

**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/1358/2021

BETWEEN:

ALHAJI SALEH HUSSAINI.....CLAIMANT/APPLICANT
(Suing Through His Attorney **MIKE ILOKA EJEMBA**)

VS

UNKNOWN PERSONS.....DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 29/6/2021 but filed on 30/6/2021 with Motion Number M/4023/2021, brought pursuant to Section 6 (6) and 36 of the 1999 Constitution Order 42 Rule 1 (1) (2) and Order 43 Rule 1 (1) and (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, praying for the following reliefs;

- (1) An Order of Interlocutory Injunction restraining the Defendants/Respondents either by themselves, their Agents, Privies, Assigns or Servants or howsoever described from tempering with, entering or carrying out any activity on Plot 2800, Lugbe Extension 1, Abuja till the determination of the suit

on the subject matter of this suit pending the hearing and final determination of this suit.

(2) And the Omnibus relief.

In support of the application is a nine (9) Paragraph affidavit deposed to by one Ashi Michael Ashi a Legal Practitioner in the Law Firm of Applicant's Counsel. In compliance with the Rules of Court, Applicant filed a Written Address dated 29/6/2021 and adopts same as oral argument in urging the court to grant the application.

The processes were served on the Defendants/Respondents by substituted means to wit: by pasting on the gate of the land at Plot No. 2800, Lugbe 1 Extension Layout. Abuja, despite service Defendant failed to react and was not represented by Counsel. The implication of this is that the application before the court stands unchallenged and uncontroverted. In *Gana Vs FRN* (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E, the court need that;

“Where an affidavit does not attract a Counter-Affidavit, the facts deposed to therein have been admitted and must be taken as true”

In the Written Address of the Applicant. Applicant's Counsel I. E. Uzuegbu Esq. formulated a sole issue for determination, that is;

“Whether or not the court can grant an Order of Interlocutory Injunction pending the determination of a substantive suit”

Submits that the court will usually grant an application for Interlocutory Injunction to protect a legal right, where a party to an action seeks to foist a fiat accompli on the court. Refer to *Shauibu Vs Muazu & Ors* (2206)

LPELR – 5274 (CA) 35 Paras E – F. Also refer to Gbejuade Vs Ggbejuade & Anor (2017) LPELR 41977 (CA) P 12 – 13 Paras A – B for the purpose of an order of injunction.

Relying on the principles for the grant of Interlocutory Injunction stated in the case of Uyokpeyi & Ors Vs Ukuoku (2017) LPELR – 42649 (CA) 13 – 15 Paras E-D submits that this court has a duty to preserve the Res or maintain the status quo pending the determination of the suit finally urge court to grant the prayers sought.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the submission of Counsel as well as the judicial authorities cited, the court finds that there is only one (1) issue for determination which is;

“Whether or not the Applicant has placed sufficient facts for the grant of the reliefs sought”

An Order of Interlocutory Injunction is an equitable remedy granted by the court, before the substantive issue in the case is finally determined. The object is to keep the matter in status quo, while 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 deny permanent relief on the merit. See Yusuf Vs I.I.T.A (2009) 5 NWLR (PT. 1133) 39 Para A – B.

In an application for Interlocutory Injunction, it is not necessary that Applicant must make out a case as he would on the merit, it is sufficient that he should establish that there is a serious issue to be tried. It is unnecessary to determine the legal right to a claim since at that stage

there can be no determination, because the case has not been tried on the merit. It is on this basis the court will consider this application.

In *Kotoye Vs CBN* (2001) All FWLR (PT. 49) 1567 @ 1576, the Supreme Court set out certain guidelines to be followed by the court in deciding whether or not to grant Interlocutory Injunction amongst these factors to be considered are;

- (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, if the Order of Interlocutory Injunction is not granted pending the determination of the main suit.

See also *Yusuf Vs I.I.T.A* (Supra) and *Owerri Municipal Council Vs Onuoha* (2010) All FWLR (PT. 538) 896 @ 898.

On whether there are triable issues at the main trial, the position of the law is that all the court need to establish is that the claim is not frivolous or vexatious. From the Applicant's reference in Paragraph 4 in their affidavit in support of the application, to the depositions in the substantive suit that it discloses a triable issue which pertains to the legal right of the Claimant/Applicant. I have taken a look at the Witness Statement on Oath deposed to 30/6/2021 by Claimant/Applicant particularly paragraph 2, 3, 4,

5, 6, and 7 I find that there are issues to be tried. The success or otherwise of it is not the function of the court to resolve at this stage, but for the main suit.

On the issue of whether the Applicant will suffer irreparable injury, if the application is not granted or whether the balance of convenience is in favour of the Applicant, this is an area where the discretion of the court comes into play. Judicial discretion is not a one-way traffic. It takes into consideration the competing right of the parties to justice. It must be based on facts and guided by the law or the equitable decision of what is just and proper under the circumstance in this instant application, the Applicant have by his affidavit in support of the Motion stated that damages will not adequately compensate him. See Paragraph 6 of the supporting affidavit. Though it is not for the court to determine the merit of the case at this stage, it is the view of the court that the Applicant have by his affidavit evidence show clearly that damages will not be adequate compensation for injury suffered if the application is not granted.

On the issue of whether the Applicant have a right to be protected in Paragraph 3 (1) (ii) (iii) 4 of the supporting affidavit and the claim before this court the Applicant have stated his legal rights and in the court's view they are rights worthy of protection by this court.

In all of these, the Defendants/Respondents who were duly served with the court processes, did not react to the Motion. The implication of this is that the facts contained in the affidavit evidence before this court are deemed true and correct and the court will act on it. They stand unchallenged and

uncontroverted. It is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct. See the case of the Nigeria Army Vs Warrant Officer Bunmi Yakubu (2013) LPELR 20085 (SC) where Fabiyi (JSC) stated;

“It is basic that unchallenged evidence stands, the court should accept same and act on it”

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law, the court finds that the Claimant/Applicant have succeeded in making a case deserving of the grant of the reliefs sought. The application succeeds, it is hereby ordered as follows;

- (1) An Order of Interlocutory Injunction restraining the Defendants/Respondents either by themselves, their agents privies, assigns or servants or howsoever described from tempering with entering or carrying out any activity on Plot 2800, Lugbe Extension 1 Abuja till the determination of the suit, the subject matter of the suit pending the hearing and final determination of this suit.

HON. JUSTICE C. O. AGBAZA

Presiding Judge.

16/6/2022

APPEARANCE:

IKECHUKWU UZUEGBU ESQ. FOR THE CLAIMANT/APPLICANT
NO APPEARANCE FOR THE DEFENDANTS/RESPONDENTS