

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON TUESDAY, 7TH DAY OF FEBRUARY, 2023

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/CV/1811/2020

MOTION NO. M/2383/2022

BETWEEN

1. BUNMI AJULO 2. AJULO JAB NIG. LTD. 3. ABIYEM DIVA INTERNATIONAL LTD.	}	CLAIMANTS APPLICANTS
--	---	---------------------------------

AND

1. DE-REAL PEOPLE FINANCE LTD. 2. VASALVA VENTURES LTD. 3. IKENNA IGBODIKA 4. BOLAJI FARIDAT REMILEKUN	}	DEFENDANTS/ RESPONDENTS
---	---	------------------------------------

RULING

The claimants/applicants instituted this suit on 11/6/2020 by writ of summons. On the same date, they filed a motion *ex parte* No. M/7535/2020 for interim orders and motion on notice No. M/7536/2020 for interlocutory orders. On 1/7/2020, the Court heard the *ex parte* application and made these orders:

1. *The parties to this Suit especially the 1st claimant and the 1st & 3rd defendants shall maintain status quo as at today [1/7/2020] in respect of the 1st claimant's:*

i. Duplex and BQ known as Block D14, Flat 4, Zone 5, Athletic Street, Game Village, Abuja; and

ii. Bunch of Gold jewellery

both of which were used as security or collateral for the Contract of Loan/Finance facility in letters of offer of credit facilities dated 9/8/2016 and 2/11/2016 pending the hearing and determination of the motion on notice.

This Ruling is on the claimants/applicants' Motion No. M/2383/2022 filed on 9/2/2022 for the following orders:

1. An order of mandatory injunction compelling the defendants/respondents to restore the property referred to as: Duplex and BQ situate at Block D14, Flat 4, Zone 5, Athletic Street, Games Village, Abuja to *status quo* as at 1st July 2020 in obedience to the Order of Interim Injunction duly served on them, the defendants/respondents having vandalized and taken over possession of the said property in contravention

and in defiance to the Order of Injunction of this Honourable Court and during the pendency of the Motion on Notice for injunctive reliefs with Motion Number M/7536/2020 duly served on the defendants/respondents.

2. An order of this Honourable Court further restraining the defendants/respondents, especially the 1st, 2nd and 3rd defendants, their agents, privies or anyone deriving authority from them from further trespassing, taking over, selling, renovating, destroying, demolishing or dealing in any proprietary manner and letting out or of the property of the 1st claimant to wit: Duplex and BQ known at Block D14, Flat 4, Zone 5, Athletic Street, Games Village, Abuja used as one of the securities for the contract finance/loan facilities as specified in letters of offer of credit facilities dated 8th August and 2nd November, 2016, which actions of the defendants were/are in contravention of, disregard and contempt for the Order of Interim Injunction of this Honourable Court made on the 1st day of July, 2020 directing all parties to maintain *status quo* pending the hearing and determination of the Motion on Notice for Interlocutory Injunction.

OR IN THE ALTERNATIVE

3. An order of this Honourable Court directing the Chief Registrar of this Honourable Court to take over the management and control of the property situate and being at Block D14, Flat 4, Zone 5, Athletic Street, Games Village, Abuja and bunch of gold jewellery used as security for contract finance/loan facilities in letters of offer of credit facilities dated 9th August and 2nd November, 2016 pending the hearing and determination of the substantive suit.
4. And for such further order[s] as this Honourable Court may deem fit to make in the circumstances.

The 12 grounds of the application are set out on the face of the motion paper. In grounds 1-5 thereof, the applicants stated the facts of: [i] filing the suit on 11/6/2020 together with the motion *ex parte* and the motion on notice; [ii] the interim order made by the Court on 1/7/2020; and [iii] that the order was served on the defendants/respondents. Grounds 6-12 read:

6. The defendants/respondents, in contempt and utter disregard for this Honourable Court, went ahead to deal

with the property by vandalizing and destroying some parts of the property.

7. All these events took place during the subsistence of a valid order of this Court and in contempt and utter disregard for this Honourable Court.
8. The respondents went further to repartition, demolish, chase out the occupants of the premises and let out same to third parties during the pendency of the orders of this Honourable Court and the motion on notice for injunction.
9. The actions of the respondents are in defiance of the Court orders and an affront to the rule of law.
10. The jewellery of the 1st claimant/applicant which was used as collateral for loan is feared to have been sold or in the process of being sold.
11. The Honourable Court has powers to restore the *res* to the state it was as at the time the interim order was made.

