

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI- ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE M.S. IDRIS.
HON JUDGE HIGH COURT NO. 28
Dated: 8TH APRIL, 2022**

SUIT NO: CV/2909/2021

BETWEEN:

**1. HAVILAH BAKERY LIMITED }
2. AKPAMA EKWE }
AND**

PLAINTIFFS

ADEOLA HAASTRUP-----

DEFENDANT

RULING

The Plaintiffs/Respondents brought an application by way of motion ex parte dated and filed on the 28th January, 2022 praying the Court for an order of interlocutory injunction restraining the Defendant/Applicant from the sale of plot 102 Lugbe 1 Layout, opposite JFK International School, Kapwa Main Street, Lugbe, Abuja and the appurtenances thereto pending the determination of this suit; and any other order the Honourable Court may deem fit to make. On the 26th January, 2022. The order was granted as prayed. Thus, the Defendant/Applicant was restrained from the sale of the plot 102 pending the determination of the motion on notice.

Thereafter, the Defendant/Applicant by way of counter affidavit filed a 19 paragraphed affidavit and a written address filed on the 11th February,

2022. The counter affidavit was deposed to by one Mrs. Comfort Erimma Uche, and contains among others the following facts:-

1. That Plot 102 Lube 1 layout, has nothing to do with suit No: CV/2909/2021 in this matter.
2. That the 1st Plaintiff is trying to preempt the decision of this Honourable Court by indirectly attaching plot 102 in this case.
3. That the Defendant/Applicant is putting his house in Economic use for the welfare of his family and is not relocating to another state.
4. That the Defendant/Applicant believes he will be prejudiced if this application is granted
5. That the Defendant/Applicant's children studying abroad are in their final year and are stranded due to financial challenge the family is facing.

In the written address, Defendant/Applicants raised a sole issue for determination as follows:-

"Whether it is in the interest of justice for this Honourable Court to grant this application"

Defendant/Applicant's Counsel relied on Company and Allied matter Act (CAMA) 2020 as amended tenth schedule section 475 (2) d 511(5), 520 (4), and urge the Court not to grant the application in the interest of justice.

While addressing the Court, Plaintiff/Respondent Counsel sought for a preservation and stated in response to paragraph 8 of the counter affidavit where the Defendant/Applicant alleged that making a preservation order is preempting the justice of the Court, that this Court has a duty to protect and ensure the enforcement of its judgment. He urged the Court to dismiss the application. In ***ABIBU & ORS VS ODUNTAN & ORS (1991) LPELR – 335 (SC)***, it was held that " *an interlocutory injunction can only be issued to*

restrain a threatened wrong to a right and not to restrain the lawful enjoyment of a legal right” per Obaseki JSC.

Furthermore, in **ADELEKE & ORS V LAWAL & ORS (2013) LPELR 20090 (SCA)**. It was held thus:-

“Generally, an injunction is a Court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate and complete remedy at law and that an irreparable injury will result unless the relief is granted. An interlocutory injunction therefore ... is issued before or during trial to prevent an irreparable injury from occurring before the Court has a chance to decide the case. This type of injunction will be issued only after the Defendant is confirmed to have had notice and an opportunity to be heard”

Also, in **AKAPO V HAKEEM HABEEB (1992) NWLR (pt 247) 266; (1992) 7 SCNJ 119**, it was held that “ mere inconvenience without a property right in the subject matter of the complaint is not enough to entitle an application to the order.”

See also **GLOBE FISHING INDUSTRIES LTD & ORS V CHIEF FOLARIN COKER (1990) NWLR (PT 162) 265; (1990) 11- 12 SC 80 and AZUH V UNION BANK (2014) LPELR – 22913 (SC)** .

From the above cited cases, it seems that case law precedents are in favour of the Defendant/Applicant first, an interlocutory injunction cannot be issued to restrain the lawful enjoyment of a legal right. Secondly, such an injunction should be issued only when the Defendant has had notice and a chance to

be heard. Finally, the property should be the subject matter of the complaint otherwise, it is not enough to entitle an Applicant to the order. The existence of a substantive cause or matter is an essential requirement for making an application by motion see ***NIG CEMENT COMPANY VS NRC (1992) 1 NWLR 742 CA***. the reliefs sought in an interlocutory application must also be within the ambit of and related to the Claims in the substantive cause or matter. See ***GARBA VS PN . NIG. LTD (1995) 7 SCNJ 19***. *Every interlocutory order must terminate with the substantive case or appeal. See ADEFILU VS OYISELE (1989) 5 NWLR 377 Q 407 A-G ANAMBRA STATE VS OKAFOR (1992) 2 NWLR 390 Q 423* and therefore the making of an order in an interlocutory application which persists beyond the substantive case is a grave error in law which cannot be allowed to continued. In an interlocutory application the Court should not consider issues required to be determined in the substantive suit for to do so would amount to prejudging that suit itself. See ***AKOPO VS HASSAN (1992) 7 SCNJ 119 Q 139***. from the affidavit evidence in support of the motion on notice I consider paragraph 4s,5,6,7,8,9 and 10 of the Applicant that the subject matter as contained on the writ of summons especially the statement of claim is quite different with the prayers sought on the motion on notice filed by the Applicant. On the other hand the Defendants counter affidavit paragraphs 3,4,5,6,7,8,9,10 and 11 made this Court not to grant the application and also that of the Claimants affidavit in support of the motion on notice from the above judicial authorities cited by the Court if the reliefs sought by the Applicant it would prejudice the decision of the Court as it can be sought from the processes filed by the Applicant the subject matter that is contained in the writ is different with the one contained on the motion. It would be improper for the Court to grant this application. It would be noted that the only thing this Court can do in the spirit of justice is to only

give this case an accelerated hearing. Consequently the application for interlocutory injunction is hereby refused and same is accordingly dismissed. This can be seen from the cases cited above.

HON. JUSTICE M.S IDRIS
(Presiding Judge)
8/4/2022