

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/2831/2022

MOTION NO. M/7233/2021

BETWEEN

1. **PAUL KYARI LASSA**

2. **CHIEF JOE-KYARI GADZAMA, OFR, MFR, SAN**

AND

1. **KYC INTER- PROJECT LTD**

2. **PERSONS UNKNOWN**

} ----- **CLAIMANTS/
APPLICANTS**

} ----- **DEFENDANTS/RESPONDENTS**

RULING

This is an application commenced by Motion Ex-parte dated 25th October, 2021 and filed on 26th October 2021. The application is brought pursuant to order 43(1) of the Federal Capital Territory High Court (Civil Procedure) Rules, 218 under the Inherent Jurisdiction of this Honourable court.

The application is praying for the following reliefs:

1. **An Order** of interim injunction restraining the Defendants whether acting by themselves or through any of their agents, privies, proxies, affiliates, subsidiaries or any person or entity whatsoever from doing or carrying out

any act or developing, alienating, leasing, defacing or changing the character of Plot 65A, 7th Avenue, Sabon Lugbe Airport Road, Abuja, pending the hearing and determination of the motion on notice.

2. **An Order** of interim injunction restraining the Defendants whether acting by themselves or through any of their agents, privies, proxies, affiliates, subsidiaries or any person or entity whatsoever from doing or carrying out any act or developing alienating, leasing defacing or changing the character of plot 184A, Nura Sherif Street, La Villa Diamante City, Sabon Lugbe Airport Road, Abuja, pending the hearing and determination of the Motion on Notice.
3. **And Such Further Orders** as this Court may deem fit to make in the circumstances.

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

1. The 2nd Claimant/Applicant, through the 1st Claimant/Applicant, purchased Plot 65A, 7th Avenue, La Villa Diamante City, Sabon Lugbe Airport Road, Abuja from the 1st Defendant at the cost of N3,000,000.00 (Three Million Naira).

2. The 2nd Claimant/Applicant, through the 1st Claimant/Applicant, also purchased Plot 754B Ayuba Auta Street, Sabon Lugbe Airport Road, Abuja for the 1st Claimant from the 1st Defendant at the cost of N3,000,000.00 (Three Million Naira). However, the 1st Claimant was re-allocated Plot 184A, Nura Sherif Street, La Villa Diamante City, Sabon Lugbe Airport Road, Abuja.
3. There was also a subsequent payment of N3,181,000.00 (Three Million, One Hundred and Eighty-one Thousand Naira) to the 1st Defendant for the construction of a damp proof course on the 2nd Claimant/Applicant's plot.
4. The Defendants however trespassed into Plot 65A, 7th Avenue, La villa Diamante City, Sabon Lugbe Airport Road, Abuja belonging to the 2nd Claimant/Applicant and Plot 184A, Nura Sherif Street, La Villa Diamante City, Sabon Lugbe Airport Road, Abuja reallocated to the 1st Claimant/Applicant.
5. The Defendants began unauthorized construction works over the property belonging to the 2nd Claimant/Applicant leading up to the decking level of the property.
6. After this issue surfaced, the 1st Claimant/Applicant, having made payment for damp proof course on his plot at the cost of N3,181,000.00 (Three Million, One Hundred and

Eighty-One Thousand Naira), requested that the payment be transferred and used for the 2nd Claimant/Applicant's plot who would be allocated a plot within section A of the estate, and a refund of the amount paid for his (the 2nd Claimant/Applicant's) plot.

7. The 1st Defendant has however failed and/or refused to issue the 2nd Claimant/Applicant a refund as agreed and has also permitted and/or neglected to refrain the 2nd Defendant from constructing on the 2nd Claimant/Applicant's land.
8. Out of all the resolutions reached at the meeting on 22nd March, 2021 the 1st Defendant only fulfilled 2 (two) of its obligations, one of which it has reneged on-the re-allocation of Plot 184A, Nura Sherif Street, La Villa Diamante City, Sabon Lugbe Airport Road, Abuja to me in Section A of the estate.
9. The Claimants/Applicants will be prejudiced if the Defendants are allowed to continue any work whatsoever on the property, without the intervention of this Honourable Court.

FACTS OF THE CASE.