12. This Court has power to order that a neutral and unbiased authority appointed by this Honourable Court maintain the property and take over possession of same.

The 1st applicant filed a 24-paragraph affidavit in support of the motion; attached therewith are Exhibits BA1, BA2, BA4 & BA5. Olajide Olaleye-Kumuyi Esq. filed a written address with the motion.

In opposition, the 3rd respondent deposed to a counter affidavit of 11 paragraphs on 25/2/2022 on behalf of himself and the 1st& 2nd respondents. Attached to the counter affidavit are Exhibits OLI A, B, C, D, G, H, I, J, K, L, M, N, O, P, Q1, Q2, R, S, T & U. Chief Oli Chukwudi Prince Esq. filed a written address along with the counter affidavit.

On 9/5/2022, Chike Nwogbo, a lawyer in the law firm of Adegboyega Awomolo & Associates, filed a 14-paragraph further affidavit along with the reply on points of law filed by Chiamaka Nwaiwu Esq.

At the hearing of the motion on 10/11/2022, Eyitayo Fatogun, SAN adopted the applicants' processes while A. I. Malik Esq. adopted the 1st-3rd respondents' processes.

In the affidavit in support of the application, Bunmi Ajulo [the 1st applicant]deposed as follows:

- i. The Court made an interim order in the suit on 1/7/2020, which is attached as Exhibit BA1. The order was served on the defendants.
- ii. Having obtained an interim order of this Court, she thought her tenant in the house was safe and could not be harmed or bothered by the defendants pending the hearing and determination of the motion on notice.
- iii. On a certain day after the interim order was made, she was called frantically by her tenant saying that the 3rd defendant came to the property with some stern-looking persons and began vandalizing the property by removing the roofs, windows and doors of the property and broke some parts of the building while her tenant was away at work; and further evicted her tenant and his dependants from the building

- unlawfully. The photographs showing the destruction and vandalism done to the property are Exhibit BA5. All attempts made on site to stop the vandalism proved abortive.
- iv. Again on 23/4/2021, while the courts were on the Judiciary Staff Union of Nigeria [JUSUN] Industrial action, the 3rd defendant took some Policemen from the Force Headquartersto further completely destroy the property in question; all the while shouting the words: *“You cannot do anything! I will utterly destroy this house and nothing will happen”*.
- v. The 3rd defendant, after the service of the order of this Court, went ahead to complete a purported sale of the property to one Hajia Suwaiba Saad. Hajia Suwaiba Saad filed an action against her [1st applicant] in *Suit No. FCT/HC/BW/520/2020: Hajia Suwaiba Saad v. De-Real People Finance & 2 Ors.* claiming that she purchased the property from the 3rd defendant. The writ of summons and record of proceedings in that matter are Exhibits BA2 & BA4 respectively.

- vi. The defendants also instituted CV/875/2020: *De-Real People Finance Ltd. v. Tijani Sadoin* the Magistrate Court 18, Zone 2 despite the order of this Court for all parties to maintain *status quo*. In the matters mentioned above, the defendants intentionally hid the fact of the subsistence of the order of this Court to maintain *status quo*.
- vii. These acts of interference with her rights in the property carried out by the defendants were deliberate and done in contravention and disregard of the order of this Court with an aim to spite her and cause her pain. The action of the defendants in denying her access to the property has taken a toll on her health and family in general, because the property is her lifetime investment and because the defendants took laws into their hands and took over the property.
- viii. There has been “*back and forth on the possession of the property*” and at some point, the Police had to come in to maintain peace as violence was introduced by the defendants.

- ix. The defendants/respondents, after service of the interim order of this Honourable Court, have continued to deal with the property using the protection of unauthorized persons.
- x. Herjewellery is still in the possession of the defendants and is at risk of being sold.
- xi. It will be tidy that a neutral and unbiased authority appointed by this Court maintain the said property and take over possession of same. If the Chief Registrar of this Court takes over possession and management of the said property, both parties can litigate this suit actively and conclude same timeously.
- xii. It will be fair that none of the parties is allowed access to the said property to dissipate same pending the hearing and determination of the suit.
- xiii. The damage done to her and her property cannot be estimated and compensated by damages and will only be assuaged by the grant of this application.
- xiv. The applicants undertake to pay costs where this application is found to be frivolous. The grant of this

application will neither prejudice nor embarrass the respondents.

