

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/2713/2020**

**MOTON NUMBER: MOTION NO.FCT/HC/10034/2020**

**DATE: 15/11/2022**

**BETWEEN:**

- 1. BUILT VENTURES LTD**
- 2. MOSMARX NIG. LTD**



**APPLICANTS**

**AND**

**MR. AKINTAYO ADARALEGBE .....DEFENDANT**

**APPEARANCE:**

Florence .F. AremuEsq and D. D. Doo-or Esq for the Defendant.

**RULING**

By a Motion on Notice dated 18<sup>th</sup> day of September 2020 and filed on the 23<sup>rd</sup> day of September 2020. Brought pursuant to Order 43 of the High Court of FCT (Civil Procedure) Rules 2018 and under the inherent jurisdiction of the Honourable Court. The Applicant herein prayed this Honourable Court for the following reliefs:-

1. An Order of interlocutory injunction restraining the Defendant/Respondent, his agents, staff, servants, thugs and privies

from entering, trespassing or further trespassing into the Plaintiff's Plot CRD MF59 Lugbe 1 Layout, Abuja pending the determination of the substantive suit.

2. And for such further other order(s) as this Honourable Court may deem fit to make in the circumstances.

Filed in support of the Motion is an Affidavit of Twenty-one (21) paragraphs deposed to by one AmokaMomoh, the Managing Director of the 1<sup>st</sup> Plaintiff. Attached to the supporting Affidavit are annexure marked as Exhibit A, B, C, D, E and F respectively.

In-compliance with the Rules of Court, the Applicant filed a written address in support dated the 18<sup>th</sup> day of September, 2020.

In the said written address, the learned Counsel to the Applicant submitted that it is trite that for an Applicant to succeed on this type of Application, the law requires him to meet certain conditions. Counsel cited the cases of **OBEYA MEMORIAL SPECIALIST HOSPITAL VS A. G. FEDERATION & ANOR (1987) 2 NSCC, (VOL 18) AT 961; SARAHI VS KOTOYE (1990)2 NSCC (VOL 21) 36; FADIWA VS VEEPEE IND LTD & 3 ORS (2001) 2 NWLR (PT. 698) PG 518 AT 519 AND STALLION (NIG) LTD & 20 ORS VS EFCC & 2 ORS (2008) 7 NWLR (PT. 1087) AT 461.**

Counsel further referred the Court to paragraphs 2 to 12 of the supporting Affidavit and the Exhibits attached thereto and submitted that the Plaintiffs/Applicants will loose more if the Application is not granted and later succeeds at last.

In his further submissions, Counsel stated that it is an old age principle of law that balance of convenience is always in favour of the party in possession of the res in an Application for interlocutory injunction. Counsel referred the Court to paragraphs 4-9 of the supporting Affidavit and contended that since the allocation of the said Plot to the Applicant in 2002, the Applicant have always been in effective possession of the said

Plot of land carrying on meaningful development. In support of this, Counsel referred the Court to the case of **OKURUKE & ORS V. ABEKEBU NICODEMUS & 4 ORS (200) 4 NWLR (PT. 654) 662.**

In another submission, Counsel stated that if this Application is not granted and the defendants continue in their recklessness and the Applicant succeeds at last, a fait accompli would have been foisted on the Court as what is sought to be protected by the timely institution of this action would be in vain.

Reliance was placed on the cases of **SHUAIBU VS MUAZU (2007) 7 NWLR PARTS 1033 at 271 TO 280 RATIO 6; OKUREKE & 3 ORS VS ABIEBU MICODEMUS & 4 ORS (2000) 4 NWLR (PT. 654) PG 662 AT 663 RATIO 2.**

Moreso, counsel stated that the writ of Summons, statement of Claim, all the documents referred to in the statement of Claim, Affidavit in support of the Application, and the Exhibits attached thereto has disclosed the existence of legal right and triable issues in the substantive suit which is worthy of protection. In this respect, counsel cited the case of **SULU GAMBARI VS BUKOLA (2004) 1 NWLR PART 853 PAGE 122 at 125 RATIO 1.**

Finally counsel urged the Court to exercise its discretion in favour of the Claimant/Applicant by granting this Application as prayed.

