

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

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

Date:- 4TH JULY, 2022

**FCT/HC/CV/2522/21
FCT/HC/ M/4204/2022**

BETWEEN

**MRS. BOCO ABDUL
AND**

... CLAIMANT/APPLICANT

**1. AMANDA ONYEDIKE DIKE }...
2. UNKNOWN PERSON }**

DEFENDANTS/RESPONDENTS

RULING

By a Motion on Notice dated 4th April, 2022, the Claimant/Applicant seeks the following reliefs:-

1. AN ORDER of interlocutory injunction restraining the Defendants/Respondents either by themselves, their agents, privies, assigns, servants or any other person whatsoever from further trespassing and or building any structure(s) over all that Plot of Land measuring about 800 Square Metres known as Plot No CRD 1936B, Lugbe 1 Layout, Abuja or any part thereof pending the hearing and determination of the substantive suit.
2. AND FOR SUCH further Order or other Orders as this Honourable Court may deem fit to make in the circumstance of this case.

In support of the Application is a 17 paragraph affidavit with 6 annexures marked as **Exhibits BA1-6**. A written address was filed in support of this Application in which the well known principles for the grant of an order of injunction were stated and it was submitted that the Applicant has met the requirements to enable the Court make the Order(s) as sought.

At the hearing, Counsel for the Applicant relied on the contents of the supporting affidavit and the annexures. He then adopted the submissions in the written address and urged the Court to grant the application.

In opposition to the Applicant's application, the 1st Defendant/Respondent filed a 23 paragraph Counter-affidavit with 9 annexures marked **Exhibits A-I**. A written address was filed in support of the Counter-affidavit in which the principles governing the grant of an order of interlocutory injunction was enunciated and it was submitted that the application of the Claimant/Applicant be dismissed.

At the hearing, Counsel to the 1st Defendant/Respondent relied on the contents of the Counter-affidavit and the annexures. He then adopted the submissions in the written address and urged the Court to dismiss the Applicant's application.

I have carefully considered all the processes filed by Counsel on both sides. The issue to be resolved by this application falls within a very narrow legal compass with very well defined principles. The facts and justice of each matter dictates whether the order(s) sought will be granted or not. It must also be borne in mind that at this stage, there is no trial on the merits.

As a logical corollary, it is now the duty of the Court to examine the established facts within the context of the principles guiding the grant of an order of injunction and to determine whether the Applicant have made out a good case for the exercise of the Court's discretion in its favour.

Now, the grant or otherwise of an interlocutory injunction involves the exercise of the Court's undoubted discretion which discretion must be exercised judiciously and judicially. The basis for the grant of an injunction is borne out of the need to protect the applicant by preserving the circumstances that are found to exist at the time of the application until the rights of the parties can be finally established. This need is weighed against the corresponding need of the respondents to be protected against any injury resulting from having been prevented from exercising their legal rights for which they could not be adequately compensated in damages if in the end the substantive action is decided in their favour. **See ODUTAN V GENERAL OIL LTD (1995) 4 NWLR (PT. 387) 1 AT 12 H-13A.** The essence of injunctive reliefs is the preservation of the status-quo. The order is given in the light of the threat, actual or perceived, to the applicant's rights. The order is put in place to forestall irreparable injury of the applicant's legal or equitable rights. **See MADUBUIKE V MADUBUIKE (2001) 9 NWLR (PT. 719) 698 AT 708 A-C.**

The principles that provides in granting of an order of interlocutory injunction are now fairly well settled. In the exercise of its undoubted discretion, the Court usually raises three posers, to wit:-

1. Is there a serious question to be tried?
2. If so, will damages be adequate compensation for the temporary inconvenience?
3. If damages will be inadequate compensation, in whose favour is the balance of convenience?

See **SUNMONU V NIGERIA SYNTHETIC FABRICS LTD (2002) 51 WRN 186.**

The first of the considerations to consider is that of whether there are serious questions to be tried. It is perhaps important to state immediately

on this point that an applicant for an order of injunction is no longer expected to show a strong prima facie case or an indefeasible right to the relief(s) sought or indeed establish or show a prospect of obtaining a permanent injunction at the end of the trial. It is sufficient once the applicant shows that there are serious questions to be tried between the parties at plenary hearing. See **ADENUGA & ORS V ODUMERU & ORS (2003) 5 SCM 1 AT 13; ONYESOH V NEBEDUN (1992) 3 NWLR (PT. 229) 315 AT 319 OYEYEMI V IREWOLE LOCAL GOVT, IKIRE (1993) 1 NWLR (PT. 270) 462 AT 461.**

On the first consideration, the combined effect of the arguments of the Applicant as well as that of the 1st Respondent drew the attention of the Court to the disclosure of a prima facie legal interest or rights of the parties over the disputed Plot of Land measuring about 800 Square Metres known as Plot No CRD 1936B, Lugbe 1 Layout, Abuja.

In the circumstances, it seems to me that the Applicant's claims relating to its denoted legal and propriety interest arising from the allocations vis-a-vis the challenge of the Defendants cannot be said to be frivolous or vexatious; in fact, there are serious issues here to be tried. The challenge of the Defendants/Respondents to the Claimant/Applicant's averred enjoyment of the allocated plots accentuates the fact that there are serious issues to be heard on the merits.

It is only pertinent to reiterate even at the risk of prolixity that at this stage, it is not necessary that the Court should find a case which would entitle the applicants to the reliefs they seek at all events. It is quite sufficient for the Court to find that the status quo should be preserved until the question(s) relating to ownership can finally be disposed of. See **ODUNTAN V GENERAL OIL LTD (1995) 4 NWLR (PT. 387)1 AT 13 B-D.** I am therefore satisfied that there are serious questions to be tried.

