

**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&GODSPOWEREBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2038/2020

MOTION: M/151/2022

BETWEEN:

- 1. MRSSHUAIBU B.A.**
- 2. COLLINS CHUKWUMAANOMNEZE**
- 3. HANNAH OМУYA**
- 4. ROSEMARY OМУYA**
- 5. SALIUALIYU**
- 6. DESMOND MADUKAIHEJIRIKA**
- 7. RITA NDUKA**

(Suing for themselves and on behalf of Allottees/Owners of various Plots of Land & Ors
House in Lugbe Extension 1 Layout).....

CLAIMANTS

VS

- 1. PAUL ODILI**
- 2. PAULO HOMES LIMITED**
- 3. INSPECTOR GENERAL OF POLICE**
- 4. JONAH CAPITAL NIGERIA LIMITED**
- 5. FEDERAL CAPITAL DEVELOPMENT AUTHORITY....DEFENDANTS**

RULING

By a Motion on Notice dated 10/1/22 and filed same day, with Motion No. M/151/2022 brought pursuant to Order 43 Rule (1) of FCT High Court (Civil

Procedure) Rules 2018 and under the inherent Jurisdiction of the Honourable Court, the Claimants/Applicants prays the court the following reliefs;

- (1) AN ORDER of this Honourable Court restraining the Respondents, their agents and privies and assignors from trespassing and further trespass, encroachment demolishing and disturbing the peaceful and quiet enjoyment demolishing and disturbing the peaceful and quiet enjoyment of the Claimant's plot of land, properties and interests described in the various title documents, but not limited to the attached document described as Lugbe Extension 1 Abuja pending the determination of the substantive suit.
- (2) AN ORDER of this Honourable Court directing the 3rd Respondent to provide protection and security to the Applicants and other allottees of LugbeExtension 1, Abuja against the 1st, 2nd, 4th and 5th Respondents.
- (3) AND FOR SUCH FURTHER ORDERS OR ORDER that this Honourable Court may deem fit to make in the circumstances.

GROUNDS FOR THE APPLICATION

1. That the Applicants have legal rights to the Plots of land and properties as covered by the title documents attached.
2. That the Applicants were allotted the Plots and built their properties and have been in the properties since 2004.
3. That the 1st and 2nd Respondents have no interest in the Applicants Plots.

The Motion is supported by a 44 Paragraph affidavit with 20 Exhibits marked Exhibits "A" "B" "C" "D" "E" "F" "H" "I" "K" "L" "M" "N" "N1-3" "O" "P" "Q" "R", Sworn to by the 1st Claimant/Applicant also filed a Written Address and adopts same as oral submission in urging the court to grant the application. On receipt of 1st/2nd/4th Defendants/Respondent's Counter –affidavit, Applicants filed a further affidavit and a reply address dated 23/6/2022 filed same day. Adopts same in urging the court to grant the relief sought.

1st, 2nd and 4th Defendants/Respondents filed a counter – affidavit dated 14/4/2022 deposed to by one OgechiUkaogo, Facilities Manager of 2nd Defendant/Respondent. Also filed a Written Address and adopts same in urging the court to refuse the application.

5th Defendant did not file any process and leaves it as the discretion of court, 3rd Defendant/Respondent did not file their response and was absent in court.

In the Written Address Victor Giwa Esq. for the Applicant formulated a sole issue for determination that is;

“Whether or not the Applicants are entitled to the reliefs sought”

And submits that the essence of an interlocutory injunction is to serve as preservatory or stop-gap measure granted during the pendency of a suit and before the court has had an opportunity to fully hear and weigh the evidence and determine the case of parties Refer to AdamuVsSuemo (2008) All FWLR (PT. 415) 1784 @ 1805 Paras A – C and station (Nig) Ltd VsEFCC (2008) 7 NWLR (PT. 1087) 401 @ 473 Paras A – C (CA) and this application has been brought before court to mitigate the risk of injustice.

Submits further that the depositions in the affidavit in support of the application satisfies the grant of this application as it meets the various conditions necessary for the grant of interlocutory injunction refer to Queen & Anor Vs Adaroh & Anor (1998) LPELR – 5917 (CA).

Urge court to grant the prayers in the Interest of Justice.

In the same vein, Oluwabunmi Adebisi Esq. for 1st/2nd/4th Defendants/Respondents formulated a sole issue for determination which is;

Is the Applicant entitled to the reliefs sought?

And relying on the factors a court must consider in the determination of an application for interlocutory injunction, stated in the cases of Umejuru & Ors Imordi & Ors (2009) LPELR – 8744 CA, Oniah Vs Onyia (1989) 1 NWLR (PT. 99) 514, Opara Vs Ihejirika (1990) 6 NWLR (PT. 156) 291, Union Beverages Vs Pepsi Cola (1994) 2 SCNJ, Onyesoh Vs Nnebe Don (1992) 9 LRCN 736, Ezebelo Vs Chinwuba (1997) 7 NWLR (PT. 511) 108. Submits that the 1st prayer of the Applicant seeks the other and order of court over the subject matter before court and other places as it claims “But not limited to the attached documents thus the prayer is outside the powers of this court, as court can only grant injunction in relation to the subject matter before it”

Submits that this application calls on the court to decide the matters for the substantive suit at the interlocutory stage of trial and the courts have been admonished to refrain from doing so. Refer, to Angiya Vs Emmanuel (2021) LPELR – 54207 (CA), Chief TACAkapo (Ojora of Lagos) Vs Alhaji H.A Hakeem – Habeeb & Ors (1992) LPELR – 325 (SC), Ocholi Eneojo James (SAN)

VsIndependent National Electoral Commission &Ors (2015) LPELR 24494 (SC), Aboseidehyda Laboratories PlcVs Union Merchant Bank Limited &Anor (2013) LPELR – 20180 (SC).

