

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT MAITAMA ABUJA
ON THE 31ST DAY OF MAY, 2022.
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH
(PRESIDING JUDGE)

MOTION NO:M/10458/2020

BETWEEN

NGONDE MARTINS PUEPET.....CLAIMANT/APPLICANT

AND

- | | | |
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| <ol style="list-style-type: none">1. RANGSUK PUEPET2. WUNLAT PUEPET3. PROBATE REGISTRAR FCT HIGH COURT | } | DEFENDANTS/RESPONDENT |
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RULING

Before this court is a motion on notice filed on the 6th October, 2020 and brought pursuant to Order 4 Rule 9, 42 Rule 4(1) and 43 Rule 1 of the High Court of The Federal Capital Territory (Civil Procedure) Rules 2018 and the inherent jurisdiction of the Honourable Court. The Applicant prays for the following:

1. An Order restraining the 3rd Defendant/Respondent, their agents, privies, assigns, representatives, successors-in-title or however described from resealing/reissuing any Letter of Administration in respect of the property of the late Mr. Miskom Puepet situate at Plot 654, Utako District, Federal Capital Territory pending the hearing and determination of this suit.

2. An Order restraining the 1st and 2nd Defendants/Respondents or vide their agents, privies, assigns, representatives, successors-in-title or howsoever described from dealing with the property of the late Mr. Miskom Puepet situate at plot 654, Utako District, Federal Capital Territory pending the hearing and determination of this suit.

3. Any further or other orders as the court may deem fit to make in the circumstances of this suit and in the interest of justice.

GROUND UPON WHICH APPLICATION IS BASED:

1. The cause of action upon which this claim is brought by the Claimant/Applicant relates to property of the late Mr. Miskom Puepet situate at Plot 654, Utako District, Federal Capital Territory Abuja.
2. The Claimant was living in the property with her late husband and her 15 year old daughter.
3. The 1st and 2nd Defendants/Respondents intend to chase the Claimant/Applicant out of the property and they have applied for resealing of the Letter of Administration in Abuja to enable them sale the property if granted.

The application is supported by an 18 paragraph affidavit, attached Exhibits and a written address.

In opposition the defendants filed on the 27th October, 2020 a 27 paragraph affidavit with attached exhibits and a written address.

I have considered the application at hand, the supporting affidavit and other accompanying documents, the counter affidavit with accompanying processes and the submissions of counsel. I am of the view that the sole issue arising for determination is:

Whether the application sought ought to be granted.

An interlocutory injunction is a discretionary remedy which the court may grant in deserving circumstances. The court may determine whether to grant or refuse such an application by taking into

consideration the fundamental conditions for the grant of an interlocutory injunction.

The main essential conditions are:

1. Prima facie case. That is whether there are serious issues to be tried. See **ORJI V. ZARIA INDUSTRIES LTD & ANOR (1992)LPELR-2768(SC) Pp. 11-13 paras A.**
2. Balance of convenience. On whose side the balance of convenience lies. See **AHAMADU V. A.G, RIVERS STATE & ORS(1996)LPELR-14004 (CA) Pp. 19-20 paras A.**
3. Irreparable loss or injury. That damages would not be adequate compensation. See **A.C.B LTD & ANOR V. AWOGBORO & ANOR (1990) LPELR-15155 (CA)Pp. 11-13 paras. A**

The applicant and 1st and 2nd respondents have adduced reasons by their affidavits and canvassed arguments in furtherance of the application to grant and objection to dismiss same respectively.

I find that the facts presented and arguments of both parties have to a large extent, overlapped into issues likely to arise for determination in the substantive suit. This therefore calls for circumspection in the determination of this application. It is settled that the court ought not to delve into or make pronouncements on issues bordering on the resolution of the substantive suit at an interlocutory stage. See

AKINRIMISI V. MAERKS NIGERIA LTD & ANOR (2013) LPELR- (SC) per NGWUTA JSC Pg. 13 para D

And

FSB INT. BANK LTD V. IMANO (NIG.) LTD & ANOR (2000) LPELR-1219 per ACHIKE JSC Pg. 28-29 paras E-A

What the court is to determine at this stage is the propriety or otherwise of granting an interlocutory. It is not expected to delve into the merits or demerits of the case of parties. And certainly not the resolution of conflict in the facts presented in their affidavits which mirrors facts also contemplated in the pleadings to be relied upon in

the substantive suit. The Supreme Court has made it clear that it is not part of the court's function at this stage to try to resolve conflicts in affidavit evidence based on facts upon which the determination of the substantive claim may ultimately depend.

See

ABOSEDELDEHYDE LABORATORIES V. UNION MERCHANT BANK LTD & ANOR (2013) LPELR-20180 (SC) PG. 47-49 paraD-B particularly Pages 47 paragraph F-G

And

OBEYA MEMORIAL SPECIALIST HOSPITAL V. AG. FEDERATION & ANOR [1987] LPELR-2163(SC) 20-22 particularly page 21 paragraphs A-D

A careful perusal of the submissions of counsel clearly reflects that their arguments have consistently delved into issues arising in the main claim. The resolution of the issues raised and arguments canvassed in the instant application one way or the other would inexorably result into delving into the issues likely to arise for determination in the substantive suit as presently constituted before the court. This would be in defiance of the admonition of the Apex court in the authorities cited Supra.

Suffice to say that the issues for determination in the main claim would have to wait for that stage for resolution. That having been said, it is my humble view however that it would be in the overall interest of justice to preserve the res of the action until final determination of the substantive suit. See

OYEYEMI & ORS V. IREWOLE L.G IKIRE & ORS(1993) SC LPELR-2881 (SC) pp. 20 para B.

And

AYORINDE V. A.G & COMMISSIONER FOR JUSTICE, OYO STATE & ORS (1996) SC LPELR- 685(SC) Pp. 21 paras F.

Consequently, it is hereby ordered that all parties maintain status quo pending the final determination of the substantive suit.

Signed

Honourable Judge

Representation

Sekop Zumka Esq with Folmi Yohanna Esq for 1st and 2nd Defendant
Gloria David Ms for Claimant.