

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/2338/2018

DATE: : WEDNESDAY 13TH APRIL, 2022

BETWEEN

**MORRIS ODUBO EMMANUEL } CLAIMANT
/APPLICANT**

AND

**1. VICTORIA IYABO EDUBI } DEFENDANTS/
2. ELIJAH EDUBI } RESPONDENTS**

RULING

The Applicant vide Motion No. M/6721/2021 approached this court for the following;

1. An Order of Interlocutory Injunction Restraining the Defendants/Respondents, their privies/agents or servants from selling the property situate at Zone C08 Dakwo District, Unity Hills Garden Estate, Abuja which is the subject matter of this suit.
2. An Order of this Honourable Court ordering parties to maintain status quo pending the determination of this suit.
3. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the motion is a 4 paragraphs affidavit deposed to by Yusuf Abdulazeez.

It is the deposition of the Applicant that a suit was filed by the Claimant/Applicant on the 13th July, 2018 with respect to the encroachment by the Defendants/Respondents into the Claimant/Applicant's property both of which are situate at zone C06 Dakwo District, Unity Hills Garden Estate, Abuja.

That the Defendants/Respondents have taken steps to sell off their property at the said location which is the subject matter of this suit.

That upon application, a search report was forwarded to the prospective buyers by Alhaji Maje, the CEO of Unity Hills Garden Estate, Abuja and a copy of the said report was sent to the

Claimant/Applicant to inform the Claimant/Applicant of the intended sale.

That he believes that the actions of the Defendants/Respondents will prejudice the Claimant/Applicant and irreparable damage will be caused to the Claimant/Applicant if this application is not granted.

In compliance with the law, a written address was filed wherein a sole issue was raised for determination to wit;

Whether or not the Claimant/Applicant has fulfilled the requirement of law necessitating the grant of this application.

It is the submission of the learned counsel that considering the facts deposed to in the affidavit already before this court, the Claimant/Applicant has

a legal right which the Defendants/Respondents intend to affect and a substantive issue to be tried. The balance of convenience is in the favour of the Claimant/Applicant and irreparable damage will be done if the Defendants/Respondents are allowed to proceed with the sale. ***OJUKWUVS. GOVERNOR OF LAGOS STATE (1986) 3 NWLR (Pt. 26) 39;*** ***PETER VS OKOYE (2002) 3 NWLR (Pt. 755) 529*** were cited.

Counsel submits that all the requirements as laid down by judicial authority have been fulfilled and the Claimant/Applicant urged the court to grant the application.

Upon service, the Defendant filed a counter affidavit of 10 paragraphs deposed to by Elijah Edubi the second Defendants/Respondents in this matter.

It is the counter affidavit of the Defendants/Respondents that they are the owners of an adjoining 3 Bedroom Bungalow directly behind the Claimant/Applicant's property at Unity Hills Garden Estate, Abuja, FCT.

That at no time did they or their agent intentionally encroached into the Claimant/Applicant's property. It was one N.U Maje (the owner of the estate) that came and informed them that they have encroached on 260 square metres into his land and not the Claimant's land.

That the said 260 square metres that they supposedly encroached upon which belongs to the Mr. N.U Maje was paid for at the cost of N250,000.00.

That they are no longer the owners of the adjoining 3 bedroom Bungalow directly behind the

Claimant/Applicant's property at Unity Hills Garden Estate as the said property have been sold to Mr. Victor Adebola.

That the interest of the present owner of the said property and that of the Defendants/Respondents will be prejudice if the Claimant/Applicant's application is granted.

Adopting his written address, learned counsel formulated a sole issue for determination to wit;

“Whether the Defendants/Respondents have place enough material facts before this Honourable Court to warrant the grant of this application.”

Learned counsel humbly submits that the Defendants/Respondents have made out a case requiring the court to refuse the Claimant

/Applicant's application in the light of the affidavit evidence before the court.

On their part, the Claimant/Applicant filed a further and better affidavit deposed to by Nkechi Augustine a litigation clerk at MayneGallinton.

It is the deposition that paragraph 3 of the said counter – affidavit is false and misleading, as the 1st and 2nd Defendants/Respondents encroached into the Claimant/Applicant's property.

Defendants/Respondents have also admitted to the encroachment in an undertaking letter, and also offered to pay N200,000.00 (Two Hundred Thousand Naira) only as compensation for the encroached property. The said letter attached and marked as Exhibit "F1".

That contrary to paragraph 5 of the counter affidavit, the encroachment was into 94.38 square metres, and not 260 square metres. The property encroached upon, was not the property of N.U Maje, but that of the Claimant/Applicant which he purchased for N959,030.12 (Nine Hundred and Fifty Nine Thousand Thirty Naira, Twelve Kobo).

That contrary to paragraph 5, the N250,000.00 paid to N.U. Maje was a penalty paid for the encroachment into the property which is the subject matter of the suit.