The 2nd Claimant/Applicant avers that through the 1st Claimant/Applicant he purchased plot 65A, 7th Avenue, Sabon Lugbe Airport Road, Abuja from the 1st Defendant and began construction work on the said property. The Claimants/Applicants discovered that construction work had been made on the property either by the 1st or 2nd Defendants, the Claimants/Applicants attempted to settle the matter amicably by writing a letter to them and exchanging verbal communication with the 1st Defendant, the 1st Defendant failed to cooperate. The Claimants/Applicants urges the intervention of this court to restrain the Defendants from further trespassing and construction on the land in issue.

In support of the application is a 29 paragraphs affidavit and a 27 paragraphs affidavit of urgency both deposed to by one Paul Kyari Lassa the 1st Claimant/Applicant in this suit, there is also an exhibits attached to the application P1 to P15 respectively.

Equally filed along with the application is a written address dated 26th October, 2021 wherein the Applicants' counsel formulated a sole issue for determination to wit:

“Whether the Claimants/Applicants will suffer irreparable loss if the Defendants are permitted to

continue construction on the land in dispute, and thus entitled to the reliefs sought."

Learned counsel to the Applicants argued that for an ex-parte application to be granted, the Applicant must satisfy the court of either two circumstances, first, the interest of the adverse party will not be affected or that time is of the essence for the application. He relied in the case of **LEEDO PRESIDENTIAL MOTEL LTD V. BANK OF THE NORTH (1998)7 SCN 328 AT 353**, he contended that Applicants relied on the second circumstances to support the grant of this application. Learned counsel submitted that if Defendants are allowed to continue with the construction being carried out, the 1st Claimants/Applicant's Plot at 65A, 7th Avenue, Sabon Lugbe Airport Road, Abuja will cause untold hardship and irreparable damage on the Claimants/Applicant.

He cited order 43 Rule 3 of the F.C.T. High Court (Civil Procedure) Rules 2018 which requires that before a motion ex-parte may be granted a motion on notice must equally be filed in compliance with this rule, the Applicant's motion ex-parte is filed along with the motion on notice before this honourable court.

The Applicant's counsel contended that this application is of real urgency because the Applicant's legal right is at the risk of

violation. Applicant's has shown that the injury which would result from the violation is such that damages would be inadequate compensation. He cited the case of **KOTOYE V. CBN (1989)1 NMWLR (PT. 98)419.**

Learned counsel to the Applicants submitted that section 43 of the 1999 constitution of the Federal Republic of Nigeria (as amended) gives the Claimants/Applicants rights to acquire and own moveable and immoveable property anywhere in Nigeria which the Claimants/Applicants acquired as contained in paragraphs 6, 7, 8, 9 and 10 of the 1st Claimant/Applicant's affidavit, he also cited Section 44(1) of the constitution Federal Republic of Nigeria 1999 (as amended), the Applicant's counsel submitted that the Claimants/Applicants have a right to own an immovable property. The 1st Claimant/Applicant is a rightful owner of plot 65A, 7th Avenue, Sabon Lugbe Airport Road, Abuja.

Learned Applicants' counsel submitted that the Applicant's rights are being infringed by the Defendants and pray for this honourable court to stop it pending the determination of the motion on notice. He relied on the case of **CHRISTLEB PLC & 2 ORS. V. ADEMOLA MAJEKUDUNMI & 5 ORS. (2008) TONWLR (PT. 43)352 PARA D-B.**

Learned Applicants' counsel submitted that the issue in dispute is whether the Defendants should be allowed to make any further construction on the plot 65A, 7A Avenue, Sabon Lugbe Airport road, Abuja; thus only this court is entitled to preserve the res by restraining the Defendants from taking any further action on the land in question pending the hearing of the motion on notice.

