

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

THIS MONDAY, THE 14TH DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE – JUDGE

**SUIT NO: FCT/HC/CV/1783/2021
MOTION NO: M/4848/2021**

BETWEEN:

MISS CORDELIA DUBRE-----CLAIMANT/APPLICANT

AND

1. FROT- ROYAL HOMES LTD ----- } **DEFENDANTS/
2. MR. COLLINS OTUMBA ADEWUNMI-----** } **RESPONDENTS**

RULING

This is a ruling in respect of the Claimant/Applicant’s Motion on Notice M/4848/2021 dated 29th July, 2021 and filed on the same day. The application is brought pursuant to **Order 43 Rule 1 and Order 42 Rule 1 & 4 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018**, Section 43 of the Constitution of the Federal Republic of Nigeria 1999 as Amended.

The application prays for :

1. An Order of Interlocutory Injunction restraining the Defendants/Respondents their agents, servants or privies, or whoever names so called from revoking and re-allocating the Plaintiff’s House No. A130 Fort-Royal Homes Kyami, Airport Road, Abuja or tampering with it in any form, 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 Application is supported by a 61 paragraphed affidavit with 29 annexures (ANNEXURE 1 to ANNEXURE 29), deposed to by the Claimant herself. In compliance with the rules of Court, the Counsel to the Claimant/Applicant through her Counsel filed a written address as her oral argument in support of the Application. In his written address the Counsel raised many issues for examination by this Court;

Whether there is a Serious Question to be Tried he submitted that in the case of **Onyesoh Vs. Nze Christopher Nnebedum&Ors. (1992) 3 NWLR (Pt. 229) P. 315 at 318 Ratio 2 (f)** where the Supreme Court held:-

It is not the law that the applicant must show a prospect of obtaining a permanent injunction at the end of the trial. It is sufficient for the application to show that there is a serious question between the parties to be tried at the hearing.

It was the submission of the Applicant's Counsel that, the Plaintiff/Applicant purchased a 3-bedroom detached bungalow from the Defendants/Respondents from where she succeeded in paying completely for one of the houses and paid more than half the price of one additional house. The Counsel submitted that the Defendants/Respondents who are estate developers offered 2 Units of 3 bedroom bungalows to the Plaintiff/Applicant at the rate of N18,500,000.00 each. The Counsel further submitted that the Plaintiff/Applicant paid the total sum of N29,500,000.00 to the Defendants/Respondents, meaning that she paid fully for one of the houses, House No. A130, all situate at the Defendants/Respondents' Plot 3153/4 Kyami District, Lugbe, Airport Road, Abuja. That the crux of the matter is that it took the Defendants/Respondents 6 years to deliver/handover one of the houses to the Plaintiff/Applicant, though partly completed. Furthermore, that the Defendants/Respondents till date have failed, refused and neglected to complete and hand over the second house to the Plaintiff/Applicant. Worse still, that the Defendants/Respondents instead of completing the second house turned round to

claim that the Plaintiff/Applicant's allocation of House No. A130 has purportedly been revoked. Counsel humbly submitted therefore that the Plaintiff/Applicant has proved that there is a serious question to be tried and urged the court to so hold and grant this application and referred the Court to the case of **Kotoye Vs. CBN (1989) 1 NWLR (Pt. 98) 419 at 441.**

In a way of opposition the Defendants/Respondents filed a 28 paragraphed Counter-Affidavit with six (6) Exhibits (Exhibit FRH1 to 6), deposed to by one Mohammed Alliagbor an Administrative Officer in the employment of the 1st Defendant/Respondent. Accompanying the Counter-Affidavit is a written address as their oral argument in support of their opposition.