In his counter affidavit, the 3rd defendant/respondent stated that:

- i. An offer letter of 9/8/2016 granted to the 1st claimant by the 1st defendant is for the loan sum of N40,000,000 and another loan sum of N1,350,000 granted to the 1st claimant by the 1st defendant on the same date. The total sum of N41,350,000 was disbursed into the 1st claimant's 3 account nos. 01-040300673-0, 01-040300673-1 and 01-040300673-2 as stated in paragraph 4[b] of the counter affidavit; her account statements are attached as Exhibits OLI A, B, & C.
- ii. The said loan sums were duly secured with the 4-bedroom Duplex property at Block D14, Flat 4, Athletic Street, Games Village, Abuja.
- iii. Another offer letter of 2/11/2016 granted to the 1st claimant by the 1st defendant is for the loan sum of N30,000,000, which was secured with some bunch of gold, in addition to the said Duplex. The sum of N25,005,000 was disbursed to the 1st claimant on 2/11/2016 and she signed an

- acknowledgment of cash receipt [Exhibit OLI D].The sum of N4,995,000 was disbursed to 1st claimant on 3/11/2016 through the account of the 2nd claimant in First Bank Plc.
- iv. When the loan sums became due, the 1st claimant called for the bunch of gold deposited with the 1st defendant; and on 27/1/2017, she sold them to one B. O. Ahbit Int'l Ltd. at Wuse Market, Abuja in company of a former staff of the 1st defendant at the cost of N26,500,000.
- v. The proceeds of the gold sale were paid into his [i.e. the 3rd respondent] GTB account in 4 instalments of N3,634,000, N10,000,000, N4,865,100 and N8,000,000.
- vi. In October 2017, when the loan debt was still outstanding, the 1st claimant transferred title of the said Duplex property at Games Village, Abuja to the 1st defendant via an Irrevocable Power of Attorney at the cost of N55,000,000 for the purpose of offsetting part of the accumulated loan balance. A copy of the Irrevocable Power of Attorney is Exhibit OLIG.

- vii. The 1st claimant communicated this absolute transfer of title to him and one of her consortium of counsel, Kingsley Alilionwu Esq. of XTRA Legal Attorneys and the said counsel had series of email and WhatsApp correspondences on the matter; which are Exhibits OLIH and OLI I respectively.
- viii. Subsequent rents on the property for the years of 2018 and 2019 were received from the tenants for the 1st defendant through Kingsley Alilionwu Esq.; a copy of 1st defendant's GTB statement of account evidencing these payments of rents on the property is Exhibit OLIJ.
- ix. On 18/9/2017, the 1st claimant wrote 2 letters to Mr. Tijani Sado and Mr. Moses Ifere who are tenants in the main Duplex and Boys Quarter respectively, informing them that title of the property has been transferred to the 1st defendant who is now their new landlord; copies of the letters are Exhibits OLI K and OLI L.
- x. Since the 1st defendant is a financial institution and not a property/estate dealer, it decided to place the property for sale. On 30/11/2019, the 1st defendant sold the property to

one Hajiya Suwaiba Saad for N55,000,000; the deed of assignment and purchase receipt are Exhibits OLI M and OLI N.

- xi. These separate collaterals were sold with the consent and approval of the 1st claimant because the loan facilities disbursed to her were long overdue and had accrued interest. He has series of video clips to be used at the trial of this suit where the 1st claimant and her counsel [Donald Ayibiowu Esq.] confirmed the sale of the gold and transfer of title of the Duplex property for the purpose of offsetting the loan debt.
- xii. As at July 2017 when 1st defendant magnanimously stopped the accumulating monthly interest rate of 10% against the 1st claimant's indebtedness, she had an outstanding balance of N46,030,186.68; a summary of the 1st claimant's indebtedness is Exhibit OLI O.
- xiii. As at 1/7/2020 when this Court ordered the 1st claimant, himself and the 1st defendant to maintain *status quo* on the Duplex and bunch of gold, same had long been sold to third

