

**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 & ORS

COURT NO: 6

**SUIT NO: FCT/HC/CV/253/20
MOTION NO: M/9639/2020**

BETWEEN:

**DECISION SOFTWARE RESEARCH CENTER LTD.....CLAIMANT
VS**

1. BILKISU MUSA

2. HON. MINISTER OF THE FCT.....DEFENDANTS

RULING

By a Motion on Notice dated 9/11/2020 but filed on 11/9/2020, with Motion No. M/9639/2020 brought pursuant to Order 43 Rule 1 of the High Court of Abuja (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant herein prays for the following Orders;

- (1) An Order of Interlocutory Injunction restraining the 2nd Defendant from signing any Certificate of Occupancy in favour of the 1st Defendant over Plot No.3600 situate in Maitama Abuja that will incorporate the entrance/easement to Plot No.3601 situate in Maitama belonging to the Claimant.
- (2) And the Omnibus relief.

In support of this application is an 18 Paragraph affidavit deposed to by Dr. Mathew Idoni Managing Director/CEO of the Claimant/Applicant, with three (3) annexures marked as Exhibit "A" "B" and "C". Also filed in compliance with the Rules is a Written Address and adopts same as oral submission in urging the court to grant the reliefs.

Upon receipt of the processes, the 2nd Defendant/Respondent with leave of court filed a 5 Paragraph Counter-Affidavit deposed to by one Sunday Ojumu Esq. Counsel in the Law Firm of 2nd Defendant/Respondent's Counsel; on 17/11/2021 and deemed filed and served on 9/8/2022 in opposition to the grant of the application.

The processes were also served on the 1st Defendant/Respondent by substituted means to wit; by pasting on the gate of Plot No. 3600 situate in Maitama – Abuja pursuant to Order of Court made on 4/11/2020. Despite service, the 1st Defendant/Respondent failed to react to the processes. The implication of this is that the application before court stands unchallenged and uncontroverted by the 1st Defendant/Respondent. 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”

In the Written Address of the Applicant B.O. Nafagha Esq. of Counsel formulated a sole issue for determination that is;

“Whether the Claimant/Applicant has made out a case for the grant of Interlocutory Injunction against the Defendants pending the determination of the substantive suit”

In summary, the submission of Claimant/Applicant's Counsel is that Applicant have satisfied the conditions for the grant of this application as laid down in the case of Gambari Vs Buhari (2009) All FWLR (PT. 479) 458 @ 519 – 520 Para H – E, Obeya Memorial Specialist Hospital Vs A-G of Federation (1987) 3 NWLR (PT. 60) 325 and Kotoye Vs CBN (1989) All NLR 76.

Submit that there is a subsisting suit where the court has been approached to determine the legal right of the Applicant to the property subject matter of suit as well as the serious issues to be tried in the suit.

Submit further that the Applicant has brought this application timorously and is not guilty of delay. Submits further that Applicant has shown that the balance of convenience enures in the favour of Applicant and if the 2nd Defendant is not restrained he will issue a Certificate of Occupancy to the 1st Defendant, incorporating the access road of the Clamant and damages can never be adequate compensation to the Claimant.

Referring to Paragraph 16 of the Affidavit in support of this application, submits that Applicant has giving an undertaking to pay damages to the Defendants in the event of the wrongful exercise of the court's discretion in granting injunction.

Finally urge court to grant the prayers sought by the Applicant.

2nd Defendant/Respondent did not file an Address along with their Counter-Affidavit.

Having carefully considered the submission of Counsel, the affidavit evidence, the attached Exhibits 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 have placed before the court sufficient material facts for the grant or otherwise of the relief sought”

The grant of an Order of Interlocutory Injunction is an equitable remedy granted by the court before the substantive issue in the case, is finally determined. Its object 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, which must be done judicially and judiciously. This discretion must be 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 place or disclose all the material facts.

On the nature of the grant of an Injunction, the court in the case of Mohammed Vs Umar (2009) All FWLR (PT. 267) 1510 @ 1523 – 1524 Para H – D stated;

“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 the discretion, the court is guided by the principles stated in a Plethora of judicial authorities. In Akinpelu Vs Adegboro (2008)

All FWLR (PT. 429) 413 @ 420 Ratio 7, also Kotoye Vs CBN (1989) 1 NWLR (PT. 98) 149, court stated as follows;

- (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 shall suffer irreparable damages if the Order of Interlocutory Injunction is not granted pending the determination of the main suit.

The court have also held that an application for Injunction will be granted in support of a legal right. See Gambari Vs Bukola (2003) All FWLR (PT. 158) 1198 @ 1208 Para G.

The question that would of necessity come to mind at this stage for determination is whether the Applicant has satisfied these conditions mentioned above for consideration of the grant of this application.

In this instant application, by Paragraphs 3,4,5,6,7,8,9,10,11,12,13,14,15,16 and 17 of the supporting affidavit and attached Exhibits are facts relied on by the Applicant in urging the court to grant the relief sought. On the other hand, the 2nd Respondent by the Paragraphs 3 (a) (b) (c) (d) (e) (f) and (g) of the Counter-Affidavit dated 17/11/2021 are facts contended by them that their claim to easement to Plot 3600 and 3601 vide the purported access road is illegal and unauthorized, in urging the court to refuse and dismiss this application.

I have carefully considered all the depositions and the attached Exhibits and I find that the contention of both parties in the main is whether or not the Applicant has a lawful claim to entrance/easement to the Plot No. 3601 situate in Maitama amongst others. It is my humble view that what this court should concern itself on, is whether there is exposition of facts that meet the laid down principles set out over the years by the court in consideration of an application of this nature.

The objection as it were to the grant of this application by the Respondent is hinged on the illegal act of the Applicant as they contend that the easement to Plots 3600 and 3601 vide access road was not authorized by the Development Control Department of the Federal Capital Development Authority. It is my firm view that it is not for this court to determine the property or otherwise of the lawfulness or otherwise of the claim of the Applicant to the easement right to the said Plot. I shall hold that in view of the affidavit and Exhibit "A" "B" "C", as placed by the Applicant in showing Legal Right's worthy to be protected by this court. I find these as good and proper for the Applicant, I also find that the other principles have also been satisfied. The issues raised in the Counter-Affidavit of the Respondent as contended are in my view are matters for trial.

In conclusion this application has merit, Applicant having fulfilled the conditions set out for the grant of this application in their affidavit and Exhibits attached. Accordingly, this application succeeds. It is hereby ordered as follows;

- (1) An Order of Interlocutory Injunction restraining the 2nd Defendant from signing any Certificate of Occupancy in favour of the

1stDefendant over Plot 3600 situate in Maitama – Abuja that will incorporate the entrance/easement to Plot 3601 situate in Maitama belonging to the Claimant.

Signed

HON. JUSTICE O.C. AGBAZA

Presiding Judge.

18/10/2022

A. I. AMUPITAN ESQ. FOR THE CLAIMANT/APPLICANT

SUNDAY OJUMU ESQ. FOR THE 2ND DEFENDANT/RESPONDENT

NO APPEARANCE FOR THE 1ST DEFENDANT/RESPONDENT