

**IN THE HIGH COURT OF JUSTICE OF THE  
CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 6**

**SUIT NO: FCT/HC/CV/1567/2018**

**BETWEEN:**

**A. C. W. A. GLOBAL INVESTMENT LIMITED.....CLAIMANT**

**VS**

**1. TRANSMISSION COMPANY OF NIG PLC**

**2. THE HONOURABLE MINISTER OF POWER**

**3. THE HONOURABLE MINISTER OF FCT**

**4. ABUJA METROPOLITAN MANAGEMENT COUNCIL.....DEFENDANTS**

**RULING**

By a Motion on Notice dated 15/9/2021 and filed same day, with Motion No: M/5833/2021, brought pursuant to Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules, 2018 and under the inherent Jurisdiction of the Honourable Court, the Claimant/Applicant prays for the following reliefs:-

- (1) An Order of Interlocutory Injunction restraining the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents either by themselves, their agents, privies, servants or anyone acting on their behalves from trespassing, interfering, building or carrying out any development on the property known as Park No: 3116, FO4,

Mpape Urban Fringe Layout Park, Mpape District, Abuja, pending the hearing and determination of the substantive suit.

- (2) An Order of Interlocutory Injunction restraining the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents, either by themselves, their agents, privies, servants or anyone acting on their behalves from carry on further development or building on properly known as Park No. 3116, FO4, Mpape Urban Fringe Layout Park, Mpape District, Abuja, pending the hearing and determination of the substantive suit.
- (3) Omnibus relief.

In support of the application, the Applicant, submits that the Applicant filed a 20 Paragraph affidavit sworn to by Emmanuel Opia, with 7 Exhibits marked "A-G". Rules on the averments and Exhibits. In compliances with the Rules, filed a Written Address dated 15/9/2021, adopts same.

In response to the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents Counter-Affidavit, the Applicant, filed a Reply affidavit of 13 Paragraph sworn to by Emmanuel Opia and also filed a Written Address on points of law, in urging the court to grant the reliefs sought.

Responding the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents Counsel, submits that the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents in opposition, filed a 6 Paragraph Counter-Affidavit sworn to by one Aminu Ahmed, with one(1) attached Exhibit. Also filed in a Written Address, adopts same in urging the court to dismiss the application.

By way of adumbration, submits that the Exhibits "A1" "B1" "C1" of the reply affidavit failed to satisfy the Provisions of Section 84 (2) (4) of the Evidence Act, 2011, leading in no certificate of compliance attached. And referred the court to the case of Rosahill Ltd Vs G.T. Bank Plc (2016) LPELR – 4461 (CA). And urged the court to dismiss the application in the Interest of Justice.

Replying on point of law, the Applicant Council, submits that Section 84 (2) of Evidence Act, referred only applies where the document is sought to be tendered in Evidence, not where it is merely attached as an annexure. Therefore, urge the court to discountenance this argument of the 1<sup>st</sup>/2<sup>nd</sup> Applicant Counsel and grant the application.

In the Written Address, settled by Jude Emeke Nzenwata Esq. no issues was formulated for determination, but in his submission in summary, is that the grant or otherwise of an application of this nature is a discretionary one exercised by the courts judicially and judiciously taken cognizance of the facts before it and based on the set guidelines by courts. Referred case of Akinpelu Vs Adegboire (2008) 32 NSCQR Pg. 434 @ 455 Para D – H. That a careful perusal of their affidavit, reveals that the Applicant has complied with the set guidelines, to warrant this court to exercise its discretion on their favour. That the whole essence is to preserve the Res and maintenance of status quo. In all urged the court to grant this application in the interest of justice.

In the Written Address of the 1<sup>st</sup>/2<sup>nd</sup> Respondent settled by A. U. Gaji Esq. only one (1) issue was distilled for determination; namely:

“Whether it is in the interest of justice to grant the Claimant/Applicant application in the circumstance of the case”

And submits in summary, that the grant or otherwise of an application of this nature is to preserve the Res and maintenance of status quo, which is subject to the exercise of court discretion, taking into consideration of facts and law placed before it. Referred to case of Adenuga Vs Odumeru (2001) WAR 104. Buhari Vs Obasanjo (2003) 17 NWLR (PT. 850) @ 587 @ 648. Further submits that in all the Applicant has failed to show sufficient in line with the set guideline, to warrant this court to grant the relief sought, hence urging the court to dismissed this application with substantial cost.

