

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 24TH DAY OF FEBRUARY 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/373/2019
M/541/2022

BETWEEN

NISL VENTURES LIMITED===== CLAIMANT

AND

- | | | |
|---|---|------------|
| 1. OTUNBA TAIWO AYODELE | } | DEFENDANTS |
| 2. MR. MIKE ADAMU | | |
| 3. ZURUHILLS INTEGRATED SERVICES LIMITED | | |
| 4. MR OPEMIPO OLATUNJI
(Trading under the name and style of Olaleye Olatunji & Partners) | | |
| 5. MS. HAFSATU UMAR AHMED | | |

RULING

The Applicant filed this application pursuant to Order 42 Rule 4(1), 7, 8, 9, 10, 11 and Order 43(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Honourable Court, praying the Court for the following reliefs:-

1. An Order of this Honourable Court appointing the Chief Registrar of the High Court of the Federal Capital Territory to on behalf of the Applicant receive all the rents paid by the tenants of 109 Plaza from the 15th Day of June 2020 till the eventual determination of the substantive suit.
2. AN ORDER of this Honourable Court mandating the Claimant/Respondent to remit to the Chief Registrar of the High Court of the Federal Capital Territory the sum of Three Hundred and Thirty-Four Million, Four Hundred and Twenty-Three Thousand

(N334,423,000.00) Naira being money admittedly received by the claimant/respondent from rents paid by the tenants of the 109 plaza as at November, 2019.

3. AN ORDER of this Honourable Court mandating the Claimant/Respondent hereinto render a very detailed accounts of all the rents, service charge received from the tenants of 109 Plaza and the expenses incurred in the management of the said plaza from the 15th day of June, 2020 till date and pay the rents received and any balance left of the said service charge into a designated bank account of the Chief Registrar of the High Court of the Federal Capital Territory until the determination of the substantive suit.
4. AND for such further or other order(s) as this honourable court shall deem necessary to make in the circumstances of this suit.

The grounds upon which this application is brought are as follows:

- a. That by the Order of this honourable court made on 15th day of June 2020, the applicant as well as the defendants/respondents were restrained from interfering with the claimant/Respondent's management of 109 Plaza.
- b. That the order of the court did not sate the person to whom the rents and other bills in respect of the 109 Plaza, being the res should be paid but created lacuna which the Claimant/Respondent is exploiting.
- c. That the said 109 Plaza being the subject matter of the substantive suit is the property of the applicant herein.
- d. That all other parties to this suit save the 4th defendant/respondent are directors of the applicants herein.

- e. That the Claimants/Respondent has through Mr. Dele Olaiya who carries on his business under the name and style of Dele Olaiya&Associates been solely collecting/receiving all the rents being paid by the tenants in the said plaza for her sole benefit and to the exclusion of the applicant herein and other directors of the applicant.
- f. That the claimant/respondent by paragraphs 26 and 30 of her statement admitted having received a composite sum of Three Hundred and Thirty-Four Million, Four Hundred and Twenty-Three Thousand (N334,423,000.00) Naira from the rents paid by the tenants in 109 Plaza being the subject matter of the substantive suit.
- g. That allowing the claimant to continue receiving/collecting rents and service charge from tenants 109 plaza for her sole benefit and to the exclusion of the applicant and other co-directors of the claimant/respondent is unfair, unjust, inequitable and above all, a sheer aberration.

Attached to the application is an affidavit of 21 paragraphs an exhibit marked ZH1. The Applicant's Counsel filed a written address wherein Counsel raised a sole issue for determination thus; "Whether considering the facts as averred in the claimant's statement of claim, the 1st and 2nd defendants statement of defence, the 3rd defendant statement of defence cum the particulars of counter-claim as well as the facts deposed to in the affidavit in support of this application, sufficient reasons have not been disclosed for the grant of the instant application".

Counsel submitted that it will be in the interest of justice that this Court protects the money accruing from the rent payable by the tenants in the subject plaza pending the determination of the substantive suit so as not to

render nugatory the decision that might be reached by this honourable court in the substantive suit. Counsel relied on the following authorities:

1. Chief Kalu Igwe&Ors. Vs. Chief Okuwa Kalu &Ors. (1993) LPELR-1456 (SC) P. 14, paras E-F.
2. United Spinners Nig. Ltd Vs. Chartered Bank Ltd (2001)LPELR-3410(SC), p. 19, paras. D-E
3. Alhaji Muhammadu MaigariDinyadi& Anor. vs. INEC (2010)LPELR-40142 (SC), p. 2017, paras. D-F

The Claimant/Respondent in opposing the application, filed an 11 paragraph counter affidavit attaching one (1) Exhibit, marked as Exhibit T1. Also filed is a written address wherein Counsel raised two issues thus,

1. Whether this Honourable Court has the jurisdiction to hear and determine the 3rd Defendant/Applicant's Application and grant the reliefs sought in the instant application?
2. Whether the instant application is not incompetent, frivolous, vexatious and constitute an Abuse of process?

