

**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/3193/2021**

**DATE: :MONDAY 27<sup>TH</sup> JUNE, 2022**

**BETWEEN:**

**USMAN CHIROMA IBBI..... CLAIMANT/APPLICANT**

**AND**

**1. MRS. SPAINE IYETULE**

**DEFENDANTS**

**2. THE INSPECTOR GENERAL OF POLICE**

**3. C.P AMEACHI OLUMILU**

**4. FEDERAL HOUSING AUTHORITY**

**RULING**

This ruling is at the instance of the Claimant/Applicant who approached this Honourable Court vide a Motion on Notice dated 20<sup>th</sup> May, 2022 and filed on the same day; praying this Honourable Court for;

1. An Order of Interlocutory Injunction Restraining the Defendants/Respondents, their agents, privies, and/or successor-in-title or any person working under the Respondents instruction from trespassing, entering, arresting or otherwise in any way dealing with the Claimant's property situate, lying, being and known as 4 bedroom detached Duplex (Otegbola) at No. 1, A-Close, 6<sup>th</sup> Avenue Galadima, Gwarimpa II – Estate, Abuja covered by a Letter of Allocation with **Ref. No. FHA/EST/FCT/GWA-AD/OT 13** dated 16<sup>th</sup> day of January, 2002 pending the

hearing and determination of the substantive suit before this Honourable Court.

In support of the application is an 11 paragraph affidavit deposed to Usman ChiromaIbbi, the Claimant/Applicant in this suit.

It is the deposition of the Applicant that sometime in August, 2021, I bought the house of 4 bedroom detached duplex (Otegbola) at No. 1 A-Close, 6<sup>th</sup> Avenue Galadima, Gwarimpa II-Estate, Abuja covered by a Letter of Allocatio with Ref. No. **FHA/EST/FCT/GWA-AD/OT 13** dated 16<sup>th</sup> day of January, 2002 from Mrs. SpaineIyetule.

That after the payment for the property we signed a Deed of Assignment and Power of Attorney between Mrs. SpaineIyetule and myself. The Deed of Assignment and Power of Attorney.

That after the payment the Claimant proceeded to the Federal Housing Authority for authentication and transfer of title to himself. The application for consent in my favour was approved by the Federal Housing Authority on the day 23<sup>rd</sup> of September, 2021. The application for consent in respect of the property as duly signed by S.I Ogiefa the general manager (Property Management) of the Federal Housing Authority.

That the payment for consent by Mrs. SpaineIyetule in Claimant's favour was made on the 25<sup>th</sup> of October, 2021, via a Federal Housing Authority Receipt No. 000062025 for the sum of N5,250,000.00 (Five Million, Two Hundred and Fifty Thousand Naira) dated 25<sup>th</sup> day of October, 2021.

That the official approval for the consent to assign was duly signed by the Managing Director/CEO of the Federal Housing Authority in a letter with Ref No. **FHA/EST/FCT/GWA-AD/OT/CONSENT1** dated 27<sup>th</sup> day of October, 2021.

That having satisfied the Federal Housing Authority Claimant was handed over the 4 bedroom detached duplex situate at No. 1 A-Close Avenue Galadima, Gwarimpa II – Estate, Abuja sometimes in November, 2021.

That Claimant quickly mobilized workmen and materials to the property for proper renovations for Claimant to move in with my family, but Claimant desire was frustrated by the combine mischief of the 1<sup>st</sup> – 3<sup>rd</sup> Defendants/Respondent herein.

That at a point the labourers at site, the site engineer and Claimant's personal security were arrested and

detained by the 3<sup>rd</sup> Defendant who is under the control of the 2<sup>nd</sup> Defendant without any justification thereby stopping the work at the site.

That Claimant knows as a fact that the act of trespass by the 1<sup>st</sup> – 3<sup>rd</sup> Defendants/Respondents amounts to the denial of Claimant's access to the said property thereby depriving him of contributing to the physical development of the Federal Capital Territory and indeed the Federal Housing Estate.

That Claimant has a legal right to protect in the property which is the subject matter of this suit, because the 4<sup>th</sup> Defendant/Respondent have granted consent to assigned to the Claimant and he is in possession of the property.

