

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT APO – ABUJA**

**THIS MONDAY, THE 28<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE**

**SUIT NO: FCT/HC/CV/2000/2021  
MOTION NO: M/78149/2021**

**BETWEEN:**

**DR. AUGUSTINE NJOKO-----CLAIMANT/APPLICANT**

**AND**

**1. FEDERAL HOUSING AUTHORITY-----** } **DEFENDANTS/  
2. AJOLO PROPERTIES COMPANY LIMITED** } **RESPONDENTS**

**RULING**

This is a ruling in respect of the Claimant/Applicant’s Motion on Notice M/8149/2021 dated 17<sup>th</sup> November, 2021 and filed on the same day. The application is brought pursuant to **Order 42 Rule 2 and Order 43 Rule 1& 2 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018**, The application prays for :

1. An Order of Interlocutory Injunction restraining the Respondents by themselves, agents, privies, assigns or however described from further entering, managing, subletting and or installing tenants on the Claimant’s unit of 4-Bedroom Semi Detached Duplex situate at House No. 40, 622 Road, Gwarinpa 11 Estate Abuja “the Property” or collecting rents therefrom in purported exercise of the alleged right(s) of Head Tenants or whatever title described, pending the final determination of this suit.
2. And for such further Orders or other Orders as the Court may deem fit in the circumstance.

The Grounds Upon which the Application is brought are:

1. The Applicant filled this suit claiming inter alia declarative and injunctive reliefs against the Respondents including the ownership of a unit of 4-Bedroom Semi Detached Duplex situate at House No. 40, 622 Road, Gwarinpa 11 Estate Abuja “the Property,” subject matter of this suit.
2. There is need to maintain the status quo ante bellum pending the hearing and the determination of this suit.

The Application is supported with a 43 paragraphed affidavit with 21 annexures (Exhibit AN1 to Exhibit AN21), deposed to by the Claimant himself. In compliance with the rules of Court, the Counsel to the Claimant/Applicant filled a written address as his oral argument in support of the Application. In his written address the Counsel formulated a sole issue for the determination of the Court to wit:

**Whether the Court can exercise its discretion in favour of the Applicant by granting his Application for interlocutory injunctions.**

In his argument the counsel submitted that the Applicant has made out a case through his averments in the affidavit on the basis which Your Lordship can grant the reliefs prayed. That the remedy of interlocutory injunction is usually available to maintain the *status quo ante bellum* and to preserve the *res* in action. That it is trite that the status quo ante bellum is the situation existing at the time of filing of the action.

The Counsel submitted that Order 42 Rule 2 of the Rules of this Court vests Your Lordship with the power and jurisdiction to preserve the *res* in action and to maintain the status quo, pending the determination of the substantive suit. That there must be a threat or an infringement of the Applicant’s legal rights. That Your Lordship’s jurisdiction to grant interlocutory injunction is discretionary, the remedy being an equitable one. That it is a discretion that must be exercised judicially and judiciously, upon fixed principles. He cited the cases of **Kotoye v. C.B.N (1989) 1 NWLR (Pt. 98) at 441; Obeya Memorial Specialist Hospital v. A.G Federation (1987) 1 NWLR (Pt. 60) 325; Union Beverages v. Pepsi Cola (1994) 3 NWLR (Pt. 60) 1.3.04.**

The Counsel respectfully submitted in summary that the Applicant in this Application has satisfied the hurdles placed in its path by the above case laws and urged the Court to grant his Application.

In a way of opposition the 2<sup>nd</sup> Defendant/Respondent filed a 23 paragraphed Counter-Affidavit with one annexure (Exhibit A) deposed to by one Halilulah Abubakar Sadiq a staff of the 2<sup>nd</sup> Defendant/Respondent. Accompanying the Counter-Affidavit is a written address as their oral argument in support of their opposition. In the written address the 2<sup>nd</sup> Defendant/Respondent's Counsel formulated three (3) issues for the determination of this Court to wit:

1. Whether the Applicant has placed sufficient materials before this Honourable Court upon the Court can exercise its discretion in his favour.
2. Whether the grant of an injunction, in the circumstances of this case will not prejudice the substantive case.
3. Whether the Balance of convenience is in favour of the Applicant and damages will not be adequate compensation in the circumstances of this case.