- parties with express consent and approval of the 1st claimant.
- xiv. It was when the 1st claimant and her cohorts continued to violate the order of this Court by disturbing the title and peaceful possession of Hajia Suwaiba Saad that she filed *Suit No. FCT/HC/BW/315/2020: Hajiya Surwaiba Saad vs. De Real People Finance Ltd. & 2 Ors.*
- xv. Among the 1st claimant's cohorts who was notorious in disturbing Hajia Suwaiba Saad is one Akpa Stephen Achema, who claimed in his counter affidavit filed in *Suit No. FCT/HC/BW/315/2020* that the Duplex was sold to him by the 1st claimant since 30/11/2018.
- xvi. In a counter affidavit [Exhibit OLI R] filed on 25/11/2020 in *Suit No. FCT/HC/BW/315/2020*, the 1st claimant stated that her interest in the Duplex had allegedly since been transferred to one Akpa Stephen Achema [the 3rd defendant in *Suit No. FCT/HC/BW/315/2020*], long before the interim order of this Court.

- xvii. It is fraudulent for the 1st claimant to use a property she allegedly sold to a third party as collateral to obtain loan facility worth N71,350,000.00 from the 1st defendant.
- xviii. The pictures annexed to the affidavit in support, termed as purported acts of destruction and/or vandalism are mere renovation works by the new owner of the property which has long been completed.
- xix. The 1st claimant instigated and connived with the tenant in the main Duplex [Tijani Sado] to frustrate the takeover of possession by the new owner, despite the expiration of his tenancy for which the 1st defendant commenced a recovery of premises action and got him ejected therefrom.
- xx. The 1st claimant lacks the right to ask this Court to order a neutral person or the Registrar of this Court to take over a property she tacitly deposed on oath was sold to Akpa Stephen Achema or a property the 1st defendant is claiming to have been sold to Hajiya Suwaiba Saad.
- xxi. The Duplex is a private and residential apartment and not a commercial property liable to any form of management.

xxii. It will amount to grave injustice to grant this application in favour of the claimants who have no proprietary rights in the subject property against the defendants and other persons who are not parties in this suit.

In the further affidavit, Barrister Chike Nwogbo stated as follows:

- i. The loan sum asked for was the sum of N71,350,000 whereas the sum of N61,350,000 was disbursed to the 1st claimant. The 1st claimant had no knowledge of the sale of the gold jewellery and the sale was without her consent.
- ii. The 1st claimant did not transfer title of her said Duplex to the 3rd defendant via any irrevocable power of attorney and she did not execute same in favour of anyone.
- iii. The 1st claimant never wrote to her tenants informing them that title of her said property has been transferred to the 1st defendant.
- iv. The purported sale to Achema Stephen never went through as the 1st claimant and Stephen Achema only reached an agreement but same was eventually decided against when this suit was instituted and the sale never occurred.

- v. Contrary to the claim of 3rd defendant, the pictures attached to the motion are pictures of acts of vandalism meted out on the property by thugs under the control and finance of the 3rd defendant.

From the facts in the affidavits of the parties and the submissions of both learned counsel, I am of the opinion that the issue for resolution is whether in the circumstances of this case, the claimants are entitled to the order of mandatory injunction.

Submissions of Learned Counsel for Claimants/Applicants:

Olajide Olaleye-Kumuyi Esq. posited that the primary aim of an order of mandatory injunction is to restore the applicant of such an injunction to *status quo*. He cited the case of **Adeleye & Ors. v. The Executive Governor of Ogun State [2012] LPELR-9584 [CA]** where it was held that a mandatory or restorative injunction is granted in most cases to undo what has been done. He also referred to the case of **Abubakar & Ors. v. Jos Metropolitan Development Board & Anor. [1997] LPELR-5301 [CA]** wheresome of the circumstances in which the court will grant an order of mandatory injunction were outlined.

The applicants' counsel submitted that in the applicants' affidavit, they have stated reasons for the grant of the application. He stated that the 1st & 3rd defendants, upon the service of the order of interim injunction to maintain *status quo* and the motion for interlocutory injunction on them, rushed to institute many more actions in respect of the said property. They further vandalized and destroyed the property in spite of the interim order of the Court. The 1st applicant also deposed that the damage done to her said property cannot be estimated and compensated by damages.