That the legal rights of the Claimant have been, is being threatened so much that the status **quo ante**

**bellum** needs to be maintained and not the **status quo ante litem.**

That the Claimant has suffered and will continue to suffer greater hardship, if this application is not granted as the Defendants will continue to take undue advantage of the present circumstance to my disadvantage.

That the balance of convenience is in the Claimant favour and he undertakes to pay damages to the Defendants/Respondents should this application turn out to be frivolous.

In line with law and procedure, written address was filed wherein, sole issue was formulated for determination to-wit;

***“Whether Claimant/Applicant is entitled to the reliefs sought”***

Learned counsel submits, that it is a fundamental principles for the grant of injunction that the application will always be granted to support a legal right hence the most importance precondition of an application is to show that he has a legal right which is threatened and ought to be protected.

***BEN IHENACHO & ANOR VS. UME UZOCHUKWU (1997) ISCN 117*** was cited.

It is crystal clear from the supporting affidavit to this motion that sufficient facts have been disclosed to warrant this Honourable Court grant the reliefs sought.

There is no rule requiring a Claimant/Applicant to establish a prima facie case before he can get an interlocutory injunction so long as the Court is satisfied that his case is not frivolous or vexatious and that there is a serious question to be tried.



***AGBOMAGBO VS. OKPOGO (2005) ALL FWLR  
(Pt. 291) Page 1607 at 1620 Paras C – E;***

***KOTOYE VS. CENTRAL BANK OF NIGERIA  
(1989)1 NWLR (Pt. 98) 419;***

***OBEYA MEMORIAL HOSPITAL VS. GEN OF  
THE FEDERATION (1987)2 NWLR (Pt. 60) 325***

were cited.

It is learned counsel's humble submission that the Claimant/Applicant has shown in his affidavit that he has a legal right which is threatened and ought to be protected. In addition, the Applicant has convincingly satisfied this Honourable Court by establishing special circumstances in his affidavit as to be entitled to the reliefs prayed for.

The Claimant/Applicant having satisfied the requirements of law for the grant of this application;

counsel therefore urged this Honourable Court to grant this application as prayed in the overall interest of justice.

Upon service, Defendant/Respondent filed a 35 paragraph counter affidavit duly deposed to by Mrs. Beatrice SpaineIyetule, the 1<sup>st</sup> Defendant in this suit.

It is the deposition of the 1<sup>st</sup> Defendant/Respondent that the Capt. Fola Daniel lived in the property with the wife, Mrs. Georgian Daniel as my tenant since May, 2011 but the said Capt. Fola Daniel travelled overseas and could not pay the agreed rent for the property and was in arrears for over 4 years, hence, 1<sup>st</sup> Defendant served him the necessary pre-action notices for recovery of possession of premises and rent arrears which notices were received by the wife, acknowledged and responded to. The Notice of Quit, Notice of Owner's Intention to apply to Court to

recover possession served on 1<sup>st</sup> Defendant's behalf to Capt. Fola Daniel and the wife's responses to same are hereby pleaded and would be relied upon.

That when Capt. Fola Daniel and the wife were not forthcoming with the rent arrears and could not deliver peaceable and vacant possession of the property to me, he then through the law firm of Jude-Okey & Partners initiated a law suit against Mr. Fola Daniel on the 20<sup>th</sup> of February, 2020 and the case has proceeded to hearing. The writ of summons with the accompanying process is Suit No. FCT/HC/CV/1142/2020 and the record of proceedings of Justice Ebong of the FCT High Court.

That while the above referenced case was pending against Mr. Fola Daniel, the wife locked up the house and called his Attorney, Legex Partners and

handed over the house keys to them so as to prevent accumulating arrears of rents while the husband was not forthcoming with rents.

That some staff members of Legex Partners on their regular routine checks on the property discovered that someone had awfully destroyed cashew and mango trees planted around the property and had gone further to remove the doors, windows and other appurtenances and fittings such as the AEDC Electricity prepaid metre in the property (while the metre card remains) preparatory to changing the architectural designs of the property but when they approached the workman thereat, they were informed that the workmen were working for and on behalf of the Claimant.

That Claimant thereby engaged the law firm of Legex Partners to write a letter of complaint of

criminal trespass and vandalism of his property against the Claimant to the 2<sup>nd</sup> Defendant which letter was written on the 4<sup>th</sup> day of October, 2021 and addressed to the Deputy Inspector General of Police.

