

**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: UKONUKALU&GODSPOWEREBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/1632/2021

MOTION: M/7103/2021

BETWEEN:

- 1. HRH, IGWEB.U.O. ANAKWE**
- 2. MRS. B. C. ANEKWE**
- 3. MR. LOTANNAANEKWE.....CLAIMANTS**

VS

- 1. HON. MINISTER OF FEDERAL CAPITAL TERRITORY**
- 2. FEDERAL CAPITAL TERRITORY ADMINISTRATION**
- 3. ABUJA METROPOLITAN MANAGEMENT AGENCY**
- 4. MUKTARGALADIMA,(DIRECTOR DEVELOPMENT CONTROL)**
- 5. THE REGISTERED TRUSTEES OF ABUJA COUNTRY CLUB.....DEFENDANTS**

RULING

By Motion on Notice with No. M/7103/2021 dated 22/10/2021 and filed same day, brought pursuant to Order 42 Rule 8 and Order 43 Rule 1 of the High Court of the FCT (Civil Procedure) Rules 2018 and under the inherent Jurisdiction of the Honourable Court, the Applicant praying for the following reliefs:-

- (1) An Order of Interlocutory Injunction restraining all the Defendants/Respondents whether by themselves or through

their Officers, Agents, Assignees, Servant, and Privies however called or by any other persons acting or purporting to claim under or through them or their behalf from further acts of nuisance on the adjoining green area within the residential area known as Old Aprofim, Life Camp, FCT Abuja, thereby disturbing the Claimant/Applicant comfortable, convenient and healthy enjoyment of their premises known as Villa 28, Old Aprofim Life Camp, FCT – Abuja pending the determination of the substantive suit.

(2) Omnibus Relief.

In support of the Motion, is a 35 Paragraph affidavit sworn to by the 1st Claimant, with 18 Exhibit attached, marked as "D1" – "D6". Also filed is a Written Address and a further affidavit of 24 Paragraph sworn to by the 1st Claimant; with one Exhibit marked "E", attached. Also filed is a Written Address, adopts the said address, and urged the court to grant the Reliefs Sought.

The 1st – 4th Defendants did not file any counter to the application, rather leaves it at the discretion of the court.

5th Defendant, in opposition, filed Counter-Affidavit of 32 Paragraphs on 9/11/2021. Also filed a Written Address and adopts same in urging the court to refuse this application. On this further/affidavit, submits that the said further affidavit was filed out of time and not regularized therefore urge the court to discountenance it.

In the Written Address of the Applicants, settled by Otoja J. Ede Esq. as issues was formulated for determination, Applicant Counsel arguing this application, contends and relying on several judicial authorities, that in any application of this nature, an Applicant must satisfy the laid down conditions set out in Plethora of Judicial authorities. Referred to case of KotoyeVsCBN (2000) 16 WRN 71 @ 75 and that on careful consideration, the court will find that the Applicant has fulfilled those conditions stated therein. In doing so, relied heavily on Paragraph 3 – 28 of the supporting affidavit, in urging the court to grant the reliefs sought.

In the Written Address of the 5th Respondent settled by S. M. Nwosu Esq. only one (1) issue was formulated for determination; which is;

Whether the court has the direction to refuse this application.

And contends that a careful perusal of the stated guideline set out in Plethora of judicial authorities, the Claimant/Applicant has failed to satisfy those conditions to be entitled to the reliefs sought. Referred to case of KotoyeVsCBN (Supra). Also relies on Paragraphs 7, 17, 18, 20, 21 and 22 of their counter to show that the balance of convenience ensures in favour of the 5th Defendants. In all submits that this application is bereft of sufficient facts to support the exercise of the court discretion in favour of the Applicant, therefore urge the court to refuse this application in the interest of justice.

Having carefully considered the instant Motion, the affidavit evidence of both parties, the judicial authorities cited, the court find that there is only one (1) issue that calls for determination, that is;

“Whether or not the Applicant has placed before the court sufficient facts for the grant of the relief sought”.

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by court before the substantive issue in the case is finally determined. Its 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 implication, in doing so, the court is invited to exercises its discretion, and which must be done judicially and judiciously. This exercise of discretion is based on fact circumstances as presented before the court by the parties, hence to be entitled to the reliefs sought, the Applicant must disclose all material facts. See *AnachebeVsIjeoma* (2014) 14 NWLR (PT. 1426) 168 @ 184 Paragraph D – F.

On the nature of the grant of an injunctive relief, the court in the case of *Mohammed Vs Umar* (2009) All FWLR (PT. 267) Paragraph 1510 @ 1523 – 1524 Paragraph H – D, states thus.

“Interlocutory Injunction in 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 fact”.

In the exercise of that discretion, the court in guided by principles of law led in Plethora of Judicial authorities. See *AkinpeluVsAdegbore* (2008)

FWLR (PT. 429) Page 413 @ 420 Ratio 7, KotoyeVsCBN (1989) 1 NWLR (PT. 98) Page 149.

It has also been held that an application for injunctive relief will be granted to support a Legal Right. See GambariVsBukola (2003) All FWLR (PT. 158)Pg. 198 @ 1208 Paragraph C.

The question that would as of necessity come to mind at this stage, for determination is, whether the Applicant has satisfied the conditions as stated in the guidelines in the above judicial authorities for consideration of the grant. A careful perusal of the affidavit evidence in support, the court finds that the Applicant have not quite clearly shown his legal rights, to the satisfaction of the court to warrant the exercise of the court at this stage, it is however, the court view that this is a matter for determination at the main trial.

I have also considered all the issues contended on both sides of the parties processes and find that issues raised as grounds to support or against the grant of this application are matters for consideration at the main trial, hence it would be inappropriate at this stage, to consider a grant of this application. To do so, will amount to making a pronouncement on matters for the main trial, at this Interlocutory stage, which the court have been enjoined to refrain from.

Consequent upon all of these, it is the holding of this court, that this is an occasioned, where the court rather than grant the reliefs sought, order for an accelerated hearing. Accordingly, this instant application of the Applicant is hereby refused.

HON. JUSTICE C. O. AGBAZA

Presiding Judge.

8/6/2022

Appearance

B.A. ODEYESQ FOR THE CLAIMANT/APPLICANT

A.A. ABAMESQ FOR THE 5TH DEFENDANT/RESPONDENT