In the Counsel's argument he submitted that the law is settled that he who alleges the existence of facts must prove that those facts exist. That the burden is on the Plaintiff to prove the facts which he alleges. He cited **Sections 131(1) & (2) and 132 of the Evidence Act.** The Counsel relying on the case of **Lawrence Vs. Olugbemi & Ors. (2018) LPELR-45966 (CA)** where the Court of Appeal held:

**Now, in civil cases, by the section 131 (1) & (2) of the Evidence Act, 2011, the burden of proof rest on the person who desires that the court give judgment in his favour. Such a person must adduce sufficient facts to proof that he is entitled to the judgment of the court. Accordingly, where such evidence is lacking or is insufficient and/or credible to sustain his claim, he would have failed to proof his case and the judgment of the court would be against him.**

Submitted that it is trite in an action premised on declaratory reliefs, it is the Claimant who has the duty to adduce sufficient credible evidence which must satisfy the court that he is entitled to the declaration sought. That to achieve this,

the Claimant/Applicant must rely on the strength of his own case, and not on the weakness of the defence. He cited the case of **Bulet Int'l (Nig) Ltd. & Anor. Vs. Olaniyi & Anor. (2017) LPELR 42475 (SC)**, where Kekere-Ekun said

**A declaratory relief is never granted on the bases of admission or default of pleading. The party seeking declaratory reliefs has the burden of establishing his entitlement to such reliefs. He must succeed on the strength of his own case and not on the weakness of the defence.**

It was the 2<sup>nd</sup> Defendants/Respondents' case that, the Claimant/Applicant in proof of his case alleged that he has title documents which he is relying on and which its authenticity was neither confirmed by the Nigerian Police Force upon investigation nor was it confirmed by the office of the 1<sup>st</sup> Defendant, who is the authorized land registry and validating authority. In conclusion the Defendant/Respondents' Counsel finally submitted that it is an elementary principle of law that where the relief sought by an application for interlocutory injunction is similar to the main claim or relief of the application's writ of summons, the court would not normally make an interlocutory order if its effect would be to grant a relief in the substantive suit. He referred the Court to the case of *Brown Vs. Brown (1994) 7 NWLR (Pt. 355) 217; Kotoye Vs. Saraki (1994) 7 NWLR. (Pt. 357) 414; Ogunsola Vs. Usman (2002) 14 NWLR (Pt. 788) 636 and Ogunro Vs. Duke (2006) 7 NWLR (Pt. 978) 130 at 144, paragraphs B-d.*

Counsel then urged the Court to hold that the Claimant/Applicant has not placed sufficient materials before this Honourable Court upon which the Court can exercise its discretion.

Having carefully considered the affidavit evidence, and the attached Exhibits, the submission of counsel, including the judicial authorities cited, the Court finds that there is only one (1) issue for determination;

**“Whether or not the Applicant has placed sufficient facts to sway this court to consider the grant or otherwise of the reliefs sought”**

Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. Its object 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 relief on the merit. See **Yusufu Vs I.I.T.A. (2009) 5 NWLR (PT. 1133) Pg 39 Para A – B.**

In an application for Interlocutory Injunction, it is not necessary that an Applicant must make out a case as he would on the merit, it is sufficient that he should establish that there is a substantive issue to be tried. It is unnecessary to determine the legal rights to a claim at this stage, as there can be no determination, because the case has not been tried on the merit. Consequent, for an Applicant to be entitled to the grant of an application of this nature, the affidavit evidence must disclose cogent facts. On the nature of the grant of this kind of application, the court in the case of **Mohammed Vs Umar (2005) ALL FWLR (PT. 267) Pg 1510 @ 1523 – 1524 at Para A – D** stated thus:-

**“Interlocutory Injunction is not granted as a matter of grace, routine or course. On the contrary, the Order of Injunction is granted only in deserving cases based on the hard law and facts”**

The principles guiding the grant of an Order of Interlocutory Injunction has been stated in Pletorial of authorities. In **Akinpelu Vs Adegbore (2008) ALL FWLR (PT 429) Pg 413 @ 420**, it was stated as follows:-

- (1) There is serious question to be tried, that is, the Applicant has a real possibility with probability of success at the trial notwithstanding the Defendant's technical defence (if any).**
- (2) The balance of convenience is on his side, that is, more justice will result in granting the application than in refusing it.**
- (3) Damages cannot be adequate compensation for his damages or injury, if it succeeds at the end of the day.**
- (4) His conduct is not reprehensible.**
- (5) No Order for an Interlocutory Injunction should be made on Notice unless the Applicant gives a satisfactory undertaking as to damages save in recognized exceptions"**

Also for principles governing the grant or refusal of an application for interlocutory injunction I rely on the authority of **JAMES ONWE & ORS v. JAMES OGE & ORS (2017) LPELR-42779(CA)** where the Court held thus:

**"Economic factors/benefits attached to the property in dispute may be taken into consideration in granting an interlocutory injunction pending the determination of the substantive suit. See Adesina vs. Arowolo (2005) FWLR (Pt.245) 1123 at page 1140-1141 paragraphs "F"-"G".**