Learned counsel for the applicants contended that the defendants' actions were done to pre-empt and anticipate the decision of the Court in the substantive suit. He relied on the decision of the English Court of Appeal in Daniel v. Ferguson [1891] 2 Ch. 27 quoted at paragraph 4.7 of the written address in support of the application. He also referred to the cases of Von Joel v. Hornsey [1895] 2 Ch. 774 and Registered Trustees of Apostolic Church v. Olowoleni [1990] 6 NWLR [Pt. 158] 514.

Mr. Olajide Olaleye-Kumuyi concluded that the Court can grant the order of mandatory injunction to reverse the steps taken by the

defendants to vandalize and destroy the *res* while the interim order was subsisting. He reasoned that only a restoration of things to their former state will be justice. He referred to the case of Ojukwu v. Military Governor of Lagos State & Ors. [1985] LPELR-21274 [CA]; and emphasized that the actions of the defendants are an attempt to foist a *fait accompli* on the Court and the claimants.

Submissions of Learned Counsel for 1st-3rd Defendants/Respondents:

The standpoint of Chief Oli Chukwudi Prince Esq. is that from the counter affidavit, 3rd defendant stated that the 1st claimant transferred the Duplex to the 1st defendant and the 1st defendant sold same to Hajiya Suwaiba Saad since 30/11/2019 at the cost of N55,000,000. The 1st claimant also stated in her counter affidavit filed in *Suit No. FCT/HC/BW/315/2020* that her interest in the Duplex had allegedly been transferred to Akpa Stephen Achema.

Learned counsel for the 1st-3rd respondents argued that it is clear that the Duplex upon which this application for mandatory injunction is predicated is no longer within the legal right or ownership of either the 1st claimant or any of the defendants. He submitted that it is not true that the respondents disobeyed the interim order of this Court

since the property was transferred to Hajiya Suwaiba Saad long before the interim order was made. Therefore, the reliefs sought by the applicants cannot be granted.

The counsel for the 1st-3rd respondents referred to C.A.C. v. Davis [2008] 1 NWLR [Pt. 1067] 60 and Agbogu v. Okoye [2008] All FWLR [Pt. 414] 1494 to support the principle that an injunction is won and lost on the basis of competing legal rights. Where an applicant has no legal right cognizable by the courts, there is no power to grant him an injunction. It was submitted that in the absence of any legal right of the claimants, the balance of convenience is not in their favour. He reasoned that the application is brought in baith faith and there is nothing to restore in this suit.

On the applicants' relief 3, Chief Oli Chukwudi Prince Esq. argued that there are no competing rights between the parties in this suit since both parties have admitted that title of the property had long been transferred to different persons who are presumed to be the current owner and/or holder of title of the said property.

Counsel referred to Emordi v. Emordi [2007] 4 NWLR [Pt. 1024] 412 to support the principle that the consideration of the court when it

appoints a receiver or manager of a property is ultimately for the protection and/or preservation of the property for the benefit of persons in the suit who have interest in it.

Decision of the Court:

An order of mandatory injunction is an equitable remedy and the grant of same is discretionary. It is required that the court's discretion must be exercised judicially and judiciously depending on the facts of each case. As rightly stated by both learned counsel, the courts are often reluctant to grant a mandatory injunction unless an applicant can prove special circumstances to warrant its grant. See the case of NDIC v. S.B.N Plc. [2003] 1 NWLR [Pt. 801] 311. In that case, the Court of Appeal listed the circumstances under which a mandatory injunction may be granted, which are:

- a) Where the injury done to the plaintiff cannot be estimated and sufficiently compensated by damages.
- b) When the injury to the plaintiff is so serious and material that the restoration of things to their former condition is the only method whereby justice can be adequately done.

c) Where the injury complained of is in breach of an express agreement.

d) Where the defendant attempts to steal a match on the plaintiff such as where, on receipt of notice that injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives the notice of interim injunction, it is completed.

