IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

THIS 18TH DAY OF JANUARY, 2022

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

SUIT NO. FCT/HC/CV/259/2021

MOTION NO. M/889/2021

BETWEEN

1. **BESTMARK INVESTMENT NIG. LTD** } **CLAIMANTS/**
2. VICTOR AGOH (Doing Business under the name and style of JANE VICA VENTURES) } **APPLICANTS**

AND

1**. MAJOR JAMES ONYEKE (RTD)** } **----------DEFENDANTS/**
2.MR PAYNE OKOYE **RESPONDENTS**

RULING

This ruling is predicated upon a Motion on Notice dated 22nd day of January 2021 and filed on the 2nd day of February 2021. The Motion is brought pursuant to Order 43 of the High Court of the FCT Civil Procedure rules. Applicant is praying the Honourable court for the following reliefs:

1. An order of Interlocutory Injunction restraining the Defendants/Respondents, his agents, staff, servants, thugs

and privies from entering or further trespassing into the Claimant's plot CP 120 Kurudu FCT – Abuja pending the determination of the substantive suit.

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

Attached to the motion is a 22 paragraphs affidavit deposed to by one Victor Agoh, the 2nd Claimant herein with Exhibits marked A to K.

In the his affidavit, the 2nd claimant avers that the 1st Claimant is the original allottee of Plot CP – 120 Kurudu FCT-Abuja, by venture of an offer of terms of Grant/Conveyance of Approval of Statutory Right of Occupancy dated 22/1/2002 issued by the Ministry of the Federal Capital Territory. The 2nd Claimant avers further that he is presently the bonafide owner of the said Plot CP – 12o Kurudu, FCT which the defendants unlawfully trespassed and carted away the Claimant's building materials and implements. That the 2nd Claimant acquired the rights and interest of the 1st Claimant on the said plot through a deed of sale in December 2002 and was granted a changed offer of grant statutory Right of Occupancy by the Minister of the Federal capital territory vide an Offer of Terms of Grant/Conveyance of

Approval. In line with – pursuant to - the Honorable Minister's directive that every title owner of plot within the Federal Capital Territory should submit to Abuja Geographical Information System (AGIS) for regularization, the 2nd Claimant being a law abiding citizen submitted his original title documents on his said plot CP-120 Kurudu FCT to AGIS and same was duly acknowledged vide a letter dated 10/06/2014. That the 2nd Claimant paid the requisite processing fees through ECO Bank with teller No. 005260 and a new file number MISC 32396 was given to him. That the Department of Land Planning and Survey, Abuja issued a Right of Occupancy rent and fees bills for Right of Occupancy No. MZTP/1A05/MISC to the 2nd Claimant in respect of the said land and the said bill was fully paid by the 2nd Claimant. That the Claimants had since the past 19 years been enjoying untrammelled possession of the land through planting of survey beacons, farming, concrete, fencing and depositing building materials on the land sufficient enough to commence his planned mass housing estate on the land. That the Claimant's right and title over the said plot CP-120 kurudu FCT has not been revoked according to law. That the defendants claim to be rightful owners of the same plot without any genuine title document. That sometime in December 2020, the defendants led the Invasion of

the Claimant's land with thugs and men in army uniform, destroyed the Claimant fence and gate house and carted away the 2nd Claimant's iron rods and other building materials and implements. That when the 2nd Claimant later met the 2nd defendant on the land after the invasion the 2nd defendant boldly admitted the invasion and threatened the 2nd Claimant to stay away from the land claiming that the 1st defendant bought the land from an Army General, that the army will deal ruthlessly with him and his worker if found on the land. That the defendants have continued to trespass on his plot of land with threats of killing and maiming him and his workers if found on the land.

Learned counsel to the Applicant's in his written address dated the 22nd day of January argued that for an applicant to succeed in his application of this manner the law requires him to meet some conditions. He cited **OBEYA MEMORIAL SPECIALIST HOSPITAL V. AG FEDERAION & ANWR (1987) 2 NSCC (VOL.18)AT 961, SARAKI V. KOTOYE (1990)2 NSCC (VOL 21) 36.**

Learned counsel contended that the applicant having being in possession since the past 19 years, he argued that the balance of convenience is always in favour of the party in possession of the res in an application for Interlocutory Injunction. Counsel

argued further that if the application is not granted and the defendants continue in their recklessness and lawlessness if the Applicant succeeds, a *fait accompli* would have been foisted on the court as what is sought to be protected by the timely institution of this action would be in vain, counsel cited **SHAIBU VS MUAZU (2007)7 NWLR (PT. 1033)AT 291.**