In the Applicant’s replying on Points of Law, submits that the Counter-Affidavit of the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents contains legal arguments, conclusion, extraneous matters, which are in contravention of the Section 115 (2) of Evidence Act, in Particular Para 3 (6). And that the Applicant has satisfied the conditions for the grant of this application, therefore pray the court to grant as prayed.

Having carefully considered this instant Motion, the affidavit evidence for and against, submission of both Counsel and judicial authorities cited, the court find that only one issue calls for determination; namely

“Whether the Applicant has made out a case to warrant the grant of the reliefs sought”

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case is finally determined. It object is to keep the matter in status quo, where the case is

pending, for the purpose of preventing injury to the Applicant, prior to the time the court will be in a position to either grant or refuse the application. In doing so, the court is invited to exercise its discretion, and which must be done judicially and judiciously. This discretion must exercise in relation to the facts and circumstances of the case before the court; hence to be entitled to the reliefs sought, the Applicant must disclose all material facts.

On the nature of the grant of an Injunction relief, the court in the case of Mohammed Vs Umar (2009) All FWLR (PT. 267) Pg. 1510 @ 1523 – 1524. Para H – D; court stated thus;

“Interlocutory Injunction is not granted as a matter of grace, routine or course, on the contrary, the Order of Injunction is granted only in deserving cases based on the hard law and facts”

In the exercise of that discretion, the court is guided by the principles stated in Plethoral of judicial authorities. In Akinpelu Vs Adegboire (2008) All FWLR (PT. 429) Pg. 413 @ 420; and Kotoye Vs CBN (1989) 1 NWLR (PT. 98) Pg. 149, stated as follows;

- (1) Whether there are triable issues at the trial of the substantive suit?
- (2) Whether the balance of convenience is on the side of the Applicant?
- (3) Whether the Applicant have a right to be protected?
- (4) Whether the Applicant shall suffer irreparable damages of the Order of Interlocutory Injunction is not granted pending the

determination of the main suit. See also Owerri Municipal Council Vs Onuoha (2010) All FWLR (PT. 538) Pg. 896 @ 898 the courts have also held that an Injunctive Reliefs will be granted in support of a legal right. See Gambari Vs Bukola (2003) All FWLR (PT. 158) 1198 @ 1208 Para G.

The question that would of necessity come to mind at this stage for determination is whether the Applicant has satisfied the conditions mentioned above for consideration of the grant of this application. From the affidavit evidence, the Applicant appears to have satisfied the above mentioned conditions, in particular Paras 10, 11, 12 and 13 of the supporting affidavit and Exhibit "B".

On the other hand, the 1<sup>st</sup>/2<sup>nd</sup> Defendants/Respondents in their Counter-Affidavit in oppositions that they are in possession of legal title to the subject matter vide a grant dated 25/5/1998, contained – Para 3 (c) of the Counter-Affidavit, with Exhibit "TCNI".

To assist the court in determining the grant or otherwise of this instant application, recourse is made to having a quick perusal of both the Statement of Claim and the Statement of Claim of the parties, which reveals that both parties are laying claim to the property in dispute. Granted that an Order of Interlocutory Injunction can be granted in the protection of legal right, in this instance case, where both parties appears to lay claim to the properties on dispute based on their respective legal titles, it would seem to me, that the grant of an Order of Interlocutory Injunction would not be appropriate in this instance. It is the view of this

court that the issues are matters for determination at the main trial. This position is strengthened by the law, that a court should not make pronouncement at this Interlocutory stage on such issues, which if done would be tantamount to deciding the issues before trial.

Therefore, the holding of this court, that this is an occasion where the court rather than grant the relief sought, order that the parties maintain status quo ante-bellum and press for accelerated hearing of the case.

In conclusion, this application is hereby refused. Parties are hereby ordered to maintain status quo ante-bellum pending the determination of the case and the case slated for accelerated hearing.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

9/5/2022

**APPEARANCE:**

J. E. NZENWATA FOR THE CLAIMANT/APPLICANT

AMINU AHMED FOR THE 1<sup>ST</sup>/3<sup>RD</sup> RESPONDENT

3<sup>RD</sup>/4<sup>TH</sup> DEFENDANT/RESPONDENT NOT REPRESENTED