On the other hand, in opposing the Application, the Defendant/Respondent filed a Counter Affidavit of Six (6) paragraphs deposed to by one Doose D. Doo-or, Esq a legal practitioner and Counsel in the law firm of Ephraim Chambers. Counsel to the Defendant/Respondent in this suit. Also filed in support of the Counter Affidavit is a written address dated the 26<sup>th</sup> day of September, 2022.

In the said written address, learned Counsel to the Defendant/Respondent formulated a lone issue for determination to wit:-

***"Whether the Claimants are entitled to an order of interlocutory injunction against the Defendant."***

In arguing the issue, learned Counsel submitted that it is important to raise anon the propriety or otherwise of the Claimant's Application vis-à-vis the facts of this present suit.

Therefore Counsel argued that deductible from the Affidavit in support of the present Application, the 2<sup>nd</sup> Claimant is the bonafide owner of CRD MF 59, Lugbe 1 Layout, Abuja having purchased same from the 1<sup>st</sup> Claimant vide transaction of 2018.

However, Counsel contended that it is doubtful if the 1<sup>st</sup> Claimant having sold the res to the 2<sup>nd</sup> Claimant could still be seen as a proper party to this suit. Counsel cited the case of **OBULA DIKE VS NGANWUCHI (2013) LPELR 21265 (CA)**.

To this extent, Counsel urged the Court to set aside the Affidavit deposited to by Amoka Momoh who is not the beneficial owner of CRD MF 89 as only the beneficial owner of property can sue or be sued in in that respect.

In his further submission, Counsel stated that an interlocutory injunction is intended to protect an applicant against an injury by violation of his right for which monetary compensation cannot assuage or remedy if the dispute is in his favour. In this respect Counsel referred the Court to the reliefs sought in the substantive suit before this Honourable Court wherein the sum of ₦250,000,000.00 (Two Hundred and Fifty Million Naira) only has been enumerated as an adequate compensation in damages for the Claimants. And urged the Court to refuse the Application. Reliance was placed on the cases of **OGBONAYA & 2 ORS VS ADAPALM NIGERIA LTD (1993) LPELR-2288(SC); JOHN HOLT NIGERIA LTD VS HOLTS AFRICAN WORKERS UNION (1963) 2 ALL NWLR 379**.

In addition, counsel contended that interlocutory injunctions are granted in cases of extreme urgency as no fresh act of trespass since the institution of this suit in 2020 has been alleged by the Claimants to substantiate any

urgency. Counsel cited the case of **AJEWOLE VS ADETIMO (1996) 2 NWLR (PT. 431) 391 at 405 Per Onu JSC.**

Counsel further submitted that the Claimant's present motion on Notice is grossly qualified to be termed, and indeed constitutes an abuse of Court process. To this extend, Counsel cited the cases of **EDET VS STATE (1988) 45 NWLR (PT. 91) 722, AFRICAN INSURANCE CORP VS J. D. P CONSTRUCTION NIG. LTD (2003) 2-3 SC 47; TIMOTHY ADEFULA VS SECRETARY IKENNA LOCAL GOVERNMENT AREA & 2 ORS (2002) WRN 68; IBOK VS HONESTY II (2007) 6 NWLR (PT. 1029) 55 AT 70.**

Finally counsel urged the Court to resolve the sole issue formulated against the Claimant's and refuse the prayers sought in the Motion on Notice and dismiss the Application for being an abuse of court process with a cost.

I have carefully perused the motion on Notice, the reliefs sought, the supporting affidavit, the annexures attached therewith and the written address in support of the Motion. I have equally perused the Counter Affidavit in opposition to the motion and the written address filed alongside the Counter Affidavit.

Therefore, it is my humble view that the issue for determination is whether the Claimant/Applicant has made out a case for the grant of this Application.

It is important to note at the onset that grant and/or refusal of an application of this nature is entirely at the discretion of the Court which of course must be exercised judicially and judiciously. The position was reinstated in the case of **UMA & ORS VS EFFIOM & ORS (2013) LPELR-21407 (CA)** where the Court held thus.

