

**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, GODSPOWEREBAHOR&ORS

COURT NO: 6

SUIT NO: FCT/HC/CV/3414/2021

MOTION NO: M/1200/2022

BETWEEN:

G & D REALTORS LIMITED.....CLAIMANT/RESPONDENT

VS

EHIDION NIGERIA LTD.....DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated 01/01/2022 and filed same day, with Motion Number M/1200/2022, brought pursuant to Order 43 And under the inherent jurisdiction of this Honourable Court, Defendant/Applicant prays the court the following reliefs;

- (1) **AN ORDER OF THIS HONOURABLE COURT** nullifying all the steps and/or actions taken by the Claimant/Respondent by itself, agents servants, privies or any other person however so described in revoking the Provisional Offer Letters issued in respect of the properties of 4 Bedroom Terrace Duplex in Terrace C1 also known as (The Corner Piece) and the 3 Bedroom Terrace Duplex (Terrace A5) respectively situate and being at Hebron Homes, Plot 27, Cadastral Zone C09,

Lokogoma, Abuja FCT pending the hearing and determination of this suit.

(2) **AN INTERLOCUTORY ORDER OF INJUNCTION** restraining the Claimant/Respondent by itself, agents, servants, privies or any other person however so described from disposing off, selling and/or allocating the 4 Bedroom Terrace Duplex in Terrace C1 also known as (The Corner Piece) and the 3 Bedroom Terrace Duplex (Terrace AS) respectively situate and being at Hebron Homes.

(3) And the Omnibus reliefs.

In support of the Motion is a 20 Paragraph affidavit with 10 annexures marked Exhibit "A" "B" "C" "D" "E" "F" "G" "H" "I" "J", deposed to by Dennis Odion, Managing Director of the Defendant/Applicant. Also filed a Written Address and adopts same as oral argument in urging the court to grant the application.

Responding, Claimant/Respondent filed an 8 Paragraph Counter-Affidavit with 3 annexures marked as Exhibit "G1" "G2" and "G3" deposed to by JideucheEzi a Legal Practitioner in the Law Firm of Claimant/Respondent's Counsel. Also filed a Written Address and adopts same as oral submission in urging the court to refuse.

In the Written Address settled by D.OAdemola Esq. for Applicant, a sole issue was formulated for determination that is;

“Whether this Honourable Court should grant the relief sought in the circumstances of the facts of the case”

And submits that the grant or refusal of this application is at the discretion of court, guided by certain principles. Refer to Incorporated Trustees of Nigeria Association of General Practice Pharmacist Employers Vs Pharmacist Council of Nigeria (2012) 2 NWLR (PT. 1284) 280 Paras G – H, Kotoye Vs Central Bank of Nigeria (1989) 1 NWLR (PT. 98) 419 T & E (NIG) LTD Vs Integrity Concept (2012) 2NWLR (PT. 1282) 135 Paras C – D and Order 43 of the Rules of Court.

Submits that by their affidavit in support of the application, Applicant have stated that unless the Respondent is not restrained pending the hearing and determination of the Suit, the Res of the Suit will be destroyed by the Respondent and Applicant have satisfied the conditions for the grant of Injunction. Refer to Vaswani Trading Co. Vs Savalaku & Co. (1972) 1 ANLR @ 487, A – G Anambra Vs Okafor (1992) 2 NWLR (PT. 224) 396 @ 427 ACB Vs Awogboro (1991) 2 NWLR (PT. 176) @ 711 – 719 and Interbau Construction Ltd Vs Ike (1993) 7 NWLR (PT. 304) 151. Urge Court to grant the reliefs sought by the Applicant.

In the Written Address of Respondent, Oluwole Ilori Esq. of Counsel formulated two (2) issues for determination which is;

- (i) Whether the Honourable Court can entertain the Defendant/Applicant’s application which is on the different subject matter of this suit filed by the Claimant/Respondent.

- (ii) Whether this Honourable Court can grant the reliefs sought by the Defendant/Applicant on the Interlocutory application. Parties having filed their respective pleadings which will be in breach of the constitutional right fair hearing of the Claimant/Respondent.