It was the case of the Defendant/Respondents that House No. A129 was handed over to the Plaintiff/Applicant, House No. 130 was near completion. That when there was serious inflation in the Nation's economy and further increased in the price of building materials to such an extent that the 1st Defendant/Respondent could no longer bear, it had to review its price list for houses and carcass building in its estate, and as a result it increases the price of House No. A130 from #18,500,000:00 (Eighteen Million, Five Hundred Thousand Naira) only to #27,800,000:00 (Twenty Seven Million, Eight Hundred Thousand Naira) only. That since the new price was communicated to the Plaintiff/Applicant, she had refused, neglected and failed to make any further deposit. That since the revocation of the Plaintiff/Applicant's allocation, the 1st Defendant/Respondent had always been ready to refund back the outstanding deposits on the said house to the Plaintiff/Applicant which stands at the sum of #9,612,500:00 (Nine Million, Six Hundred and Twelve Thousand Five Hundred Naira) only. That both Plaintiff/Applicant and the 1st Defendant/Respondent have mutually rescinded their agreement on the House No. 130. That what is left unsettled is the issue of how much is to be refunded to the Plaintiff/Applicant.

In the written address the Defendant/Respondent's Counsel formulated one (1) issue for the determination of this Court to wit:

Whether the material placed by the Plaintiff/Applicant before this Honourable Court is sufficient to warrant the discretion of the Honourable Court to grant the Order of Interlocutory Injunction as prayed.

The Learned Counsel to the Defendants/Respondents submitted that the Plaintiff/Applicant has not placed such materials necessary for the grant of an order of interlocutory injunction taking into consideration the requirements for the exercise of the discretion of this Honourable Court as provided under the law. The Supreme Court in the case of **Adeleke vs. Lawal (2014) 3 NWLR (pt. 1393)** has settled the law as to the conditions that must be fulfilled before the order of interlocutory injunction can be granted, as follows:

1. There must be a subsisting action.
2. Existence of a legal right.
3. Substantial issues to be tried
4. Because of the above requirement the status quo should be maintained pending the determination of the substantive suit
5. Balance of convenience
6. Irreparable damages or injury
7. Conduct of the parties.
8. Undertaking as to damages”

The Counsel submitted that before delving into the question as whether this application satisfies these conditions, it is necessary at this juncture to bring to the notice of My Lord that the supreme court had warned that an order of interlocutory injunction should not be granted where such order will lead to a predetermination or prejudging of the substantive suit before the Court held that:

In determination of any interlocutory application pending the trial of the substantive case, care should be taken not to make pronouncement which may prejudice the trial of the claim filed

and still pending before the court. To do otherwise is to prejudge the matter in respect of which evidence is yet to be led.

The Learned Counsel to the Defendants/Respondents Mr. Shuaib A. Mustapha concluded that the Plaintiff/Applicant is not entitled to the equitable order of interlocutory injunction, this is because it is (sic) rule in equity that he who seeks equity must come (sic) clean hands'. Thus, the Plaintiff/Applicant has to come to equity with clean hands. This is because it is the Plaintiff/Applicant who terminated the contract with the 1st Defendant/Respondent and further demanded for a refund of her deposit which as a result made the 1st Defendant/Respondent to revoke the allocation and further resold the house to a new purchaser in order to recover the Plaintiff/Applicant's deposit to be refunded to her on this ground we therefore urge your Lordship to refuse this application.

The Plaintiff/Applicant by way of reply filed a 4 paragraphed Further and Better Affidavit deposed to by one Stephen Ojodomo, a Litigation Clerk in the Law Firm of the Counsel to the Plaintiff/Applicant in this case. The deponent averred that for 10 years the Defendant/Respondents could not complete and hand over House No. A130 to the Plaintiff/Applicant even when the Plaintiff/Applicant paid a deposit of #11,000,000:00 for the said 3 Bedroom detached bungalow. That in 2018 the Plaintiff/Applicant out of frustration asked for a refund of her money, the Defendant/Respondent still failed and refused to refund.