That in response to paragraph 6, the Defendants/Respondents ought not to have sold the property situate at Plot 8, Zone C08 Dakwo District, Unity Hills Garden Estate, Abuja knowing fully well that it is a subject matter of litigation.

In line with the law, a sole issue was formulated for reply on points of law by the Claimant/Applicant to wit;

“Whether the Claimant/Applicant has placed enough material facts before this Honourable Court to warrant the grant of this application.”

It is the submission of learned counsel that the Claimant/Applicant has a legal right worthy of protection from the facts placed before the court in view of the trespass of the Defendants/Respondents to his property situate at Zone C08 Dakwo District, Unity Hills Garden Estate, Abuja. ***AKAPO VS HAKEEN – HABAB (1992) 6 NWLR (Pt. 247) 266 at 289 was cited.***

COURT:-

The function of an injunctive order be it interim or interlocutory, which are both stop gap measure to protect the “Res” from any form of tampering.

For a court of law to make such an Order of injunction, the legal right of such an Applicant is often taken into account..where there is no existence of a legal right, an Applicant clearly would be a meddlesome interloper. See *KOTOYE VS. CBN (1989) 1 NWLR (Pt. 98) 419.*;

MOROHUNFOLA VS.KWARA STATE COLLEGE OF TECHNOLOGY (1990) LPELR – 1912 (SC).

I have considered the affidavits in support of the application and the written argument on the one

hand, and the counter affidavit and written address on the other hand.

It is very instructive to note that, at this stage, the Court is only enjoined to determine whether or not, from the documents and averments contained in the affidavit in support of this Application, the Applicant indeed have a legal right worthy of any protection by this Court.

In determining the said right of the Applicants, I am also encouraged to avoid any overlap into the main issue as not to determine the substantive issue at stake, thereby denying either of the parties the right of trial at this stage. See *NDIC VS S.B.N PLC (2003) NWLR (Pt. 801) page 311 at 423 paragraph H.*

See also the case of *LAWRENCE DAVID LTD VS ASUTON (1991) 1 ALL ER 385 at page 394 – 6.*

The practice of granting the Plaintiff's relief by way of interlocutory injunction arose to mitigate the risk of injustice to him during the period the uncertainty could be resolved.

See the case of *STALLION (NIG) LTD. VS E.F.C.C. (2008) 7 NWLR (Pt. 1087)461 at 473 paragraphs A – C.;*

OGUNSOLA VS USMAN (2002) 14 NWLR (Pt. 788)636.

The position of law that an Applicant for interlocutory injunction must have an established legal right, for his application to succeed, cannot be over emphasized.

Of equal importance is the fact that interlocutory injunction is usually granted to protect the Plaintiff against injury, by violation of his right for which he could not be adequately compensated in damages recoverably in the action if the uncertainty were resolved in his favour at the trial.

See ***ADAMU VS AG NASARAWA STATE (2007) 6 NWLR (Pt. 1031) 485 at 492 paragraph F-G.***

Furthermore, one determining factor for granting an Order of interlocutory injunction is to preserve the Res. It is indeed the province of the law that the Res should not be destroyed or annihilated before the judgment of Court. See ***AKINKPELU VS ADEGBORE & ORS (2008) 4 – 5 SC (Pt. 11) 75.***

I shall consider the evidence of the Applicant, though not challenged, with the aim of ascertaining

the Legal Right which he alleged to be tempered with. This is in view of the facts that, where there is no legal right known to law, the Plaintiff cannot be heard to complain.

The Plaintiff/Applicant in his paragraph 5 of the further and better affidavit in support of motion on notice stated that he is the owner of the property. That N.U Maje informed the Defendants/Respondents of the encroachment on behalf of the Applicant.

From the above authority and on the strength of evidence above, it is my considered opinion that the Plaintiff/Applicant has established a legal interest worthy of being preserved and protected.

Having established the legal interest of the Applicant, I will now weigh, on which side lies the

balance of convenience should this Application be granted.

On balance of convenience, Applicant stated in his further and better affidavit in support of this application that the property encroached upon was not the property of N.U Maje, but that of the Claimant/Applicant which he purchased for N959,030.12 (Nine Hundred and Fifty Nine Thousand, thirty Naira, Twelve Kobo).

Flowing from the above authority and in view of the fact the Defendants/Respondents has not placed anything before this Court for me to juxtapose with evidence presented by the Plaintiff/Applicant, I must resolve that the balance of convenience in favour of the Plaintiff/Applicant.

On the whole, and in view of my findings above, the Application of Plaintiff/Applicant for An Order of Interlocutory Injunction restraining Defendants/ Respondents, their privies/agents or servants from selling the property situate at Zone C08 Dakwo District, Unity Hills Garden Estate, Abuja which is the subject matter of this suit and an Order of this Honourable Court ordering parties to maintain status quo pending the hearing and determination of this suit is **hereby granted.**

Justice Y. Halilu
Hon. Judge
13th April, 2022

APPEARANCES

E. B Henry, Esq. – for the Claimant.

Defendants not in court and not represent.