And on Issue one, submits that parties are bound by their respective pleadings and cannot go outside their pleadings to introduce a new subject matter. Refer to Odom & Ors Vs PDP & Ors (2015) LPELR – 24351 (SC), Mrs. Vidah E. Ohochukwu Vs Attorney General Rivers State & AMP 2 Ors (2012) 2 SC (PT. 11) 103, Mr. David 1 Karinga Stowe and Anor Vs Godswill T. Benstone & Anor (2012) 1 SC (PT. 11) 86 and Ajikanle Vs Yusuf (2008) 2 NWLR (PT. 1071) 301 @ 339 Paras E – G. That this Suit has nothing whatsoever to do with 3 Bedroom Terrace Duplex Terrace A5, which Defendant/Applicant wants to smuggle into this Suit and court cannot entertain or grant a relief on a subject matter that is different from the Suit. Refer to Ajakaiye Vs Idehai (1994) 8 NWLR (PT. 364) 504 @ 526 Para D, Obioma Vs Olomu (1978) 3 SC 1 and Elumeze Vs Elumeze (1969) 1 All NLR 311. Urge Court to resolve this issue in favour of the Respondent.

On issue two, submits that court must take all precautions not to determine a substantive matter at an Interlocutory application stage. Refer to NNPC Vs FAMFA Oil Ltd (2009) 1 NWLR (PT. 1156) 435 SC 496 – 497 Paras G – B and A – G Anambra State Okafor (1992) 2 NWLR (PT. 224) 396 and granting this application would be contrary to this principles of law, parties having joined issues in their respective pleadings. Refer to Section 36 of 1999 Constitution.

Finally urge court to dismiss the application with cost of ₦200,000.00 in favour of Claimant/Respondent.

Having carefully considered the affidavit evidence, the submission of Counsel. The annexed Exhibits as well as the Judicial Authorities cited the court finds that in this application only one (1) issue calls for determination and that is;

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

The grant or otherwise 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 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 a positions 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. See the case of *AnachebeVsIjeoma* (2014) 14 NWLR (PT. 1426) 168 @ 185 Para D – F. This discretion must exercise in relation to the facts and circumstances of the case before the court hence to be entitled to the reliefs; the Applicant must 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 hard law and facts”

In the exercise of that discretion, the court is guided by certain guidelines set out in Plethora of Judicial authorities. In *AkinpeluVsAdegbore* (2008) All FWLR (PT. 429) 413 @ 420 the 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 has 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 *Owerri Municipal Council VsOnuoha* (2010) All FWLR (PT. 538) 896 @ 898.

The question that would necessarily come to mind at this stage for determination is;Whether the Applicant has satisfied the conditions mentioned above for consideration in the grant of an application of this nature.On a careful perusal of the affidavit evidence of the Applicant and in particular Paragraphs 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19 and the Exhibits “B” “C” “D” “F” “G” “H” “I” “J” shows Applicant has satisfied the conditions stated above. Claimant/Respondent, however, by their Paragraph 4(i – xvii) have established that there is indeed serious issues to

be tried at the substantive case which the court cannot determine at this Interlocutory application. And granted that the Applicant seeks a relief on another property which does not form the subject matter of the Suit set up by the Claimant, cannot preclude the court from hearing and determining the reliefs of the Applicant which constitute the subject matter of this suit. Furthermore the fact that both parties have joined issues in their pleadings cannot stop the court from protecting the Applicant while the case is pending determination, having in my view satisfied the conditions for the grant of an Order of Interlocutory Injunction.

In conclusion and having considered this instant application in line with the position of the law, it is the finding of the court that this application has merit and should be allowed for the preservation of the Res. Accordingly this application succeeds and it is hereby Ordered as follows;

- (1) An Order of this Honourable Court nullifying all the steps and/or actions taken by the Claimant/Respondent by itself, agents, servants privies or any other person however so described in revoking the Provisional Offer Letter issued in respect of the property of 4 Bedroom Terrace Duplex in Terrace C1 also known as (The Corner Piece) situate at being at Hebron Homes Plot 27 Cadastral Zone C09, Lokogoma, Abuja FCT pending the hearing and determination of this Suit.
- (2) An Order of Interlocutory restraining the Claimant/Respondent by itself, agents, servants, privies on any other person however so described from disposing off, selling and/or allocating the 4

Bedroom Terrace Duplex in Terrace C1 also known as (The Corner Piece) situate and being at Hebron Homes Plot 27 Cadastral Zone C09 Lokogoma Abuja FCT.

The court has refrained from making pronouncement on the relief of the 3 Bedroom Terrace Duplex (Terrace A5) as claimed by the Applicant as it neither forms part of the Claimant's/Respondent's Suit nor Defendant/Applicant's Counter-Claim which is the record of this court.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge
24/11/2022

APPEARANCE:

D.O. ADEMOLA ESQ. FOR THE DEFENDANT/APPLICANT

OLUWOLEILORI ESQ. FOR CLAIMANT/RESPONDENT