

**MIN 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/760/2019

MOTION: M/303/2021

BETWEEN:

MASTRO COMMENCE LIMITED.....CLAIMANT

VS

1. NICHOLAS YAHAYA UGBANE

2. SIMNIC NIGERIA LIMITED

3. DR. HENRY OKECHUKWU.....DEFENDANTS

RULING

By a Motion on Notice dated 3/11/2021 and filed same day, with Motion number M/303/2021, brought pursuant to Section 6 (6) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and under the High Court of FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court, the 3rd Defendant/Applicant prays the court the following reliefs;

- (1) An Order of this Honourable Court directing the Claimant/Respondent to produce the Certificate of Occupancy of Plot No. 622 File No. KG 12134, measuring 875.90 sqm in Cadastral Zone AO4, Asokoro, FCT, Abuja of the property situate at No. 20 Gnassingbe Eyademe Street Asokoro, Abuja to be kept in

the custody of the court pending the determination of the substantive suit.

(2) And the Omnibus relief.

The Motion is supported by an 8 Paragraph affidavit sworn to by one Ameh Joseph, a Litigation Secretary in the law firm of Applicant's Counsel. Also filed a Written Address and adopts same as oral submission in urging the court to grant the reliefs.

The processes were served on the respective Respondents in this application. And in reacting Claimant/Respondent filed through her Counsel a 12 Paragraph Counter-Affidavit on 7/3/2021 sworn to by one Ndidi Ejimadu a Litigation Clerk in the law firm of Claimant/Respondent's Counsel. Also filed a Written Address and adopts same as oral argument in urging the court to refuse the application.

1st Defendant/Respondent did not file his response but informed the court through his counsel that they are not opposed to the application and prays the court to discountenance the Counter-Affidavit of the Claimant/Respondent.

Similarly, 2nd Defendant/Respondent did not file her response to the Motion and aligns with the submission of 1st Defendant/Respondent's Counsel, also urge court to grant the prayer of the Applicant.

In the Written Address of Applicant, Applicant's Counsel formulated a sole issue for determination, that is;

“Whether the 3rd Defendant/Applicant is not entitled to the grant of this application in the spirit of fair hearing equity, good conscience and in the interest of justice?

And submits that it is just and equitable that the certificate subject matter of the application be produced in court for safe keeping pending the determination of the substantive suit and for onward transmission to whichever party the court may so direct. Refer to *Newswatch Communications Ltd Vs Alhaji Aliyu Ibrahim Atta* (SC/101/2001) (2006) NGSC 117 (28 April 2006)

Submits further that an atmosphere for fair hearing will not be created if this application is not granted. And fair hearing leads to a fair trial. Refer to *Onyekwuluje Vs Animashaun* (1996) 3 NWLR (PT.439) 637 and *Newswatch Communications Ltd Vs Alhaji Aliyu Ibrahim Atta* (Supra) and Section 36 (1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

In the same vein, Claimant/Respondent Counsel formulated a sole issue for determination that is;

“Whether in the light of the materials before this court and in all circumstances of this case, the 3rd Defendant is entitled to the relief sought”

And submits that Applicant has placed nothing before this court to warrant the exercise of its discretion in favour of the Applicant and grant the relief of the Applicant. Refer to *Ebe Vs Commissioner of Police* (2008) ALL FWLR (PT.406) 1840 @ 1858 Paras B – C (SC); *Coker Vs Olaiya* (2011) LPELR – 3991 CA,

Saffieddine Vs Commissioner of Police (1965) 1 ALL NLR 54 @ 56 and Ugboma Vs Olige (1971) 1 ALL NLR 8.

Submits finally that the grant of this application will be prejudicial to the Claimant as it amount to a determination of the main suit at the Interlocutory stage, therefore urge court to dismiss this application.

Having given an insightful consideration to the affidavit evidence of the parties, the submission of counsel as well as the judicial authorities cited, the court finds only one (1) issue call for determination, that is;

“Whether the Applicant has placed sufficient facts before the court to warrant the grant of the reliefs sought by the Applicant”

The grant of an application of this nature is at the discretion of the court and in a Plethora of authorities, the court have enunciated principles that may guide the court in the exercise of its discretion in *Osuji Vs Ekeocha* (209) ALL FWLR (PT. 490) 614 @ 647 Paras C – E, the Supreme Court stated that;

“For a judicial discretion to be exercised judicially and judiciously, it is not exercisable on a mere segment of the person doing so, but upon facts and circumstance necessary for the proper exercise of that discretion where a court grants a relief in the exercise of its inherent powers, it can only grant a relief which in the circumstance of the case that party is entitled to”

See also the case of *George Vs Dominion Flour Mills Ltd* (1963) 1 SCNLR 117.

Thus an Applicant seeking the court to exercise its discretion in his favour must place cogent facts before the court for his relief to succeed. And to

effectively determine whether the Applicant has placed cogent fact before this court for the application to succeed the court must take a well-considered look not only at the affidavit in support of the Motion, the Counter-Affidavit of the 3rd Defendant/Respondent, but also its record and this the court is empowered to do. See the case of Agbarah Vs Mimra (2008) ALL FWLR (PT.409) 559.

I have taken a look at the Amended Statement of Claim of the Claimant/Respondent, the Amended Statement of Defence of the 3rd Defendant/Applicant as well as the Paragraphs 6, 7, 8 of the 3rd Defendant/Applicant, I find that there is nothing suggesting that the certificate subject matter of this application is in imminent danger to warrant that the Claimant produce it in court for safe keeping. Furthermore parties have already joined issues in the matter pertaining to the ownership or otherwise of the property, therefore the court is of the view that the rights or otherwise of the parties to the property be left for determination at the substantive suit.

From all of these, the court is of the firm view that having failed to place sufficient facts which could warrant the grant of the relief sought by the 3rd Defendant/Applicant, this court therefore hold that this application lacks merit and is accordingly refused.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge
1/12/2022

APPEARANCE:

HANNATU BAHAGO ESQ WITH NKIRU ARINZE (MRS) AND ONYEKA MAMAH ESQ - FOR THE CLAIMANT/RESPONDENT

P.O. OKOLO (SAN) WITH P.E. OSSAI (MRS); M. IBEKWE ESQ ESQ FOR THE 1ST DEFENDANT/RESPONDENT

I.I. DAMISU ESQ WITH C.C. AMAEFULA (MRS) - FOR THE 2ND DEFENDANT/RESPONDENT

E. O. OHUCHIEYO ESQ WITH S.O. OMEDE ESQ - FOR THE 3RD DEFENDANT/APPLICANT