That due to Claimant's complaint of criminal trespass and vandalism on his property being House No.1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja, the 2<sup>nd</sup> Defendant invited the Claimant to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' office for his confirmatory statement which 1<sup>st</sup> Defendant made on caution on the 1<sup>st</sup> of November, 2021 wherein the Claimant gave detailed narratives of her title to the property, the criminal trespass and vandalism against the Claimant and supported same with documents of title, currency of a pending suit against the Occupant/Tenant for possession and arrears of rents

and the criminal trespass and vandalism of House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja.

That only the workers were met at the site and because they were summoned by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, the Applicant called the police unit of the 3<sup>rd</sup> Defendant, and was invited during which the Claimant made statement stating therein that the Claimant bought his house, House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja from one SpaineIyetule but confirmed that the Claimant and him had never seen each other and that the said owner, Mrs. IyetuleSpaine was introduced to the Claimant by one Lawal Mohammed Lawal and indicated that the Claimant paid for the property through Zenith Bank Account

No. 2006004053 allegedly belonging to one Olusegun A. Adegoke and not mine.

That the Claimant was thereby directed to produce the person who impersonated the 1<sup>st</sup> Defendant in the sales arrangement as well as Mr. Lawal A. Lawal who introduced the impersonating Mrs. SpaineIyetule but despite the Claimant's undertaking to so do, the Claimant never did till date.

That the Claimant had severally boasted of the Claimant's personal connections with the police force such that the Claimant refused to cooperate with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for detailed investigation into the allegations he made against the Claimant but rather rushed to the Honourable Court to frustrate investigation.

That the Defendant did not sell, contemplate selling and or engaged any person including one Abubakar

M. Sambo (allegedly authorized to transact on the 1<sup>st</sup> Defendant's property on the 1<sup>st</sup> Defendant's behalf) to transact on or dispose my property, being House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja to any person, including the Claimant.

That the 1<sup>st</sup> Defendant does not know Abubakar M. Sambo and have never by any means whatsoever authorized Abubakar M. Sambo to apply to the 4<sup>th</sup> Defendant for stamping and registration of the purported Deed of Assignment in respect of my property being House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja, or any other property and he state that the said letter of authority attached to the Claimant's statement of claim dated the 3<sup>rd</sup> day of August, 2021 purportedly giving authority to Abubakar M. Sambo to deal in my property is a product of forgery and manipulation.



That the 1<sup>st</sup> Defendant is not the owner of the signature assigned to her in the said letter of Authority and did not sign the Letter of Authority.

That the 1<sup>st</sup> Defendant did not sell his house, House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarinpa II Estate, Abuja, to any person howsoever described including the Claimant.

That House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarinpa II Estate, Abuja is currently submerged in litigation in Suit No. FCT/HC/CV/1142/2022 with Mr. Fola Daniel still deemed a tenant till the attention of their abscondment is reported to the trial Court.

That the 1<sup>st</sup> Defendant did not pay or authorize the payment of the sum of Five Million Two Hundred and Fifty (N5,250,000.00) Naira or any amount whatsoever to the 4<sup>th</sup> Defendant on the 25<sup>th</sup> October,

2021 or any date at all as consent fee for the sale of House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja or any property for that matter.

That 1<sup>st</sup> Defendant did not receive or authorize the receipt of letter of the 4<sup>th</sup> Defendant dated the 27<sup>th</sup> day of October, 2021, signed by one Sen. Gbenga B. Ashafa and copied the Claimant which letter was addressed to me and purportedly given approval to me to assign my interest in the property to the Claimant and directing me to stamp three copies of the said Deed of Assignment and Claimant further state that these documents were made and used by the Claimant, 4<sup>th</sup> Defendant and their syndicates for their benefits and has no relationship whatsoever with me.

That 1<sup>st</sup> Defendant did not donate any Power of Attorney to the Claimant and that the undated Irrevocable Power of Attorney allegedly donated by him as well as the undated Deed of Assignment made in favour of the Claimant.