**One may also ask: At the close of trial, would the party that applied for the interlocutory injunction be entitled to a permanent or perpetual injunction? This question was posed and answered in Adenuga vs. Odumeru (2003) FWLR (Pt.158) 1288 at page 1304 paragraph "H" to page 1305 paragraphs "A"-"G" per Uwaifo, JSC to wit:**

**"In an application for an interlocutory injunction, the plaintiff must show an existence of his right which needs to be protected in the interim. He must at the same time satisfy the Court that there is a**

real question to be tried in the substantive suit: *Egbe vs. Onogun* (1972) 1 All NLR 95 at 98. This does not require the Court to determine the merit of the plaintiff's entitlement to the claim. But it places on the plaintiff an initial burden. It is the burden of showing that there is a serious question to be tried upon the affidavit evidence (as well as averments in the statement of claim, if any has been filed): See *Obeya Memorial Hospital vs. Attorney-General of the Federation* (1987) 3 NWLR (pt.60) 325.

It is necessary to emphasize that it is of vital importance for a plaintiff seeking an interlocutory injunction to adduce sufficiently precise factual affidavit evidence to satisfy the Court that his claim for a permanent injunction at the trial is not frivolous; or at any rate, based on the substantive claim to produce affidavit evidence to satisfy the Court in justification of his application for an interlocutory injunction to maintain the status quo. It is only when this has been done that it will become necessary for the Court to proceed further with the application to consider the balance of convenience. Otherwise the application ought to be refused at the point the Court is not so satisfied. This is clear from the observation made by Lord Diplock in *American Cyanamid Co. vs. Ethicon Ltd.* (1975) 1 All E.R. 504 at 510 as to what should be the approach in considering an application for an interlocutory injunction.

He said inter alia:

"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence of affidavit as to facts on which the claims of either party may ultimately depend not to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial... so unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

**In my opinion, the granting or refusal of an application for interlocutory injunction pending the determination of a substantive suit should be based on legal and equitable principles, predicated on the relevant strength of the case the parties presented in the lower Court by an examination of their respective pleadings. The decision of the learned trial Judge in this appeal is amply supported by the weight of evidence adduced by the 1st set of respondents in favour of granting the application. The learned trial Judge granted reliefs that met the justice of the case." Per TUR ,J.C.A (Pp. 45-48 paras. C)**

On whether there are triable issues at the main trial, the law is that, all the courts need to establish, or consider, is whether the claim is not frivolous or vexatious. From the facts stated in Paragraphs 5 to 32 of the Affidavit in Support of the Application with Exhibits "AN1" to Exhibits "AN21" attached to the affidavit and paragraphs 4 to 26 of the Statement of Claim, clearly shows that there are serious issues to be tried. The success or otherwise of it, is not the function of the court to resolve at this stage, but for the main trial.

On the issue of whether the Applicants will suffer irreparable injury if the application is not granted or whether the balance of convenience is in favour of the Applicant, is an area where the discretion of the court comes into play. Judicial discretion is not a one way traffic; it takes into consideration the competing rights of the parties to justice. It must be based on facts and guided by the law or equitable decision of what is just and proper in the circumstance. In this instant application, the Applicant contends that he would further suffer irreparable injury if the application is not granted. Though it is not for the court to determine the merit of the case at this stage, it is the court's view that the Applicant has by his affidavit evidence with the attached Exhibits, shown clearly that he would suffer more injury if the application is not granted.



In all of these, the 1<sup>st</sup> Defendant/Respondent who were duly served with the processes but did not react to the motion. But the 2<sup>nd</sup> Defendant/Respondent by its paragraph 5 (d) and (e) of the Counter-Affidavit avers that it is a tenant not the owner. The 2<sup>nd</sup> Defendant/Respondent by its depositions it is very clear to this court that it claims only the possession of the property as a legal tenant.

The court having earlier stated the position of the law, shall accept the facts as true and correct; the plaintiff having shown an existence of his right which needs to be protected in the interim. The Claimant/Applicant has adduced sufficiently a precised factual affidavit evidence to satisfy this Court that his claim for an interlocutory injunction at the trial is not frivolous, hence there is justification for his application for an interlocutory injunction to maintain the *status quo* and I so hold.

In conclusion and having considered the depositions in the affidavit, the exhibits attached, and the law, the court finds that the application has merit and should be allowed. The application succeeds and it is hereby ordered as follows:-

1. An Order of Interlocutory Injunction restraining the Respondents by themselves, agents, privies, assigns or however described from further entering, managing, subletting and or installing tenants on the Claimant's unit of 4-Bedroom Semi Detached Duplex situate at House No. 40, 622 Road, Gwarinpa 11 Estate Abuja "the Property" or collecting rents therefrom in purported exercise of the alleged right(s) of Head Tenants or whatever title described, pending the final determination of this suit.

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**Hon. Justice Jude O. Onwuegbuzie**