

**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/551/2018**

**MOTION: M/1571/2018**

**BETWEEN:**

**PUPPLE BOND NIGERIA LIMITED.....CLAIMANT**

**VS**

**1. AM-PM GLOBAL NETWORK LTD**

**2. HON. MINISTER, FEDERAL CAPITAL TERRITORY**

**3. FEDERAL CAPITAL TERRITORY ADMINISTRATION.....DEFENDANTS**

**RULING**

By a Motion on Notice dated 13/12/2018 and filed same day with Motion number M/1571/2018, brought pursuant to Order 42 Rule 1 (1) and (2) of the High Court (Civil Procedure) Rules of the FCT 2018 and under the inherent jurisdiction of this Honourable Court, the Claimant/Applicant prays the court the following reliefs:-

- (1) An Order of Interlocutory Injunction to restrain the Defendants by themselves, servants, privies, agents or otherwise however called from further trespass to Plot No. 30 Cadastral Zone DO3, Idogwari Abuja disturbing or restraining the Claimant/

Applicant's right of ingress and egress to the said Plot or development thereof: Re-allocating the said Plot to other persons or organization, forceful acquisition thereof without due compensation, resettlement or relocation to a similar Plot of the same size, forceful election of the Claimant therefrom without recourse to due process of law.

2. And the Omnibus relief.

The Motion is supported by a Twenty Four (24) Paragraphs affidavit with 5 Exhibits attached and marked as Exhibits "A", "B", "C", "D and "D2" deposed to by Chidi Ihenacho, General Manager of Claimant. Also filed a Written Address and adopts same as oral argument, in urging the court to grant the application.

The processes were served on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, despite service on them 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/ Respondents failed to react to the processes. And were absent in court. The implication of this is that the application before the court stands unchallenged and uncontroverted and deemed admitted as true and correct. In Gana Vs FRN (2012) All FWLR (PT. 617) 793 @ 800 Paras D – E the court held that;

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

In the Written Address of the Applicant, Applicant's Counsel Isaac Ibuoye Esq formulated a sole issue for determination that is;

“Whether it is just and equitable to grant this application in order to preserve the res”.

Submits that the power of the court to grant the reliefs sought is inherent. Refer to the case of Azuh Vs UBA Plc (2014) ALL FWLR (PT. 743) 317 SC.

Submits further that the conditions for the grant of Interlocutory Injunction can be found in the cases of 7UP Bottling Co. Ltd Vs Abiola & Sons Ltd (1995) (PT. 38) 257, Kotoye Vs CBN (1985) 1 NWLR (PT.98) 419 @ 422 and Obeya Memorial Specialist Hospital Limited Vs Attorney General of the Federation (1987) NWLR (PT.60) 325.

Submits that the facts of the case is whether the Claimant are the lawful holders and bonafide allottee of the Plot No. 30 Cadastral Zone DO3 Idogwari District Abuja measuring approximately 644182m<sup>2</sup> and these are serious and triable issues to be determined by the court at the trial of the suit. Refer to Edosomwan Vs Erebor (2001) 13 NWLR (PT.730) 260 Ratio 5.

Submits that the depositions in Paragraphs 3 – 23 of the affidavit in support of the application as well as Exhibits “A”, “B”, and C established the Applicant’s legal right over the property. And Interlocutory Injunction will always be granted to support a legal right. Refer to Ihunde Vs Samson Roger Nig Ltd (2000) FWLR (PT.16) 2782 @ 2786 Ratio 8 and 5.

On the other condition, relying on the case of HFP – Eng Nig Ltd Vs Oba (2000) 13 NWLR (PT. 685) 558. Submits that the balance of convenience is more in favour of the Applicant to grant the reliefs, damages will not be

adequate compensation to the Applicant. Submits that Applicant is a serious developer of housing and has procured foreign investors who have commenced development on the Plot subject matter of the suit. Applicant also undertakes as to damage.

Finally submits that it will be in the overall interest of justice to grant the application.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibits marked "A", "B", "C", "D", "D<sup>2</sup>", the submission of counsel as well as the judicial authorities cited the court finds that there is only one (1) issue that calls 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 *Yusuf Vs I.I.T.A. (Supra)*, *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 facts stated in the affidavit of the Applicant particularly in Paragraph 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 clearly shows that there are issues to be tried. The successes 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 to into play. Judicial discretion is not one-way traffic; it takes into consideration the competing rights 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 her affidavit in support shown that she would suffer if this application is not granted that she would be divested of her interest and right in the subject matter. See Paragraph 21 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 her affidavit evidence show clearly that he would suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to be protected from the Paragraphs 6, 7, 8, 9 of the supporting affidavit and the Exhibits "B" and "C" and the claim before this court, the Applicant have stated his rights and in court's view they are rights worthy of protection by this court.

In all of these, the Defendants/Respondents who weedy duly served with the processes did not react to the Motion. The implication of this, as mentioned earlier, is that the facts contained in the affidavit evidence before this court are deemed true and the court can act on it. They stand unchallenged and uncontroverted. And it is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct.

See *The Nigerian Army Vs Warrant Officer Bunmi Yakubu* (2013) LPELR 2008 5 (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 therefore succeeds, it is hereby ordered as follows;

- (1) An Order of Interlocutory Injunction restraining the Defendants by themselves, servants, privies, agents or otherwise however called from further trespass to Plot No. 30 Cadastral Zone DO3, Idogwari Abuja disturbing or restricting the Claimant/Applicant's right of ingress and egress to the said Plot or development thereof: Re-allocating the said Plot to other persons or organization, forceful acquisition thereof without due compensation, resettlement or relocation to a similar Plot of the same size, forceful ejection of the Claimant therefrom, without recourse to due process of law.

This is the Ruling of court and to be served on the Defendants

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

Presiding Judge.

8/6/2022

**Appearance**

ISAAC IBUOYE ESQ FOR THE CLAIMANT/APPLICANT

NO REPRESENTATION FOR THE 1<sup>ST</sup>, 2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANTS/RESPONDENTS