Learned counsel submitted that the loss that will be suffered by the Applicant if this application is not granted cannot be estimated either in terms of time or quantum of damages he relied on **OKURUKE & 3 ORS VS ABIEBU NICODEMUS & ORS(2004)4 NWLR PT 654 AT 662.**

On legal right and triable issues, learned counsel submitted that the Writ of Summons, Statement of Claim and all the documents before the court clearly shows that there is a triable issue. That the legal rights of the appellants has been infringed by the combined lawless actions of the Defendant/Respondent on the applicant's plot of land. He cited **SULU-GAMBARI V. BUKOLA (2004)1 NWLR PT. 853 AT 122** particularly at **page 125 ration 1.**

On a serious question to be tried in the substantive suit, counsel referred this court to the statement of claim filed by the applicants. Learned counsel on balance of convenience referred to the case of **OKURUKE & ORS VS ABIEBU NICODEMUS & ORS.(Supra) ratio 2.**

In response, the defendant/respondents filed a 38 paragraphs counter affidavits deposed to by one **Onyeke Emmanual** and Exhibits annexed thereto.

The defendants/Respondents avers that the 2nd claimant does not have the consent of the 1st Claimant/Applicant to depose to the affidavit dated 2nd February 2021 as he was informed by one Mrs. Florence Kofoworola Akinbole the director of the 1st Claimant. That it is a fact that the 1st Claimant/Applicant was the original allottee of the landed property known as plot No. CP-120, Kurudu Layout, within the Abuja Municipal Area Council letter of offer issued by the Ministry of Federal Capital territory. That the 2nd Claimant/Applicant is not the owner of plot No. CP-120, Kurudu layout that the defendants never unlawfully trespassed into the land and never carted away building materials that the 1st Claimant sold the land to FAIDEEN NIGERIA LIMITED in 2002 and by 2006 was issued a new file number MISC 75066. That the 2nd

Claimant forged the letter of title in his possession that alleged TDP issued to the 2nd Claimant was a product of the forged documents. That the 2nd Claimant had not been in possession of the land through plantings of survey beacons, farming, concrete fencing and depositing building materials on the land. The defendants/respondent avers that the true position on the said land is that he acquired plot No. CP 120, Kurudu layout from Shazza Goro Nigeria Limited on the 26th day of April 2019; and when he visited and inspected the land prior to the acquisition between January to March, 2019, that he saw a land that is being cultivated by the agent of Shazza Goro Nigeria Limited. That between 2006 and 2021 before this suit was filed; there was no time that the 2nd Claimant/Applicant was ever in possession of the land for any moment. That he carried out full concrete fencing round about the land between 8th May 2020 to 20th July 2020 and he never met anyone neither was he challenged by anyone. That Shazza Goro Nigeria Limited also acquired the land from Faideen Nigeria Limited.

Learned Counsel to the Defendants/Respondents in his written address formulated a lone issue for determination to wit:

> "***Whether the Claimant/Applicants have met the factors or conditions for the court to grant them the***

order of Interlocutory Injunction sought against the Defendant/Respondent in the circumstances of this suit:".

It is the contention of learned counsel to the Defendant/ Respondent that the Claimants/Applicants have not met the factors or conditions for the court to grant them the order of Interlocutory Injunction. Learned counsel submitted that of all the factors to be considered in a application for Interlocutory Injunction two are paramount which are (i) existence of legal right and (ii) Balance of convenience.

On existence of legal right counsel argued that it is a question of fact that must be determined by evidence, counsel cited the case of **ABOSELDEHYDE LABORATORIES PLC V. UNOGON MERCHANT BANK & ANOR (2013)LPELR – 20180** to the effect that the aim of an order of Injunction is to protect an established right of the applicant that where the Claimant/Applicant does not have a legal right recognized by the court, there is no power to grant him Interlocutory Injunction he cited **UNWUL BEVERAGES LIMITED VS PEPSI COLA INTERNATIONAL LIMITED (1994)3 NWLR (PART 330)PAGE 1**. Counsel argued that the Defendant/Respondent have put the purported document of title of the 2nd

Claimant/Applicant in issue as one tainted with fraud and illegality as such cannot be basis of valid title for a court of equity to rely on and grant equitable relief.

