

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI – ABUJA
THIS 12TH DAY OF JANUARY, 2022
BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA
SUIT NO. FCT/HC/CV/640/2021
MOTION NO.6476/2021

BETWEEN

MISS HELEN IJI - - - - - CLAIMANT
AND

FELIX AMOBI PAUL - - - - - DEFENDANT

RULING

By a motion on notice dated the 5th day of October, 2021 and filed on 6th October, 2021, the application is brought pursuant to Order 43 of the Federal Capital Territory High Court (Civil Procedure) Rules 2018, and under the inherent jurisdiction of this court.

Applicant is seeking for the following reliefs:

1. An Order of Interlocutory Injunction restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise however described from selling or dealing with the one bedroom flat lying and situate behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja, wherein the Claimant currently lives with their two children, and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the

Claimant/Applicant pending the determination of the substantive suit before this Honourable Court

2. An Order of Interlocutory Injunction restraining the Defendant, whether by himself or by his agents, servants, privies or otherwise howsoever described from selling or dealing with the two Bedroom Flat situate and lying at Piwoyi behind the Mosque, along Airport Road, FCT Abuja, belonging to both Defendant and the Claimant and which formed part of the subject matter of this suit, in any way contrary to the proprietary rights of the substantive suit before this Honourable court.
3. And for such further or other orders as this Honourable court may deem fit to make in the circumstances.

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

1. That upon service of the Originating processes in this suit on the Defendant, the Defendant eloped and has refused to come to court to defend this case.
2. That the Defendant has been making concerted efforts through his agents to sell off the two properties which are the subject matter of the suit.
3. The Claimant/Applicants seek to restrain the Defendant, whether by himself or by his agents, servants privies or otherwise howsoever described from selling or dealing with

the one bedroom flat lying and situate behind Catholic Church, Piwoyi along Airport Road, FCT Abuja. Wherein the claimant currently lives with their two children, and the two Bedroom flat situate and lying behind the Mosque, along Airport Road, FCT Abuja, belonging to both the Defendant and the Claimant and both of which form parts of the subject matter of this suit, in any way contrary to the proprietary rights of the Claimant/Applicant pending the determination of the substantive suit before this Honourable court.

4. That should the Judgment of this court is eventually delivered in favour of the Claimant/Applicant, it will be rendered nugatory if the res is allowed to be sold or destroyed.

FACTS OF THE CASE

Claimant/Applicant avers that the defendant entered her house without her consent and evacuated almost all her properties in the house, after that the Defendant send his agents to advertise the house for sale by pasting an inscription "House for Sale, contact 09077254392", the house is situate at behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja.

In support of the application is a 3 paragraphs affidavit deposed to by one Miss Helen Iji the Applicant herself and exhibits 1 and 2 attached to the application respectively.

Equally filed along the application is a written address dated 6th October, 2021.

Learned counsel to the Applicant raised a lone issue for determination in his address to wit:

"Whether it is in the interest of justice for this Honourable court to exercise its discretion in favour of the claimant/Applicant, particularly in the circumstances of the facts disclosed".

In addressing the sole issue above, learned counsel to the Applicant urged this court to resolve same in favour of the Claimant/Applicant, reasons being that this application is one that invokes the discretionary powers of this honourable court, Counsel prayed this court to exercise its discretion judicially and judiciously as this application discloses sufficient facts that should persuade this court to grant all the reliefs sought. He relied on the case of **AZUL V. UNION BANK OF NIGERIA PLC (2004)14 NWLR (PART 893)402, 415 D-E.**

Learned Applicant's counsel contended that the entire paragraphs of the affidavit deposed to by the Applicant clearly shows that the Applicant has interest and if this application is refused will occasion irreparable loss to the Claimant/Applicant. He referred this court to the case of **KOTOYE V. CENTRAL BANK OF NIGERIA (1989)1 NWLR (PT 98) 419** and also the case of **OBEYA MEMORIAL HOSPITAL V. A.G OF THE FEDERATION (1987) 3 NWLR (PT 60) 325.**

Learned Applicant's counsel submitted that there is no doubt that all the conditions for the grant of an interlocutory injunction has been met by the applicant. The fact that irreparable damage will

be done to the Claimant/Applicant before the determination of the substantive suit, and the grant of this application is necessary to preserve the res (the two property) which are in danger of being sold, whereas the property is the substantial subject matter of this suit, learned counsel to the Applicant cited the case of **EJIOFOR V. EMUJULU (2008)17 NWLR (PART 1117)459,467-468 H-A.**

Learned counsel to the Applicant urge this honourable court to exercise its discretion in favour of the Applicant and grant all the reliefs sought.

Exhibits attached to the application

1. Exhibit 1 and 2 are pictures of the res (subject matter of this suit).

Learned counsel to the Applicant cited the following cases in canvassing his argument.

