

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI – ABUJA

THIS 2ND FEBRUARY 2022

BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA

SUIT NO. FCT/HC/CV/3469/2020

MOTION NO. M/1312/2020

BETWEEN

ERNEST IWUOHA - - - - - CLAIMANT

AND

SHEIK IBRAHIM IDRIS - - - - - DEFENDANT

RULING

This is an application commenced by a Motion on Notice dated 3rd December,2020 and filed on the 17th December,2020. The motion is brought pursuant to Order 42 and 43 of the High Court of the Federal Capital Territory Civil Procedure Rules 2018. The Claimant/Applicant is praying the court for the following:

- 1. An order of this Honourable court restraining the Defendant, their agents, privies, staff, workers or those claiming through her, whatever name called from harassing entering, trespassing and working on the land known as Hospital Plot,*

measuring about 1,200Sqm Lugbe 1 Extension Layout, Abuja pending the hearing and determination of this suit.

- 2. An Order of this Honourable court granting this suit an accelerated hearing.*
- 3. And for such further orders as this honourable court may deem fit to make in the circumstances.*

In support of the application is a 23 paragraphs affidavit deposed to by one Ernest Iwoha the Claimant herein, annexed are Exhibits

Exhibit A1 to A4 Exhibit A1 is an Allocation letter dated 16/8/06
Exhibit A2 is an Acceptance letter dated 29/8/06
Exhibit A3 is a TD Plan dated 17th November, 2006
Exhibit A4 are pictures of the res.

The Claimant avers that following his application to the zonal office of the Ministry of Federal Capital Territory (Abuja Municipal Area Council) plot 3964 lying and situate at Lugbe 1 Extension Layout Abuja measuring about 1,200 sqm was allocated to him. That he accepted the conveyance of provisional Approval dated 16/08/06. He avers that by virtue of the allocation, he became the allottee of and the holder of Right of occupancy over the said plot 3964 Lugbe 1 Extension, Lugbe Abuja. He avers that he cleared the land with bulldozer with the intention to commence

development of the land. That he also obtained the Technical Design plan (also commonly called Title Deed Plan) TDP over the plot. That since 2006 he has been enjoying peaceful, quiet and exclusive possession of the plot of land. That sometimes in 2020 his attention was brought to the presence of some strange men who visited the land. He avers that he reported the matter at the police station and also his solicitors.

In his Written Address, learned counsel to the Claimant/Applicant formulated a sole issue for determination to wit:

"Whether the Applicant has made out a case to be entitled to the grant of Interlocutory Injunction sought?"

On the lone issue above, counsel submitted that for on application for an order of Interlocutory to succeed, the applicant must satisfy the court that:

- i. He has interest in the subject matter of the suit.
- ii. There is a serious issue to be tried.
- iii. Balance of convenience is on the applicant's side
- iv. There is undertaken as to damages.

Learned counsel cited **OKEKE-OBA & ANOR V. OKOYE (1994)& NWLR (PT.364)605 AT 616, OBEYA MEMORIAL SPECIALIST HOSPITAL & ANOR V. AG OF FEDERATION & ANOR (1987)3 NWLR (PT.60)325** amongst others.

It is the argument of learned counsel to the Applicant that the Applicant has shown that it has a legal right worthy of protection as can be seen in the affidavit and Exhibits annexed. Counsel contended that the Respondent is taking actions capable of altering the Res, dissipating it and also affecting the applicant's right and interest in the Res. Counsel argued that the balance of conveniences is on the side of the applicant and damages will not be enough to compensate him if the Respondent is not restrained. He urged this court to grant his application.

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 INJUNCTION WHICH HE SEEK AGAINST THE DEFENDANT.

The court would commence by alluding to the fact that the defendant respondent was served with the motion on notice. The

respondent having been served but did not file a response thereto, the court is enjoined to act on the motion.

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/3469/2020. 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 3964 Lying and situate at Lugbe 1 Extension 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 known as plot No 3964 Lying and situate at Lugbe 1 Extension 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 plot No 3964 Lying and situate at Lugbe 1 Extension 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. Case is hereby adjourned to 29th March 2022 for hearing of the substantive suit.

Appearances:

Parties absent

Mercy Omanijo for the Claimant/Applicant

The defendant is absent and unrepresented

Ruling read in open court.

Signed
Presiding Hon Judge.
02/02/2022