In the instant case, the applicants' ground for seeking an order of mandatory injunction is that the respondents disobeyed the interim order of the Court made on 1/7/2020 for the parties to maintain *status quo* [as at 1/7/2020] in respect of the 1st claimant's Duplex and BQ known as Block D14, Flat 4, Zone 5, Athletic Street, Game Village, Abuja; and bunch of gold jewellery.

I have deliberately stated in details the facts deposed to by the parties to show their different positions in respect of the said Duplex and BQ and the bunch of gold jewellery, subject matter of the suit. There is a serious contest about the ownership of the Duplex and BQ; and whether or not the 1st claimant's gold jewellery

which she used as collateral for the loan facilities had been sold to offset part of her debt.

For emphasis, the 1st-3rd respondents' position is that on 27/1/2017, the 1st applicant sold the gold jewellery to B. O. Ahbit Int'l Company Ltd. for N26,500,000, which was paid to his account in 4 instalments. Also, that in October 2017, the 1st applicant transferred the property [i.e Duplex and BQ] to the 1st respondent for the sum of N55,000,000 to offset part of the accumulated loan balance. On 30/11/2019, the 1st respondent sold the property to Hajiya Suwaiba Saad for N55,000,000. By the 1st-3rd respondents' counter affidavit, the said sales took place before the interim order was made on 1/7/2020.

In the applicants' further affidavit, it is deposed that the 1st applicant had no knowledge of the sale of the gold jewellery; the sale was without her consent. Also, the 1st applicant did not transfer her title to the said property to the 3rd respondent.

Now, the above facts are some of the facts respectively relied upon by the parties in the substantive suit. In other words, the facts relied upon by the parties in this application are inextricably interwoven

[or very closely connected]with the facts in the substantive suit.In the circumstance, it is difficult to determine the *status quo* in respect of the said property and the gold jewellery as at 1/7/2020 when the interim order was made by the Court without delving into or prejudging the live issues in the substantive suit.

As rightly stated by Chiamaka Nwaiwu Esq. in the applicants' reply on points of law, the issue of ownership of the property raised by the 1st-3rdrespondents in their counter affidavit "*delves into the substantive suit and this Court cannot be expected to delve into same in these interlocutory proceedings.*"

In Agwu & Ors. v. Julius Berger [Nig.] Plc. [2019] LPELR-47625 [SC] cited in the applicants' reply on points of law, it was restated that in dealing with any interlocutory application, the court should not delve into the issues in the substantive suit. It is not proper for a court to make pronouncement in the course of interlocutory proceedings on issues capable of prejudging the substantive issues before the court. Also, in the case of Maduiké v. Madubuiké [2001] 9 NWLR [Pt. 719] 698, it was held that live issues in the suit must be left for the substantive trial.

Finally, from paragraph 4.0 to 4.7 of the applicants' reply on points of law, Chiamaka Nwaiwu Esq. referred to some averments in the statement of claim and submitted that the 3rd respondent should not be allowed to benefit from his wrong. In line with the position of the law stated above, the Court can only determine whether the 3rd respondent [or any other party in the suit] is wrong or right in the substantive suit after the plenary trial. That issue cannot be decided in this interlocutory application.

Before I conclude, let me remark that from the applicants' affidavit, the alleged acts of vandalization and destruction of the said property by the 3rd respondent in company of "*some stern-looking persons*" was "*on a certain day*" after the interim order was made on 1/7/2020 and again on 23/4/2021. This application was filed on 9/2/2022.

There is no doubt that the applicants did not file this application within a reasonable time after the alleged destruction of the said property by the 3rd defendant. In the case of **Solid Unit Nig. Ltd. & Anor. v. Geotess Nig. Ltd. [2013] LPELR-20724 [CA]**, it was

restated that delay defeats equity particularly where the exercise of the discretion of a court is sought.

From all that I have said, this is not an appropriate case for the Court to grant a mandatory injunction or to direct the Chief Registrar of this Court to take over the management and control of the said property and the gold jewellery pending the determination of the suit. It is safer to refuse the application and make an order for accelerated hearing of the suit. This application is refused. I order accelerated hearing of this suit. The parties shall bear their costs.

HON. JUSTICE S. C. ORJI
[JUDGE]

Appearance of Learned Counsel:

Adebayin I. Olorunniyi Esq. for the claimants/applicants; with Princess I. Chidi Esq.