1. AZUL V. UNION BANK OF NIGERIA PLC (2004) 14 NWLR (PART 893)402 – 415D-E
2. CENTRAL BANK OF NIGERIA V. SYSTEM APPLICATION PRODUCTS NIGERIA LTD (2005)3 NWLR (PART 911)152,199 C-H.
3. KOTOYE V. CENTRAL BANK OF NIGERIA (1989)1 NWLR(PART 98)419.
4. OBEYA MEMORIAL HOSPITAL V. ATTORNEY GENERAL FEDERATION (1987)3 NWLR (PART 60)325.
5. EJIOFOR V. EMUJULU (2008)17 NWLR (PART 1117)559, 467-468 H-A.

At the hearing of the application on 27th October, 2021 Applicant's counsel informed this honourable court that the processes has been served on the Defendant by substituted means including the hearing notice as ordered by this court.

Applicant's counsel moved the application and adopted his written address dated 6th October 2021 and prayed this court to grant all the reliefs sought herein. The court adjourned this matter to 11th November 2021 for reply on point of law, Defendant did not file any reply on point of law, he failed to put up appearance in court despite the service of court processes on him.

On a careful perusal of the application and the evidence before me. The issue for determination in this application is:

"Whether the Claimant/Applicant has made out a case for the grant of an interlocutory injunction 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 an 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 has seek to protect.
3. That there is 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 in bringing the Application.
6. Damages cannot be adequate compensation for the injury he wants the court to protect.
7. The Applicant must make an undertaking as to damages in the event of wrongful exercise of the court discretion. In granting the application, see the case of **Adeleke & Ors Vs. 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/640/2021 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. UMEODUAGE (2004)13 NWLR(PT.890)352** where it was held per Kajo, JSC at page 9-9 para G-A.

"To proceed to examine the defence could amount to determining the case pre-emptorily on the state of 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 that plaintiff has shown the existence of a legal right which he seeks to protect.

In the instant case, the claimant/applicant in paragraph 2-3 of the supporting affidavit, the Claimant herein averred that the Defendant entered the claimant's house and packed all their properties without her knowledge and the Defendant sent his agents to advertise the house for sale by pasting an inscription "House for sale " situate at behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja, wherein the Claimant currently lives with their two children.

I observe that the Defendant never appear or filed anything before the court to counter the Claimant/Applicant's application at this stage the court is enjoined to take a look at the Claimant statement of claim and not a statement of defence of the Defendant or any defence by way of affidavit flowing from the defence if any. See the case of **UNION BANK V. ROMANUS C. UMEDUAGU (Supra)**. From the totality of the processes before this court, it is my considered legal view that the Claimant has shown a recognisable right over the House one Bedroom flat situate at behind Catholic Church, piwoyi, along Airport Road, FCT Abuja. See the case of **SARAKI V. KOTOYE (1989)1 NWLR (PT.98)419 AT 441**.

On the issue of whether the Claimant can be compensated by damages, it is the position of the law that in application for interlocutory application such as this, the court may require undertaking 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.

(PT In **AFRO CONTENETAL (NIG.)LTD V. AYANTUYI (1996)9 NWLR.420)411**, 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 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 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 CONTINENTAL (NIG.)V. AYANTUYI, (Supra)**.

In this case Applicant's counsel made undertaking as to damages. Given the circumstances in this case; it is my humble 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 **AFRON CONTINENTAL (NIG.) LTD V. AYANTUYI (Supra)** this court hereby direct that the Plaintiff to make and file an undertaking to pay damages to the Defendant.

On the issue of Balance of convenience, is a question of who will stand to lose if the status quo is restored and maintained till the

final determination of this suit. See the case of **AYORINDE V. A.G. OYO STATE (1996)2 SCNJ 198.**

In the instance case, averments in Plaintiff/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 one bedroom flat situate at behind Catholic Church, Piwoyi, along Airport Road, FCT Abuja.

From the foregoing therefore, I hereby resolve the sole issue in this application in the affirmative and hold that the Plaintiff have made out a case for the preservation of the Res and maintenance of status quo with regards to the house - one bedroom flat at behind Catholic Church, Piwoyi, along, Airport Road FCT Abuja, and two bedroom flat situate and lying at Piwoyi behind the Mosque, along Airport Road, FCT Abuja. Claimant/Applicant is ordered to file an undertaking to pay damages should the order of this honourable court be found to be unwarranted.

It is hereby ordered that the injunctive orders sought by the Plaintiff/Applicant are granted as prayed. Pending the hearing and determination of the substantive suit.

Appearances:

Parties absent in court.

B.I Ogar for the Claimant/Applicant.

Ruling read in open court

Signed
Presiding Hon Judge
12/01/2022