Counsel arguing the above issues submitted that this instant application is therefore a mala fide invitation for this Honourable Court to sit on appeal, re-examine or revisit its own subsisting orders, particularly when there is no evidence before the Court that the Court was bereft of jurisdiction to make the orders of interlocutory injunctions in the first place.

Counsel urged the Court to hold that the instant application is incompetent, frivolous and constitutes an abuse of Court process and resolve all the issues against the 3rd Defendant/Applicant and refuse the instant application for being unattainable, misconceived, borne out of mischief, and unmeritorious with substantial cost.

Counsel relied on the following authorities;

1. FRN V Maishanu [2019] 7 NWLR (PT. 1671) p. 203
2. Fecond Network LTD v. Okolo&Ors [2018] LPELR-46854(CA),
3. James V N.S.C.D.C [2015] 8 NWLR (PT. 1462) P. 514,
4. Ganiyu&Ors v. Otegbola&Ors [2020] LPELR-49752(CA)
5. CBN & Anor V. Aribu [2017] LPELR-47932(SC).
6. SarakiV. Kotoye [1992] 9 NWLR (PT. 264) 256,
7. UmehV. Iwu [2008] 8 NWLR (PART 1089) 225
8. Ogojeifo V. Ogojeifo [2006] 3 NWLR (PART 966) 205 AT 220

I have considered the entirety of the Claimant's application and the accompanying documents as well as read the submission of the Applicant's Counsel. I have also read and considered the Respondent's counter affidavit and written address, and two issues call for determination as follows;

1. Whether this Honourable Court has the jurisdiction to hear and determine the Applicant's motion.
2. Whether the Applicant has placed sufficient facts before this Court to be entitled to the reliefs sought.

With respect to the first issue which is whether this Court has the jurisdiction to hear and determine this instant application, the Respondent's Counsel is contending that the Court is functus officio as it relates to the management and or collection of rent for the subject property at 109 Plaza, the Court Coram A. B. Mohammed J (now JCA) granted the said powers of management and collection of rent on the Claimant on the 15th day of June 2020. The Respondent replying on points of law submitted that this instant case is before this Court de novo hence, this Court has the power to set aside the order earlier granted.

The question that begs to be answered is whether this case having been transferred to this Court upon the elevation of the previous judge handling this case, the orders previously granted still subsists. "The Latin maxim "de novo" connotes a 'New', 'Fresh', a 'beginning', a 'start' etc. Blacks Law Dictionary, defines de novo trial or hearing means 'trying a matter anew, the same as if it had not been heard before and as if no decision had been previously rendered. In the case of BABATUNDE Vs. P. A. S. & T. (2007) LPELR-698 SC thus;the Supreme Court held

"...that a trial de novo could mean nothing more than a new trial. This further means that the Plaintiff is given another chance to re-litigate the same matter or rather in a more general sense, the parties are at liberty, once more to reframe their case and restructure it as each may deem it appropriate".
The legal effect of commencing a matter de novo before another Judge is that all pending proceedings including orders made previously by the former trial judge are rendered null and void.."

The Black's Law Dictionary defines a trial de-novo as "a new trial of the entire case that is on both questions of fact and issues of law conducted as if there had been no trial in the first instance. The question that comes to fore is what is the effect of the trial denovo on previous interlocutory orders? The answer to the above is not far fetched as the Court of Appeal in the case of NGIGE VS. OBI (2012) 1NWLR (Pt.617) 738 @ 757-758 held that

"the judicial effect or consequence of a case starting denovo before another tribunal is to render null and void all previous and pending proceedings and orders made in the case before the order denovo is made".

A case that illustrates and encapsulates the answer to the above question is the case of BANKULE VS. TANEREWANA NIG LTD (1995) NWLR (PT.380) 278. In this case, the matter was transferred to a new trial judge to start de novo. The appellant had filed an application previously heard by the former trial judge. The new trial judge did not hear the application as it assumed it was functus officio relying on the former judge's ruling. The Court of Appeal held *"the effect of starting a case afresh (denovo) before another judge is to sweep clean all previous proceedings in the case. Any of the parties therefore is free to bring afresh any application brought before the previous judge and in which he gave an adverse ruling against the party"*. In other words, "decisions and orders made in the first place cease to exist and therefore lifeless. The effect of a trial *denovo* is that comes clean and clear as if there has never been any trial let alone decision or order of any sort on the matter in the first trial-Per Uchechukwu Onyemenam JCA in NANA & ORS VS. NINGI & ORS (2018) LPELR- 46399 (CA).