That the 1<sup>st</sup> Defendant does not know how he came about his documents in respect of House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja and he aver that there is a high profile syndicates of land speculators and grabbers from the 4<sup>th</sup> Defendant who participated in the deals hence the 4<sup>th</sup> Defendant never bothered about the regularity of the 1<sup>st</sup> Defendant's signature nor called him in verification of the purported sale of his House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja.

That the attempt by the Claimant to take possession of House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja without his consent or knowledge by breaking in, destroying the keys with which the doors were locked failed as he resisted same and directed my siblings to be in the house to prevent unlawful entry and occupation and that remains the position till date.

That the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not lock up the house nor deny the Claimant entry into the house but had directed the Claimant to produce the person who impersonated him in the purported sale of House No. 1, 6<sup>th</sup> Avenue, A-Close, Galadima, Gwarimpa II Estate, Abuja only for the Claimant to keep off the premises to prevent arrest since the Claimant could not and cannot produce such person and then devised the means of frustrating the investigation by

the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants which investigation would have help in unmasking the land syndicates and grabbers in the Federal Capital Territory, Abuja.

That the 1<sup>st</sup> Defendant is not aware of the letter of S.I Ogeifa referred to in paragraph 5 of the Applicant's affidavit since it was made without my knowledge as an offshoot of the purported Letter of Authority allegedly given to Abubakar M. Sambo.

That the Federal Housing Authority did not hand over his property that was under his possession to the Applicant and that was the reason the Applicant had to destroy the keys and destroy doors and windows of his house so as to gain entry.

That the balance of convenience is in his favour since the Applicant is living in Maitama and tends only to renovate his house for his future use against

the convenience of his tenant and relatives who are in occupation of the res on my behalf.

The Defendant undertakes to pay any cost of the Applicant should the Court in the final analysis find that he ever sold the property to the Applicant and state that the Applicant can be compensated by damages in the long run.

That it is in the interest of justice to dismiss the Application and Order accelerated hearing instead.

Written was filed wherein sole issue was formulated for determination to-wit;

***“Whether the Applicant is entitled to the grant of an Order for Interlocutory Injunction in the circumstances of the case?”***

Learned counsel submits, that the Applicant has no justifiable legal right in the subject matter worthy of

judicial protection, having not been able to produce the impersonators for investigation and having not even listed them as prospective witnesses before the Court. Counsel further submits, that by Exhibit “G”, the property is subject of litigation with the 1<sup>st</sup> Respondent as the Claimant. Counsel submits, that the Defendant in Exhibit “G” has handed over the house keys to the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent has put her siblings in lawful occupation of her property.

It is the submission of counsel, that an Interlocutory Injunction cannot be granted to restrain the 1<sup>st</sup> Respondent from enjoying lawful occupation of the res. We rely on the case of *AKIBU & ORS VS. ODUNTAN & ORS (1991) LPELR – 335 (SC)* was cited.

The Applicant admitted that the Applicant was never in exclusive possession of the res. In the interlocutory part of the supporting affidavit, the Applicant stated that he lives at No. 25, Danube Street, Maitama – Abuja and in paragraphs 9, 10 and 11 of the same supporting affidavit stated that he only mobilized workman and materials for renovation but the desire was frustrated. It implies therefore that the Applicant is not in exclusive possession as to be granted interlocutory injunction against the 1<sup>st</sup> Respondent whose tenant and relative are by law occupying the premises.

Learned counsel submits, that a careful perusal of the affidavit in support as well as the counter affidavit in opposition, the grant of the application will touch on and delve into the substantive issues before the Court and the Courts are enjoined not to



grant applications in the Interlocutory stage that would have the effect of touching on the substance, the instant application touches on the allegation of unlawful arrest, title to the res, injunction against trespass. The Court can only grant injunction against trespass if the Court has determined that the Applicant is in lawful occupation of the property or indeed is the rightful owner thereof. This issue becomes more seriously injurious to the application when Paragraphs 3 – 8 of the supporting affidavit alongside paragraphs 1 – 27 of the 1<sup>st</sup> Respondent's counter affidavit.

It is further the submission of learned counsel, that the essence of the instant application is to frustrate the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' from investigating the case of forgery, impersonation and criminal trespass levelled against the Applicant. We rely on

Paragraphs 9, 10, 11, 12, 22 and 28 of the counter affidavit and Exhibits “H”, “I”, “J” and “K” of the counter affidavit and on the authority of *FABUNMI VS. INSPECTOR GENERAL OF POLICE & ANOR (2011) LPELR – 3550 (CA)* was cited.