By way of reply on points of law, the Plaintiff/Applicant's Counsel in the written address attached to the Further and Better Affidavit, submitted that in a dispute over an immovable property like a house, it is always safer for the court to insist that *status quo* be maintained or to grant an injunction to restrain a party in the dispute from destroying the *res*. This is because when the *res* is destroyed, the judgment of the court may be rendered nugatory. The Counsel referred the Court to

the case of **IGWE VS. KALU (1993) 4 NWLR (pt. 285) 1 @ page 10 to 11 paras H – B**, where the supreme court held per OGWUEGBU J. S. C. held;

I agree with the learned senior advocate for the appellants that if the respondents are allowed to continue erecting buildings and factories on the land in dispute, surely, the character of the land will be radically and irrevocably altered and even if their appeal succeeds, there can be no return to the status quo. By the same token, unless the order for stay is granted, the subject matter of the proceedings in this case, the farm land will be destroyed and the appeal will be rendered nugatory if they succeed. See Vaswani Trading Co. v Savalakh and company (1972) All N.L.R. 922.”

The Learned Counsel to the Plaintiff/Applicant Mr. Charles H.T. Uhegbu finally submitted that in the instant case, if the *res* is not preserved, the Defendant/Applicants’ can go ahead and do whatever they like with the Plaintiff/Applicant’s house. That it is therefore this Honourable Court that can stop the Defendants/Respondents from continuing with their usual impunity and exploitation against the Plaintiff/Applicant and humbly urged the Court to discountenance the Defendants/Respondents’ counter affidavit and grant the Plaintiff/Applicant’s application.

Having carefully considered the affidavit evidence, and the attached Exhibits, the submissions of both counsel, including the judicial authorities cited by both parties in this application with its legal arguments, contained in the both written addresses, needless repeating or reproducing all of them as they form part of the record of the court. The now Court adopts the issue raised by the Learned Counsel to the Defendant/Respondents Mr. Shuaib A. Mustapha for determination by this Court;

Whether the material placed by the Plaintiff/Applicant before this Honourable Court is sufficient to warrant the discretion of the Honourable Court to grant the Order as prayed

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 Adegboro (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 court needs to establish, or consider, is whether the claim is not frivolous or vexatious. From the facts stated in Paragraphs 21 to 59 of the Affidavit in Support of the Application with "Annexure 1" to "Annexure 29" attached to the affidavit and paragraphs 20 to 54 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 Applicant 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 both 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 she 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 or Annexures, shown clearly that she would suffer more injury if the application is not granted.

But the Defendants/Respondents by its paragraphs 10, 11, 12, 15, 17,23 and 24 of the Counter-Affidavit avers that it is the Plaintiff/Applicant who started making payments to them for the two houses allocated to the Plaintiff/Applicant to the tune of #29,500,000:00 (Twenty Nine Million, Five Hundred Thousand Naira) only and

left with an outstanding balance of #10,275,000:00 (Ten Million, Two Hundred and Seventy Five Thousand Naira) only inclusive of legal and administrative fees since 2011.

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 Plaintiff/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 *status quo*, therefore the Plaintiff/Applicant has placed enough material before this Honourable Court to warrant the discretion of the Honourable Court to grant the Order of as prayed and I so hold.

In conclusion and having considered the depositions in both affidavit, the exhibits attached, the law, and has fulfilled the conditions in the case of **Adeleke vs. Lawal (supra)**, the court finds that the application has merit and should be granted. The application succeeds and it is hereby ordered as follows:-

1. An Order of Interlocutory Injunction restraining the Defendants/Respondents their agents, servants or privies, or whoever names so called from revoking and re-allocating the Plaintiff's House No. A130 Fort-Royal Homes Kyami, Airport Road, Abuja or tampering with it in any form, **pending the final determination of this suit.**

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. James Ngwuli Esq. holding the brief of Charles Uhegbu Esq for the Plaintiff/Applicant
2. S.A Mustapha Esq. for the Defendants/Respondents.