

**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/1336/2022

MOTION: M/5039/2022

BETWEEN:

7TH GEAR AUTO LIMITED.....CLAIMANT/APPLICANT

VS

**1. DIRECTOR, DEPARTMENT OF DEVELOPMENT
CONTROL (AMMC)**

2. HON. MOHAMMED WAKIL

**3. HONOURABLE MINISTER OF THE FEDERAL
CAPITAL TERRITORY.....DEFENDANTS/RESPONDENTS**

RULING

By a Motion on Notice dated 25/4/2022 but filed on 28/4/2022, with Motion Number M/5039/2022, brought pursuant to Order 42 (4) 1; Order 43 Rule (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant prays for the following reliefs;

- (1) An Order of Interlocutory Injunction restraining all the Defendants and 1 Or any other 3rd Party or persons, whether known or unknown Corporate or Individual, their agents,

servants and privies howsoever described, whether acting jointly or severally from entering into or coming upon the Claimant's automobile business premises for any purpose or illegal purpose, restraining the 1st and 3rd Defendants from engaging in and further taking illegal step(s) towards recovery of possession of Plot 1093, Cadastral Zone A00Central Area, Abuja in favour of the 2nd Defendant and/or any other form of obstruction of the Claimant's automobile business whether by way of trespass or unauthorized seizure of vehicles and/or properties or from conducting any form of demolition exercise at the Claimant's business premises or from taking any step(s) or directing the taking of any step(s) or action(s) sanction(s) measure(s) and/or direction(s) of any nature, whether actual or constructive which action(s) sanction(s) measure(s) and /or directions may culminate in or likely to adversely affect the Claimant's possessory/tenancy rights to all that property situate/known and described as Plot 1093, Cadastral Zone A00, Central Area, Abuja pending the hearing and determination of the Claimant's substantive Suit.

(2) And the Omnibus Relief.

In support of this application is a 39 (Thirty Nine) Paragraphs affidavit with 20 (Twenty Exhibits attached mark as Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T" deposed to by the Managing Director/Chief Executive Officer of the Claimant/Applicant

company in compliance with the Rules of court, Claimant/Applicant filed a Written Address and adopts same as oral argument in urging the court to grant the reliefs sought.

The processes were served on the 1st and 3rd Defendant/Respondent on 10/5/2022 and in their respective addresses, while 2nd Defendant/Respondent was served the processes. On 27/5/2022 by substituted means, to wit: by pasting at the gate of 2nd Defendant's last known address/office being the No. 19 Danube Crescent Maitama Abuja vide Order of Court made on 27/5/2022. Despite service of the processes, 1st, 2nd and 3rds Defendants/Respondents failed to react to the processes, were absent in court and were not represented by counsel. The implication of this is that the application before court stands unchallenged and undefended. 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 facts deposed to therein have been admitted and must be taken as true and correct”

In the Written Address of the Applicant, Charles Abalaka Esq of counsel formulated a sole issue for determination that is;

“Whether this Honourable Court ought to grant the reliefs sought”

Submits that an Applicant for an Order of Interlocutory Injunction has a duty to satisfy the court that he has prima facie right (legal or equitable) which ought to be protected by the court. Refer to *Dekit Construction Co.*

Ltd & Anor Vs Musibau Adebayo & 2Ors (2011) ALL FWLR (PT. 590) 515. And in granting this application court should consider the competing rights of the parties as well as what the dictates of justice may be; refer to Aboseldehyde Laboratories Plc Vs Union Merchant Bank limited & Anors (2013) LPELR – 201809 (SC) as well as Baa Vs Adamawa Emirate Council & Ors (2013) LPELR 22068 (SC) for the principles which may guide the court in the grant or otherwise of an application for Interlocutory Injunction.

Submits that by the affidavit evidence of Applicant, Applicant have shown that his possessory right and title ought to be protected by the court and have also disclose thatthere are serious issues to be tried. And the court has a duty to preserve the res by granting this application for Introductory Injunction.

Submits further that Applicant have met all the requirements by her evidence for the grant of the application. And has shown that the balance of convenience is in favour of Applicant who has serious issues to be tried in the substantive suit. Applicant has undertaken to pay damages, not guilty of delay in commencing this action and no amount of damages will be enough to compensate for damages, which refusal of this application would occasion.

Finally, urge court to exercise its discretion in favour of the Applicant.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibits marked as Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O" "P", "Q", "R", "S", "T", the submissions 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 (2006) 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 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 also Yusuf Vs I.I.T.A (Supra) Owerri Municipal Council Vs Onuoha (2010) ALL FWLR (PT.538) 896 @ 898.

In the grant or otherwise of an application for Interlocutory Injunction the court is enjoined to exercise its discretion judicially and judiciously, and this discretion is exercised in relation to the facts and circumstances of the case before the court, hence to be entitled to the relief sought, the Applicant must disclose all material facts. In the case of Mohammed Vs Umar (2009).All FWLR (PT.267) 1510 @ 1523 – 1524 Para H – D, the court held thus;

“Interlocutory Injunction is not granted as a matter of grace, routine or course, on the contrary, the Order of Injunction is granted only in deserving cases based on the hard facts and law”.

In the instant application, from the affidavit evidence of the Applicant, the acts of the 1st, 2nd and 3rd Defendants/Respondents which resulted in this application touches on the possessory rights of the Applicant over the property subject matter of the suit, trespass as well as recovery of premises, to assist the court in the determination of the grant or otherwise of this application, recourse was made to having a quick perusal of the Statement of Claim of the Claimant/Applicant and it clearly reveals that the

Claimant/Applicant relies on same facts of presented for this application and that of the substantive suit, which calls the court to determine the questions of the possessory rights of the Applicant claim for trespass and acts of 2nd Defendant/Respondent to recover possession of the property which Applicant occupies by virtue of Exhibit C. And the reliefs sought by the Applicant is the same as Applicant's reliefs (a), (b), (c), (d), (e), (f), (g), (h). It is the opinion of the court that a determination of the application, will necessitate a look into these facts and claims at this interlocutory stage of trial. And granted that an Order of Interlocutory Injunction can be granted in the protection of legal rights, the court has been enjoined to refrain from determining matters for the substantive suit at the interlocutory stage. See G.G.C Nigeria Ltd Vs Alh Hassan Baba (2005) ALL FWLR (PT.242) 515 @ 530 – 531, and this the court will refrain from doing.

From all of these, it would seem to me that the Order of Injunction would not be appropriate in this circumstance, as granting it would be tantamount to deciding the issues before trial.

In the light of all of these, it is the holding of this court that this is an occasion where the court rather than grant the reliefs sought, Order that the parties maintain status ante bellum and press for accelerated hearing.

In conclusion, this application is hereby refused. Parties are hereby ordered to maintain status quo ante bellum, pending the determination and hearing of the substantive suit, and press for accelerated hearing of the case.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

4/7/2022

APPEARANCE:

CHARLES ABALAKA ESQ. FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR THE 1ST, 2ND AND 3RD DEFENDANTS/ RESPONDENTS