It is against this backdrop that I hold that orders as to interlocutory injunction pronounced by the former trial judge is hereby wiped clean and remains abated as if no such order was given. It therefore follows that parties are free to relitigate on previous applications as if same had never been heard by any Court. It is worthy to note that a trial *denovo* does not affect processes filed as they remain valid neither does it affect orders which finally determines the right of parties made at an interlocutory stage as such final orders determines the suit and constitutes *res judicata*.

Going by the principle as stated in the case of BANKULE VS. TANEREWANA NIG LTD (*supra*) all proceedings including the order of 15th June 2020 is hereby set aside as if same was never given. Hence, this Court has the jurisdiction to entertain this instant application.

The second issue to be determined is whether the applicant has placed sufficient facts before this Court to be entitled to the reliefs sought.

Now the grant or otherwise of an interlocutory injunction involves the exercise of the court's undoubted discretion which discretion must be exercised judiciously and judicially. The basis for the grant of an injunction is the need to protect and preserve the circumstances that are found to exist at the time of the application until the rights of the parties can be finally established. The Applicant in this instant suit is seeking for an order appointing the Chief registrar to receive all rents paid in the subject property into an interest yielding account. The Respondent is objecting to the grant of same, as the Applicant has no legal right over the subject property to be entitled to the prayers sought.

In this instant suit, the Claimant/Respondent is seeking for declaratory reliefs with respect to the ownership and management of the subject property. The 3rd Defendant/Applicant in the counter claim is also maintaining that it is entitled to subject property as well as the rents and management of same. The collection of rent in the subject property is part of the bone of contention in this instant application and this Court in the interest of justice of all parties, will grant the first prayer sought by the Applicant and appoint the Chief Registrar to receive all subsequent rents payable by the tenants of the subject property, pending the determination of this instant suit.

The Applicant in reliefs two and three is praying the Court to mandate the Claimant to remit the sums already received to the Chief registrar and render a detailed accounts of all the rents and service charge received from subject property. The trial Court has been enjoined to avoid making a finding or pronouncement on a matter at the Interlocutory stage of the

proceedings on matters or issues it will have to determine after the conclusion of evidence as this will amount to dealing with the issue twice in the same proceeding. See Adeleke V. Lawal (2014) 3 NWLR Pt.1393, pg. 1 at 21 para G-H. Hence, this Court determining these reliefs would touch on, go into the merits, or come to a decision which ought to be made in the substantive suit, considering the reliefs sought by the 3rd Defendant in its counter claim are closely related to the prayers sought in this instant application. As it relates to the funds received by the Claimant from June 2020, there is no way this Court being a trial Court can examine and determine same without touching on the same matter or relief which is slated for it to determine in the substantive suit after evidence is heard by the Court. To venture into that will result to the Court prejudging at this interlocutory stage the same issue which it will have to determine at the substantive stage of the case. If at the end of the substantive suit the Applicant is found to be entitled to his claim, this Court would order damages in the Applicant's favour.

The present application before this Court is largely seeking an exercise of the Court's discretion. In this wise, it is the duty of the Court to act judiciously and judicially by looking at materials placed before the Court and decide whether the circumstances of the application justify the exercise of the Court's discretion in favour of the applicant. See AKPOKU VS. ILOMBU (1998) 8 NWLR (PT.561) 283 @291 PARA F-G Per Achike JCA.

As I had stated earlier, the Court is not to predetermine the substantive suit at an interlocutory stage. The substantive issue before the Court as gleaned from the Writ of Summons revolves around financial contribution in respect of 109 Plaza development venture. It is very necessary that the Court exercises its discretion in granting Applicant's prayers as contained in

his application in order to secure rents received in the hands of a third party (Chief Registrar) pending determination of this suit.

Consequently, it is hereby ordered as follows;

1. That the Chief Registrar of the High Court of the Federal Capital Territory is hereby appointed to receive all the rents paid by the tenants of 109 Plaza situate at Plot 109, Ademola Adetokunbo Crescent, Wuse II, Abuja-FCT from the date of this order till the eventual determination of the substantive suit.
2. That rents received in furtherance of No.1 above shall be placed in an interest yielding account by the Chief Registrar to be released with all accrued interest to the judgment creditor within one week of application for same.

Accelerated hearing is hereby ordered in the substantive suit.

Parties:3rd Defendant's representative present.

Appearances:TertseaJoo, Esq., for the Claimant. Victor Orie, Esq., for the 3rd Defendant. Madu C. P. appearing with S. O. Ezeonyika, esq., for the 3rd Defendant. 1st and 5th Defendants not represented.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
24/02/2022