Submits that this instant case is one where the court would grant an Order for accelerated hearing instead of considering the application on the merit. Refer to Wetipp Nigeria Ltd VsLadipo&Ors (2014) LPELR 24413.

Submits that this action was commenced in 2020 and between then and 2022 when this application was filed, nothing in the affidavit of the Applicant suggests a change in circumstances since then. The averments are a replica of the position two years ago therefore the balance of convenience is in the favour of the Respondent. Refer to UdezeVsOrazulike Trading Co. Ltd (1999) LPELR – 10015 (CA).

Submits finally that the identity of the land in dispute is unknown and it is trite that an Order of interlocutory injunction cannot be granted in such circumstance refer to Adeleke 7 OrsVsLawal 7 Ors (2013) LPELR – 20090 (SC). Urge Court to refuse the application.

In reply to the submission of Respondent, Applicant's Counsel submits that the Applicants as Claimants in this suit are seeking to protect their properties in issue, documents attached to the application are not exhaustive of all the allottees represented in the suit, but the subject matter sought to be protected is clearly before this court.

Submits that the court is not called upon to determine the success or otherwise of their claim or title, but that where the court finds a prima-facie

legal right worthy to be protected, court should make an order to keep the subject matter from determination or dissipation by the Respondent pending the determination of the substantive suit.

Submits that the reliefs sought in this application is different from the claims in the substantive suit. The circumstance of the case necessitates the application for interlocutory injunction, as despite service of court processes 1st/2nd and 4th Respondents have continued in their encroachment of the portions of land in issue therefore an order of accelerated hearing will not redress it.

Submits finally that the balance of convinces is in favour of Applicant refer to the meaning of balance of convenience as stated in the case of *AfanVsNnah&Ors* (2022) LPELR – 57201 (CA) and *KotoyeVsCBN* (1989) 1 NWLR (PT. 98) 419 (SC).

Submits finally that the area in dispute is very clear and known to the Respondent as expressed on the face of the Applicant's Amended Writ of Summons. Urge court to grant the reliefs.

I have carefully considered the affidavit evidence of the parties and the Exhibits attached their Written Submissions and judicial authorities cited and I find that there is only one (1) issue for determination that is;

“Whether or not the Applicant has placed before the court sufficient facts for the grant or otherwise of the reliefs sought”

The grant of an order of Interlocutory Injunction is an equitable remedy granted by the court, before the substantive issues in the case is finally determined. Its objects is to keep the matter in status quo, where 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 refuse the application. In doing so the court is invited to exercise its discretion and which must be done judicially and judiciously, this discretion is exercised in relation to the facts and circumstances of the case before the court hence to be entitled to the reliefs sought, the Applicant must disclosed all material facts.

On the nature of an injunction relief, the court in the case of Mohammed Vs Umar (2009) All FWLR (PT. 267) 1510 @ 1523 – 1524 Para H – D. stated 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 law and facts”

In the exercise of that discretion, the court is guided by the principles stated in Plethora of cases in KotoyeVsCBN (2001) All FWLR (PT. 49) 1567 @ 1576 the Supreme set out the principles in deciding whether or not to grant interlocutory injunction amongst these factors to be considered are;

- (1) Whether there are triable issues at the trial of the substantive 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 VsI.I.T.A (2009) 5 NWLR (PT. 1133) 3 Paras A – B and Owerri Municipal Council VsOnuoha (2010) All FWLR (PT. 538) 890 @ 898.

In this instant application, from the affidavit evidence of the Applicant and the 1st, 2nd and 4th Defendants/Respondent it clearly shows that whilst Applicant is laying claim to title of the subject matter of this suit as well as for injunction for trespass, which is also a relief in the substantive suit. 1st/2nd and 4th Defendants/Respondents also lay claim to the subject matter via a development lease agreement.

To assist the court in the determination of the grant or otherwise of this instant application, recourse was made to having a quick perusal of the statement of claim of claimant and the Statement of Defence of the 1st, 2nd and 4th Defendant, which clearly reveals that the parties are laying claim to the property subject matter in dispute. Claimant/Applicant also seek redress for trespass. It is trite that the court cannot make a pronouncement on such a claim as it has been enjoined not to determine issues for the substantive suit at the interlocutory stage of trial. See C.G.C Nigeria Ltd VsAlh. Hassan Baba (2005) All FWLR (PT.515) @ 530 – 531. Granted that an Order of injunction can be granted in the protection of legal rights, in the instant case, the Applicant and the 1st, 2nd and 4th Respondents are laying claims to the property, subject matter of this suit.

From all of these, it would seem to me that the Order of injunction would not be appropriate in the circumstance moreso as the Applicant appears to be raising the issues for determination at the trial on the substantial Suit, if done would be tantamount to deciding the issues before trial. See G.G.C. Nigeria Ltd VsAlhaji Hassan Buba (Supra).

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 relief sought, Order that the parties maintain status quo 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 hearing and determination of the substantive suit and press for accelerated hearing of the case.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

29/9/2022

VICTOR GIWAESQ FOR THE CLAIMANT/APPLICANT.

OLUWABUNMIADEBIYIESQ FOR 1ST, 2ND AND 4TH DEFENDANTS/
RESPONDENTS.

L.I. MUSA ESQ WITH ABDULLAHI M. SANNIESQ FOR THE 5TH DEFENDANT/
RESPONDENT.

NO APPEARANCE FOR THE 3RD DEFENDANT/RESPONDENT