On Balance of convenience, it is the submission of learned counsel to the defendant/respondent that it is a factor relevant for consideration if and only if the Claimant/Applicant has established a legal right to be protected by an Injunction; otherwise the failure to do so will mean the dismissal of the Application. He cited **MISSIAL & ORS VS BALOGUAL)1968(1 ALL NLR 318** and submitted that the applicant has failed to prove that the balance of convenience is on his side.

Learned counsel to the Defendant/Respondent contended that if damages will be adequate compensation to the Applicant and the defendant is in a position to pay damages to the Applicant then the injunction sought by the applicant should not be granted he relied on **ORJI UZARIA INDUSTRIES LIMITED (1992)1 NWLR)PT 216(EZEBILO V CTILNWUBA (1997)7 NWLR (PT 511)108 AT 127 PARAS F-G.**

learned counsel contended that by the Claimants/Applicants showing in their pleadings the 2nd Claimant have already assessed their cumulative damages in the substantive suit to the tune of

N200,000,000.00(Two Hundred Million Naira only) Counsel cited **ABOSELDEHYDE LABORATORIES PLC V UNWAL MERCHANT BANK LTD & ANOR (Supra)** to the effect that a plaintiff's need for a protection by way of an Interlocutory Injunction must be weighed against the corresponding need of the defendant to be protected against injury resulting from having been prevented from exercising his legal rights from which he could not be adequately compensated in damages. Learned counsel argued that the 2nd Defendant/Respondent has shown by his counter affidavit that his predecessor in title beginning from the 1st Claimant **Faideen Nigeria Limited, Shazza Goro Nigeria Limited** and presently the 2nd defendant/Respondent have been in absolute and continuous possession of the land since 2002.

Learned Counsel to the Defendant/Respondent argued that the status quo that should be maintained is that which prevailed over the years, the peaceable occupation/possession of the land and enjoyment of it by the 2nd Defendant/Respondent and is his predecessor. He cited **AJEWOLE VS ADETIMO & ORS (1996)2 NWLR (PT. 431)P 391** amongst others.

In his reply on point of law dated 5th October 2021 to the Respondent's Counter Affidavit learned Counsel to the applicant

contended that the counter affidavit and written address of the Defendants/Respondents is not proper before this Honourable court and as such this honourable court is robbed of jurisdiction to entertain same for not being filed within the time limit stipulated by rules of court and also the requisite condition precedent which the provision of the rules of this court for extension of time to file a counter affidavit and written address. He cited **MADUKOLU VS NKEMDILIM (1962)2 SCNLR 34. UMA & ORS V EFFION & ORS (2013)LPELR 21 407(CA).**

Learned counsel argued that this honourable court had on the occasions granted adjournment to enable them file their response, he contended further relying on **NEWSWATCH COMMUNICATIONAL LIMITED VS ALHAJI IBRAHIM ATTA (2006)12 NWLR (PT. 993)144 AT P 151** to the effect that fair hearing is a two-way traffic as well as a two edged sword that it is never meant to avoid aid the indolent. Counsel contented that the Defendant's counter affidavit and written address in response to Claimant's motion for Interlocutory injunction are not in compliance with the provision of the rules of this court as stipulated in order 43 Rule 1 (4)Order 49 Rule 45 and Order 36 Rule 4 of FCT Civil Procedure Rules 2018.

It is the argument of learned counsel that where a Respondent is in breach of the Rules of the court in filing his counter affidavit, the court should strike out or discontinuance same, and proceed to give its ruling an Applicant's affidavit. He cited **ABIA STATE TRANSPORT CORPORTAIONAL & ORS VS QUORUM CONSORTIUM LIMITED (2009) 3 – 4 SC 187, ELEPHANTU GROUP PLC VS NATIONAL SECURITY ADVISER & ANOR (2018)2 PELR – 45528.**

On the whole counsel submitted that the counter affidavit be strike out for non compliance with the rules of this honourable court.

I have considered the submissions of the parties to this application. The issue for determination in this application is simply

WHETHER THE CLAIMANT HAS MADE OUT A CASE FOR GRANT OF INTERLOCUTORY INJUCTION WHICH HE SEEK AGAINST THE DEFENDANT.