The exhibits attached to the application are:

1. Exhibit P 1 is a KYC Inter project Ltd application form contained a personal data of a Gadzama Joe Kyary J.K. Gadzama.
2. Exhibit P 2 is a GT Bank Cheque dated 7th June 2019.
3. Exhibit P 3 is a First Bank Teller.
4. Exhibit P 4 is a KYC Inter project Ltd Application form contained the personal Data of Kyari Paul Lassa dated 7th June 2019.
5. Exhibit P 5 is a KYC Inter project Ltd payment receipt of Three Million Naira only received from Kyari Paul Lassa dated 7th June 2019.
6. Exhibit P 6 is a Power of Attorney given by KYC Inter Project Ltd (Donor) to Gadzama Joe-Kyari/J.K Gadzama dated 29 June 2019.
7. Exhibit P 7 is a power Attorney given by KYC Inter Project Ltd (Donor) to Kyari Paul Lassa dated 29 June 2019.
8. Exhibit P 8 are pictures.
9. Exhibit P 9 is letter of complaint regarding the allocation for the group managing director KYC Inter Project Ltd dated 16th February, 2021.
10. Exhibit P 10 is a letter of Request for Refund to KYC Inter Project Ltd dated 23rd March, 2021.

11. Exhibit P 11 is a letter of Demand for the Refund of payment for allocation vide Diamanate Estate to KYC Inter Project Ltd dated 17th May 2021.
12. Exhibit P12 is a Plot Allocation/Offer letter for "KYC La Villa Diamante City" Sabon Lugbe East layout Lugbe, Road Abuja dated 23th April 2021.
- 13 - Exhibit P 13 is a Handing over of completed damp proof course (DPC main building only) on plot No. 184A at LA Villa Diamante City Sabon Lugbe east extension, Airport Road Lugbe, Abuja dated 27th April, 2021.
14. Exhibit P 14 is a Request for Refund letter to KYC Inter Project Ltd dated 18th October, 2021.
15. Exhibit P 15 are pictures of the res

Learned counsel cited the following cases in his argument.

1. Agbogu v. Ojoe (2008)All FWLR (PT. 414)1524.
2. Christlieb Plc & 2 Ors V. Ademola Majekodunmi & 5 Ors. (2008)16 NWLR(PT. 113)324 AT 352 Para D – E.
3. Intercity Bank Plc V. Ali (2002)7 NWLR (PT.766)420.
4. Kotoye V. C.B.N. (1989)1 NWLR (PT. 98)419;
5. Leedo Presidential Motel V. Bank of the North (1998)7 SCN 328.

I have carefully perused the application and the exhibits attached and it is my considered legal opinion that this application raised a lone issue for determination:-

Whether from the circumstances and the facts before me the Applicant is entitled to the grant of an interim injunction?.

On a lone issue above, it is trite law that for an Interim Injunction to be granted certain conditions must be met by the Applicant, these conditions has been laid in the case of **C.B.N V. SAP (NIG.)LTD (2003)3 NWLR (PT.911)752 Ratios 20 AS FOLLOWS:**

1. There is a real urgency but not self reduced.
2. Until a certain days, usually the next motion day by which time the other party should have been put on notice.
3. When the court considers on a prima facie view that an the otherwise irreparable damage may be done to the plaintiff before application for interlocutory interim injunction can be heard after notice has been given to the party.
4. When it is necessary to preserve the res which is in danger of being destroyed.
5. Although it is made without notice to the other party there must be a real impossibility of bring the application for such injunction on notice and serving the other party.

A careful perusal of the application and the averment in support of the application particularly paragraph 6, 7, 9, 11, 12, 20, 23, 24, 25, 26, 27 and 28 respectively it is my humble legal view that the application has disclose a real urgency.

In view of the above, **it is hereby ordered as follows:**

1. The Respondents are hereby restrained whether acting by themselves or through any of their agents privies, proxies, affiliates, subsidiaries or any person or entity whatsoever from doing or carrying out act or developing, alienating,leasing, defacing, or changing the character of Plot 65A, 7thAvenue, Sabon Lugbe Airport Road, Abuja, pending the hearing and determination of the motion on notice
2. The Respondent are hereby restrained whether acting by themselves or any through of their agents, privies, proxies, affiliates, subsidiaries or any person or entity whatsoever from doing or carrying out any act or developing, alienating, leasing, defacing or changing the character of plot 184A Nura Sherif street, La villa Diamante City Sabon Lugbe Airport Road, Abuja, pending the hearing and determination of the Motion On Notice

Appearances:

Parties Absent

Laman Joe- Kyari Gazama

For the Applicant –with H Ojeke

Signed
Presiding Hon. Judge
18/01/2022