

**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: UKONUKALU, GODSPOWЕРЕBAHOR&ORS

COURT NO: 6

**SUIT NO: FCT/HC/CV/3012/2021
MOTION NO: M/5175/2020**

BETWEEN:

JOGRAFAV NIGERIA LTD.....APPLICANT

VS

1. CHRISTOPHER OGWUDE

2. UNKNOWN PERSON.....DEFENDANT

RULING

By a Motion on Notice dated 4/11/2021 but filed on 11/11/2021 with Motion No: M/7806/2021 brought pursuant to Order 43 Rules 1(1), 42(8) 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 the court the following reliefs;

- (1) An Order of interlocutory injunction restraining the Defendants/Respondent, their agents, servants or privies, however described or anybody else acting on their behalf from unlawfully trespassing continuing and/or destroying any structure on plot MF 3786A, measuring approximately 2

Hectares within Lugbe 1 Extension, FCT pending the hearing and determination of this suit.

(2) And the omnibus reliefs.

The application is supported by a 19 Paragraph affidavit with 3 Exhibits attached and marked Exhibit "A", "B" and "C", sworn to by one Sunday Apochi, Property manager of Claimant/Applicant. Also filed a Written Address and adopts same as oral submission in urging the court to grant the application.

The process was served on the Respondent by substituted means to Wit by pasting on the wall/gate of the Plot MF 3786 A Lugbe 1 Extension, Abuja pursuant o Order of Court made on 1/2/2022. Despite service, the Defendants/Respondents failed to react to the processes. The implication of this is that the application before court stands unchallenged and uncontroverted in GanaVsFRN (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 deemed admitted and must be taken as true"

In the Written Address of the Applicant, Anthony Biose Esq. of Counsel formulated a sole issue for determination that is;

"Whether by the facts and circumstances of this case, the Plaintiff has disclosed sufficient facts to warrant the grant of the interlocutory injunction pending hearing and determination of this case"

In summary, the submission of Claimant/Applicant is that the aim of an Order of interlocutory injunction is to protect existing legal right with a view to preserve the res pending the hearing and determination of the substantive suit. Refer to IjaVsNyong (1994) 1 NWLR (PT. 318) 56 and OguuroVs Duke (2006) 7 NWLR (PT. 978) 130 132 Ratio 1.

Submits that the depositions in Applicants affidavit has disclosed the existence of a legal right which is being threatened by the Defendants therefore it is imperative for court to grant the order as prayed.

Submits further that in considering whether to grant or refuse an order of interlocutory injunction, court is called upon to exercise its discretion which must be exercised judicially and judiciously. Refer to Obeya Memorial Specialist Hospital Ltd Vs Attorney General of the Federation &Anor (1987) 7 Sc 52 and Lafferi (Nig) Ltd VsNAL Merchant Bank Plc (2002) 1 NWLR(PT. 748) 33 urge court to exercise its discretion in favour of Applicant.

Submits that by the depositions in the affidavit in support of the motion, the Applicant has fulfilled all the principles the court would consider in granting an Order of interlocutory injunction refer to the Principles stated in Obeya Memorial Hospital Vs A G Federation (1987) 3 NWLR (PT. 60) 325, OjukwuVs Governor of Lagos (1986) 3 NWLR (PT. 26) 39, KotoyeVs Central Bank of Nigeria (1989) 1 NWLR (PT. 98) 419 and UketVsOkpa (2006) 8 NWLR (PT. 983) 464 @ 466 Ratio 1.

Submits, finally that where an application of this kind has been filed and served, parties thereto must refrain from taking any action on the res as a mark of respect for the court pending the determination of the suit. Refer

to OjukwuVs Governor of Lagos State (Supra) urge court to grant the prayers of the Applicant.

Having carefully considered the affidavit evidence of the Applicant, which is unchallenged and uncontroverted, the attached Exhibits marked "A" "B" and "C", the submission of Counsel as well as the judicial authorities cited the court finds that, there is only one (1) issue 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 objects 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 position to either grant or deny permanent relief on the merit See Yusuf VsI.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 established that there is a serious issue to be tried. It is unnecessary to determine the legal right to a claim sine 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 KotoyeVsCBN (2001) 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 treble issues at the trial of the substantive suit?
- (2) Whether the balance of convenience is on 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 VsT.I.T.A (Supra), Owerri Municipal Council VsOnuoha (2010) All FWLR (PT. 538) 896 @ 898.

On whether there are treble issues at the main trial, the position of the law is that all the court need to establish, is that the claim is not Frivolous or vexatious.

From the facts stated in the affidavit of the Applicant particularly in Paragraph 4, 5, 6, 7, 8, 9 and 10, clearly shows that there are issues to be tried. The success or otherwise or it is not the function of the court to resolve at this stage, but for the main suit. On the issue of whether the Applicant will suffer irreparable injury if the application is not granted or whether the balance of convenience is in favour of the Applicant, this is an area where the discretion of the court comes into play. Judicial discretion is not a one-way traffic, it takes into consideration the competing rights of the parties to justice, it must be based on facts and guided by the law or the equitable decision of what is just and proper under the circumstance in the instant application, the Applicant have by her affidavit in support,

shown that he would suffer irreparable injury if the application is not granted. See Paragraph 9, 10, 12, 13, 14 and 17 of the supporting affidavit, through it is not for the court to determine the merit of the case at this stage it is the view of the court that the Applicant have by his affidavit evidence shown clearly that he would suffer more injury if the application is not granted.

On the issue of whether the Applicant have a right to be protected, from the Paragraph 3, 5, 6 and 7 of the supporting affidavit and Exhibit "A" "B" "C" and the claim before this court, the Applicant have stated her legal right and in the court's view they are worthy of protection by this court.

In all of these the Defendants/Respondents, who were duly served with the process, but did not react to the motion the implication of this is that the facts contained in the affidavit evidence before this court are deemed true and the court can act on it. They stand unchallenged and uncontroverted. It is trite law that the court should accept such unchallenged and uncontroverted facts as true and correct see the Nigeria Army Vs Warrant Officer BunmiYakubu (2013) LPELR 20085 – (SC) where Fabiyi (JSC) stated thus;

"It is basic that unchallenged evidence stands. The correct should accept same and act on it"

In conclusion and having considered the unchallenged and uncontroverted evidence and the position of the law, the court finds that the Claimant/Applicant have succeeded in making a case deserving of the

grant of the relief sought. The application therefore succeeds. it is hereby ordered as follows;

- (1) An Order of interlocutory injunction restraining the Defendants/respondents their agents, servants or privies, however described or anybody else acting on their behalf from unlawfully trespassing continuing and/or destroying any structure on plot MF 3786A measuring approximately 2 Hectares within Lugbe 1 Extension, FCT pending the hearing and determination of this suit.

This is the Ruling of the Court.

HON. JUSTICE C.O. AGBAZA

Presiding Judge.

14/09/2022

APPEARANCE:

ANTHONY BIOSE ESQ. FOR THE CLAIMANT/APPLICANT

NO APPEARANCE FOR THE DEFENDANT/RESPONDENT