In the case of **BUHARI & ORS. V. OBASANJO & ORS. (2003)17 NWLR (PT. 850) 587,** the supreme court categorically spelt out the guiding principles for the grant of

Interlocutory Injunction, stating that the applicant must prove as follows:

1. *Existence of a subsisting action;*
2. *The Existence of a legal right which the applicant seeks to protect.*
3. *That there is a serious question or issue to be tried necessitating that status quo be maintained pending the determination of the substantive action.*
4. *That the balance of convenience is in favour of granting the application.*
5. *That there has been no delay in bringing this application on the part of the applicant.*
6. *That damages cannot be adequate compensation for the injury he wants the court to protect.*
7. *That the applicant must make an undertaken as to damages in the event of wrongful exercise of the court's discretion. In granting the application. See the case of* ***ADELEKE & ORS. LAWAL & ORS(2013) LPELR – 20090 (SC)AKADO V. HAKEEM – HABEEB (1992) NWLR (PT. 247)266.***

With regards to the first requirement, it is evident that there is a substantive suit No FCT/HC/CV/259/2021. Pending the

determination of which the plaintiff/applicant has made this application for Interlocutory Injunctions against the Defendant.

On the second requirement relating to the existence of a legal right, it is noteworthy that this is determined by the court by examining the statement of claim of the plaintiff and not the defence as put forward by the defendant see the case of ***UNION BANK PLC V. ROMANUS C. UMEODUAGU (2004)13 NWLR (PT. 890)352.*** Where it was held per KAIGO, JSC at page 8-9 paras G-A.

"To proceed to examine the defence could amount to determining the case pre-emptorily on the state of the pleadings before trial and without taking evidence. What is required at this stage is for the court to see whether on the face of the statement of claim the plaintiff has shown the existence of a legal right which he seeks to protect."

As mentioned earlier in this ruling, the courts is at this stage enjoined to take a look at the claimant's statement of claim and not the statement of defence of the defendant or any defence by way of affidavit flowing from the defence. See the case of ***UNION BANK V.*** **ROMANUS C. UMEDUAGU(Supra)**.

From the totality of the processes before this Honourable Court, it is my considered legal opinion that the claimant has shown a recognisable right over the plot No CP-120 kurudu Layout Abuja See the Case of ***SARAKI V. KOTOYE (1989)1 NWLR (PT. 98)419 AT 441.***

On the issue whether the claimant can be compensated by damages, it is the position of the law that in an application for Interlocutory injunction such as this, the court may require undertaken of the plaintiff or the defendant; as the case may be if the justice of the case demands, in order to compensate the person temporarily restrained for damages he has suffered should it turn out that the restraining order ought not to have been made.

In ***AFRO CONTINENTAL (NIG)LTD V. AYANTUYI (1996)9 NWLR (PT. 420)411***, the Supreme Court laid down the following principles on the issue of given an undertaking as to damages:

1. *That it is not on all cases that Extraction of an undertaking as to damages is necessary;*

2. *That the trial court has a discretion on the question whether or not to order an undertaking as to damages.*

3. *The absence of the order as to damages will not of itself lead to setting aside the order made.*

4. *That where the trial court failed to extract an undertaking as to damages an appellate court can vary the order to include an undertaking by the plaintiff to pay damages. See the case of* ***AFRO CONTINETAL (NIG) V. AYANTUY, (supra)***

In this instant case, learned counsel to the applicant made undertaking as to Damages. Given the Circumstances of this case; it is my considered view that such an undertaking as to Damages to Compensate the Defendant in the event it turns out that the injunctive order ought not to have been made. Consequently in line with the decision in ***AFRO CONTINENTAL (NIG) LTD V. AYATUYI (Supra)*** this court hereby direct that the plaintiff to make and file an undertaking to pay damages to the Defendant.

On the issues of Balance of conveniences, is a question of who will stand to lose if the status quo ante is restored and maintained till the final determination of the suit. See the case of **AYORINDE V. A.G. OYO STATE (1996)2 SCNJ 198** in the

instant case, averments in the Claimant/Applicant's affidavit shows that the balance of convenience in the instant action lies in favour of maintaining the status quo in respect of the property know as number No CP-120 kurudu Layout Abuja.

From the foregoing therefore, I hereby resolve the only issue in this application in the affirmative and hold that the Claimant/Applicant have made out a case for the preservation of the Res and maintenance of status quo with regards to the No CP-120 kurudu Layout Abuja Subject to the Claimant/applicant filing an undertaking to pay damages should the order hereunder be found to be unwarranted, it is hereby ordered that the injunctive orders sought by the plaintiff are granted as prayed for in the motion paper, pending the hearing and determination of the substantive suit.

Apperances:

Parties Absent
Chika Egbo for the claimant
A.U. Umoso with J.C. Adediran for the Defence
Ruling read in open court.

Signed
Presiding Hon Judge
Date 18/01/2022