On the second issue for consideration, whether damages would be adequate compensation, the Claimant/Applicant has argued that damages would not be adequate compensation if the Defendants/Respondents are not restrained albeit, temporarily and they continue with the alleged irreparable alteration of the disputed plots.

This now conveniently leads me to the question of balance of convenience. Now by balance of convenience is meant who would lose more if the status quo is preserved and maintained until the determination of the suit. In consideration of the balance of convenience, the law does not require mathematical exactness; it suffices if from the measurement of the scales of justice, the pendulum tilts in favour of the applicant. See ***ACB LTD V AWOGBORO (1991) 2 NWLR (PT. 176) 711 at 719.***

The Applicant in the entirety of the affidavit and the annexures have streamlined precisely the matters that go to balance of convenience. The applicants alluded to how they acquired the disputed plot of land, the 1st Respondent arguing per contra has also alluded how they acquired the disputed plot of land. In this instance however, it is clear that if the Court does not intervene at this stage, the fear of Applicants of irreparable damage to the plot and the attendant complications of third parties who may have bought is real and not frivolous.

In the circumstances, I find and hold that the balance of convenience is in favour of the Applicant. There is equally no blame that can be placed on the Applicant with respect to its conduct in the entire trajectory of the narrative of this case.

I note that in paragraph 15 of the Applicant's supporting affidavit, the Applicant gave an undertaking as to damages. The requirement for an undertaking as to damages is the *quid pro quo* for the grant of the application for injunction. See ***ONYEMELUKWE V ATTAMAH (1993) 5 NWLR (PT.293) 350 at 366.*** Since the Applicant has here voluntarily

deposed in the supporting affidavit that they undertake to pay damages, the necessity for the Court to extract an undertaking clearly does not arise. See ***ONYESOH V NNEBUDUM (1992) 3 NWLR (PT.229) 315 AT 340.*** Where at the end of the injunction, it is found to lack bona fide, nothing stops the 1st Respondent from proceeding with inquiry to assess the quantum of damages.

I now come to the reliefs sought by the Applicant and the appropriate orders to make in the circumstances. I note that Relief 1 on the motion paper seeks for an order restraining the Defendants/Respondents either by themselves, their agents, privies, assigns, servants or any other person whatsoever from further trespassing and or building any structure(s) over all that Plot of Land measuring about 800 Square Meters known as Plot No CRD 1936B, Lugbe 1 Layout, Abuja. There are clearly two arms to this relief. With respect to the first arm dealing with "**trespass**", it is important to underscore the point that in law, trespass constitutes the slightest disturbance to the possession of land by a person who cannot show a better title. See ***INOMA RUSSEL V NIGER CONSTRUCTION LTD (1987) 3 NWLR (PT.60) 298.***

It would in the circumstances be injudicious to grant an interlocutory injunction restraining Defendants on terms as couched by the Applicant when I am yet to determine whether the Defendants are indeed guilty of trespass on the disputed plots. That determination can only be made after hearing. In the circumstances, I decline to make any interlocutory order with respect to trespass as prayed. That would amount to prejudging some of the key issue(s) to be determined at plenary trial.

Now with respect to the other arm of **Relief 1** dealing in essence with the alleged continuance of further building of structures on the disputed land, it will appear unreasonable to allow the Defendants to continue with these alleged acts of further building structures on the disputed plot of land or

carry out any act that will affect the state of the said land being the subject matter of this action. As stated at the outset, the basis for the grant of an order of injunction is the need to protect the "res"(subject matter) as well as the Applicant by preserving the circumstances that are found to exist at the time of the application until the rights of the parties can be fully established.

At the stage of hearing an interlocutory application the Court must not be involved in the resolution of conflicts between the affidavit and counter affidavit as to facts on which the claim of either party ultimately depends. see ***OPOBIYI VS MUNR (2005) 15 NWLR (pt948) 320-332-333.*** It should also be noted from the facts of the application that the Court must also refrain from deciding a difficult question of law that may require detailed argument and sober consideration. Since on the hearing of an application for interlocutory injunction the claim of either party has not yet been determined and will not be determined until final judgment is given in the action, the Court must desist from making findings of facts at the stage which may prejudice the substantive case. It is very important that in dealing with all interlocutory applications during the substantive suit, the Court must be cautious and should avoid dealing with or going into resolving or making any pronouncement on the main issues it ought to determine at the end of the trial.

See ***GOMWALK VS O.KWOUSA (1996) 3 NWLR (pt439) 681-689***
ACB VS AWOGBON (1988) 2 SCNJ 233-235-240.

In this case the preservation of the subject matter in this case is very important so that the successful party would not be confronted with an empty judgment. This is the sole purpose for the granting of an order of interlocutory injunction. See ***OYEYEMI VS IREWOLE L. GO (1993) 1 NWLR (PT 270) 462.*** I seriously emphasize on this ruling that there is the need for the subject to be preserved in the interest of justice and fair play.

The application brought by the Applicant is meritorious and same ought to be granted.

I accordingly, having found that the Applicant has made out a case for a favourable exercise of the Court's discretion order as follows:-

1. The Defendants/Respondents are hereby restrained from dealing with or carrying out further building of any structures over all that Plot of Land measuring about 800 Square Metres known as Plot No CRD 1936B, Lugbe 1 Layout, Abuja or any part thereof pending the hearing and determination of the substantive action.
2. An Order for accelerated hearing of the substantive action is hereby ordered.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)