v. CBN (1998) 1 NWLR (pt. 98) 419; and also ACB vs. Awogboro (1991) 2 NWLR (pt. 176) 711. The Supreme Court held *that if the Applicant shows that the acts he is complaining of will take place to render it unjust and unreasonable if the court refuses to intervene, then the Applicant is prima facie entitled to an interlocutory injunction.*

His Lordship, Onnoghen, J. C. A (as he then was; now CJN), described the measuring device of the phrase 'balance of convenience' in respect to injunctions, in the case of Governor of Kwara State Vs. Ojibara (2005) ALL FWLR (pt. 414) 1494 C. A. thus:-

“The principle governing determination of balance of convenience is that if the position is such that the Applicant will suffer inconvenience more than the Respondent if the order for injunction is refused, then the court will make the order. But if the Applicant will not suffer more inconvenience than the Applicant if the order is made, then in such a case, the order will not be made.”

Counsel therefore urged the court to hold that the Applicant has satisfied the condition that the balance of convenience is in his favour. In addition, that the Applicant has tried to show that his claim is strong and there is a serious question to be tried at the hearing of his suit which borders on his constitutionally guaranteed right over the subject matter.

He prays the court to exercise the court’s discretion in favour of the Applicant and grant his application.

On the other hand, the Defendant counsel filed a 6 paragraphs counter affidavit dated and filed 29th September, 2021 sworn to by one Fwangmut Fwangshak Danladi counsel relied on all the paragraphs. Attached also are exhibits A, B, C, D and a written address in support.

Counsel also raised a sole issue for determination thus:-
“that the Respondents most humbly adopt the issue formulated for the termination of the Honourable court that is, whether Applicant is entitled to an order of interlocutory injunction in circumstances of this case”.

In arguing the issue, counsel submitted that the submission in paragraph 3.1 of the Applicant’s written address relating to substituted service/or interim injunction is totally extraneous to the application and should be expunged.

It is counsel submission that the courts in a litany of cases have laid down perimeters which define what judicial and judicious discretion entails in matter of interlocutory injunctions. Counsel referred the court to the case of Effiom Vs. iron bar (2000) 3 NWLR (pt. 650) 5454 the court held that an Applicant seeking for an order of injunction must show that:-

- a. Whether there is existing established legal right capable of being protected.
- b. Whether the act has not been completed
- c. Whether there is delay which may hamper the grant of the injunction.
- d. Whether damages would be adequate compensation.

- e. Conduct of the parties
- f. Applicant undertaking as to damages.
- g. Whether the balance of convenience is in favour of the Applicant.

That the facts as contained in the affidavit evidence in support of this application clearly fall short of the above these requirements and therefore the application, he therefore submits that it cannot fly in the circumstance.

On the issue of legal right, counsel submits that if there is any legal right to be protected in this case, it is that of the 2nd Defendant/Respondent who has documented his title with the relevant constituted authorities and is in physical possession of the said property.

Counsel stated that from the counter affidavit, the Respondent have shown that they have been in physical possession of the plot as far back as year 2000. It is also shown that the structure thereof was approved by the Abuja Metropolitan Management Council and the said building commenced since 2017.

On the conduct of the Applicant, it is counsel submission that this application and the entire Suit No: CV/188/2019 was instituted in bad faith. By the affidavit evidence, the development which this application seeks to restrain is a

storey building which requires gradual process. This project was started in 2017 and the 2nd Defendant/Respondent has developed it up to the 2nd floor before the Applicant suddenly woke up to file this application. Counsel urged the court to dismiss the application based on the repressible conduct of the Applicant.

Counsel also submitted that given the level of work done and the fact that building materials are on site which will be damaged if this application is granted, the balance of convenience is in favour of the 2nd Respondent who will suffer more damages. He referred the court to the case of Governor of Kwara State VS. Ojibara (2005) ALL FWLR (pt. 414) 1194 cited by the Applicant. Moreover, the Applicant has nothing on site and would be adequately compensated in damages in the remotest event the he wins the case at the end of the day.

Counsel further submitted that apart from the allegation that the Applicant's Nuhu Sule was issued with a Certificate of Occupancy, which shall be determined at trial, the Applicant has not shown any other official document relating to this land or show cause that he was in physical possession of the property at any period in time. He therefore urged the court to discountenance this applications as same is intended to annoy the Respondents.

He also submits that this application lacks merit and should be dismissed with cost.

I have carefully perused the Motion on Notice No: M/4512/2020 dated 20th January, 2020 and filed on 23rd January, 2020 and the order sought therein. Its supported by an 18 paragraphs sworn affidavit along with written address of counsel brought pursuant to order 42 Rules 2, 3, and 4 of the Rules of court 2018 and under the inherent jurisdiction of this Honourable Court. It's also accompanying by Exhibits A1 – A3 relying on same.

I have equally understood the sole issue raised by the Applicant that is, whether the Applicant is entitled to an order of interlocutory Injunction in the circumstances of this case.

I have also understood all the cases cited therein, I adopted all. Main while, I have gone through the counter affidavit of claimant Respondent of 6 paragraphs and the attached Exhibit A–D together with the written submission of counsel. The Respondent adopted the sole issue raised by the Applicant counsel.

Haven adopted the whole arguments of both counsel for and against, it's my humble and respected view that the main objective of an order of an interlocutory injunction on matter

of this nature is to protect the legal right of the Applicant with the aim of or keeping the subject matter in status quo pending the determination of the main suit. See Ogunro & Ors V. Duke (2006) 7 NWLR (Pt. 978) 130 @ 142.

The argument as to who owns the subject matter in issue at this moment does not rise unless and until the determination of the substantive suit itself. As such, all argument has to be put aside pending the outcome of the final decision of the court.

In the circumstances therefore, I hereby make an order banning both side from tempering or carrying or trespassing in to the subject matter pending the hearing and determination of the case.

2. Order of maintenance of status quo pending the determination of the main suit is hereby made against all parties to the suit. I so ordered.

APPEARANCE:

E. Ansley – Thomos, Esq. for the Plaintiff
The Respondent absent in court

Sign
Hon. Judge
10/02/2022