***"There is no doubt that the issuance of orders of interlocutory matters is purely at the discretion of a court, but such discretion should be exercised judicially and judiciously."***

The court is guided on the principle to be considered in granting or refusing an Application for interlocutory injunction. These principles were clearly spelt in the case of **SOLID UNIT NIG. LTD & 2 ORS VS. GEOTES NIG. LTD (2013)LPELR-20724 (CA) PER JUMMAI HANNATU SANKEY JCA** at pages 42-46, paras A-A where the Court held thus:-

*"The principles for the grant of an interlocutory injunction have been well settled and restated in decisions of the highest Court of our land time and again enough to make them now a matter of judicial recognition. An interlocutory injunction is procedurally between an interim injunction and a perpetual injunction and it is granted pending the determination of the case. The locus classicus is KOATOYE VS CENTRAL BANK OF NIGERIA (1989) 1 NWLR (PT. 98) 419. In that case, the Supreme Court held as follows (a) "That the Applicant must show that there is a serious question to be tried i.e that the Applicant has a real possibility, not a probability of success at the trial, notwithstanding the defendant's technical defence (if any), OBEYA MEMORIAL SPECIALIST HOSPITAL VS A. G. FEDERATION (1987) 3 NWLR (PT. 50) 325). (b) That the Applicant must show that the balance of convenience is on his side, is that more justice will result in granting the application than in refusing it; (IMI VS. BALOGUN (1958) 1 ALL NWLR 318 referred to. (c) That the Applicant must show that damages cannot be adequate compensation for his damages or injury, if he succeeds at the end of the day. (d) That the applicant must show that his conduct is not reprehensible for example that he is not guilty of any delay. (e) No order for an interlocutory injunction should be made on notice unless the applicant gives a satisfactory undertaking as to damages save in recognized exceptions. (f) Where a Court of first instance fails to extract*

***an undertaking as to damages, an appellate Court ought normally to discharge the order of injunction on appeal."***

Similarly, it was held in the case of **INSPECTOR GENERAL OF POLICE & ORS VS DR. AYODELE PETER FAYOSE (GOVERNOR OF EKITI STATE) & ORS (2007) LPELR-12870 (CA) PP 18-19 PARAS E-THAT** ***"perhaps, the most important consideration that will weigh on the mind of the court towards taking a decision whether to grant or refuse to grant an application for interlocutory injunction is the balance of convenience of the parties from the Affidavit evidence placed before it."***

To this end, It should be noted that an interlocutory injunction is basically aimed at maintaining the status quo pending the determination of the issue submitted for adjudication by the Court. It is an equitable jurisdiction which the Court is called upon to exercise in the light of the facts presented before it by the applicant. The Applicant must present convincing facts before the court to enable it exercise its equitable jurisdiction. On this premise, I refer to the case of **ALHAJI. A. AHAMADU VS ATTORNEY GENERAL RIVERS STATE & ORS (1996) LPELR-14004 (CA) PP 19-20, PARAS A PER KATSINA ALU JCA.** Where it was held thus:-

***"The reason is obvious, the object or purpose of the injunction is to maintain status quo pending the determination on the merit."***

Before I conclude, let me point out that the Defendants/Respondent's counsel urged the Court to set aside the Affidavit deposed to by Amaka Momoh on the grounds among other things that the 1<sup>st</sup> Claimant is not a proper party in this suit. It should be reinstated that it is trite law that anybody can depose to an Affidavit on a matter as long as it complies with the rules of evidence Act, on this I refer to the case of **JIMOH VS HON. MINISTER OF FCT. 2018 LPELR-46329 SC. PAGE.10-12 PARAS A-A.** Per Eko JSC. Where it was held thus:-

***"A Deponent of an Affidavit in any proceeding before a Court of law is a witness in the matter. Section 115 (1) of the Evidence Act, 2011 enjoins the deponent as a witness, to depose to facts in an Affidavit that either of his own personal knowledge or from information which he believe to be true....."***

In the light of the fore going, I cannot fault nor set aside the affidavit deposed to by Amaka Momoh. I so hold.

Consequently, I equally do not see how this present Application is an abuse of Court process as submitted by the Defendant/Respondent Counsel. To that extent, I hereby distance myself with that submission. I will say nothing more on that.

In the circumstances therefore, I hereby resolve the issue for determination in favour of the Claimants/Applicants against the Defendants/Respondents and hold that the Claimants/Applicants have made out a case for the grant of this Application.

To that extent and without further ado, this Application is hereby granted as prayed. I equally order for the accelerated hearing of the substantive suit in the interest of justice. No order as to cost.

***Signed:***

***Hon. Justice S. U. Bature  
15/11/2022.***