Counsel submits, that it is in the interest of justice that the application be refused and accelerated hearing ordered so that the Honourable Court can hear evidence from the parties.

### **COURT:-**

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 of the Applicant, they indeed have a legal right worthy of any protection by this Court.

In determining the said right of the Applicant, 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) Pages 311 at 423 Paragraph H.*

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

See also ***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.

It is pertinent to note 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 paragraphs 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 with the aim of ascertaining the Legal Right which he alleged to have been tampered 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. This is done by examining the affidavit in support of the application.

The Plaintiff/Applicant in paragraph 14 of his Affidavit in support of motion on notice stated that the claimant has a legal right to protect in the property No. A-close, 6<sup>th</sup> Avenue, GaladimaGwarimpa II-Estate, Abuja which is the

subject matter of this suit, because the 4<sup>th</sup> Defendant/Respondent has granted consent to assign (as evidenced by Exhibits “B”, “C”, “D”, “E” and “F” respectively) to the Claimant therefore he is in possession.

The 1<sup>st</sup> Defendant/Respondent Mrs Spaine Iyetule, however insists that she did not, contemplate selling and or engaged any person including one Abubakar M. Sambo who was allegedly authorized to transact on the property No. A-close, 6<sup>th</sup> Avenue, Galadima Gwarimpa II-Estate, Abuja belonging to the 1<sup>st</sup> defendant and on her behalf. The Defendant is not the owner of the signature in the said letter of authority and contends that it is a product of forgery and manipulation.

In the case of *DOMA VS. OGIRI (1997) 1 NWLR (pt. 481) 322 Page 337 Paragraphs C- F* the court held thus:-

*“It is trite law that the aim of an injunction is to protect an established legal right. The Court will grant an injunction to protect an established legal right. Court of Law do not grant injunction to one who has not established the legal right he seeks to protect. It would amount to making an unwarranted Order.”*

Interlocutory injunction, being an equitable relief, it is expected of the Applicant to come to its refuge with clean hands and make a clean disclosure of facts to enable the Court do equity between the parties.

Indeed, the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent have led evidence before this

court and also annexed various documents to show that they are the true owners of the property.

Flowing from the above authorities and in view of the nature of this Application, I am constrained and my bounds are limited. I cannot turn a blind eye on the Plaintiff/Applicant's legal interest in the property; No. A-close, 6<sup>th</sup> Avenue, GaladimaGwarimpa II-Estate, Abuja...which is the subject matter of litigation.

Establishing legal interest in an Application for interlocutory injunction takes priority over other factors such as balance of convenience, undertaking as to damages etc. It is the establishment of the legal interest that determines the consideration of other factors.

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 affidavit in support of this application that he has expended monies on the property; No. A-close, 6<sup>th</sup> Avenue, GaladimaGwarimpa II-Estate, Abuja the subject matter of litigation.

Balance of convenience (opposite of inconvenience) between the parties is a basic determining factor in an application for interlocutory injunction. In determining this factor, the law requires some measurement of the scales of justice to see where the pendulum tilts. While the law does not require mathematical exactness, it is the intention of the law that the pendulum should really tilt in favour of the applicant.

See *ACB VS AWOGBORO (1991) 2 NWLR (pt. 176) 711 at 719.*

In view of my findings above, application succeeds.

Relief for Interlocutory Injunction restraining Defendants, their employees, servants, workers, agents, privies including those claiming through them or any person acting through Defendants from further entry into and/or engaging in any form of construction, on the property No. A-close, 6<sup>th</sup> Avenue, GaladimaGwarimpa II-Estate, Abuja pending the hearing and determination of this suit is hereby granted.

Claimant/Applicant shall not take any steps that would alter the architectural structure of the house in contention and or any other step that will affect the subject matter.

I hereby Order for accelerated hearing of the said suit.

*Justice Y. Halilu*  
*Hon. Judge*  
*27<sup>th</sup> June, 2022*

**APPEARANCES**

Blessing Anazodo, Esq. – for the  
Claimant/Applicant.

Charles Ugwu, Esq. – for Defendant.