IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT GARKI, ABUJA
BEFORE HON. JUSTICE S.B BELGORE

CLERK: CHARITY
COURT NO: 10

SUIT NO: FCT/HC/GAR/CV/84/23
DATE: 24/2/2023

BETWEEN:

1. **EZE CHUKWUBE**
2. **OGOLA ENOGENYI ONAZI**

PLAINTIFFS/APPLICANTS

AND

1. **INCORPORATED TRUSTEES OF ALL CHRISTIAN FELLOWSHIP CHURCH LUGBE**
2. **AUSTIN AIKE**

DEFENDANTS/ RESPONDENTS

RULING
(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This Motion – M/165/2023 is brought pursuant to Order 42 Rules 1 and 2 Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent power of this Honourable Court. This Motion pray the Honourable Court for the following one principal relief:

(1) **AN ORDER** of interlocutory injunction restraining the Defendant, his agents, servants, privies or anyone deriving authority from him howsoever described from developing and or carrying out any further act of development or

construction of any manner howsoever described on plot 222, Lugbe 1 Extension layout, Lugbe Abuja pending the determination of the substantive case.

(2) **AND FOR SUCH ORDER** or further orders as this Honourable Court may deem fit to make in the circumstances of this case.

This Motion is supported by 20-paragraph affidavit deposed to by one Ogola E. Onazi, the 2nd Plaintiff/Applicant.

Attached to the Affidavit are Exhibits A, B, C, D1, D2, E, F, G1 – G5, H1 – H3. The salient facts leading to this application can be summarised thus:

> ***"The Plot in question was originally allocated to one Lydia David on 29/6/1998 by Abuja Municipal Area Council but following a mutually beneficial understanding between the said Lydia David and the 1st Claimant; the offer of allocation issued in favour of Lydia David was surrendered to the Area Council who subsequently re-issued the allocation in favour of the 1st Claimant in the year 2006. Copies of both the surrendered allocation paper and the re-issued allocation paper issued by Abuja Municipal Area Council in respect of Plot 222 Lugbe 1 Extension layout measuring about 1500 square meters are herewith attached and marked as Exhibits A and B respectively.***
>
> ***2nd Applicant was appointed Attorney to the 1st Plaintiff vide a Power of Attorney executed in my favour, a copy of which is herewith annexed and marked as Exhibit C.***

That following the appointment as Attorney, the 1st Plaintiff handed over her all relevant title documents to the land namely: Abuja Municipal Area Council payment receipts, Plot Survey plan, AGIS letter of Acknowledgment copies all of which are herewith annexed and marked as Exhibit D1, D2, E and F respectively in addition to Exhibits A and B earlier on mentioned.

Sometimes in the month of March 2021, one Mr. Otubu Moses Eka who claimed to be the pastor and or owner of a Church called "ALL CHRISTIAN FELLOWSHIP CHURCH (MISSION) LUGBE" filed an action against unknown persons in suit No. FCT/HC/CV/947/2021 and caused the process to be pasted on the wall fence.

However, the 2nd Applicant was shocked to receive a telephone call from her security guard resident within the plot that some armed thugs came to the plot on December 27, 2022 at about noon to brake the padlock, remove the iron gate, replace it with their own and started digging the plot prior to commencement of building.

The information she gathered from her security guard who was forced out of the land by the thugs was that the alleged engineer was one of the people behind the previous Court action which was abandoned. She took few photographs of some of the things I saw on the site and are herewith annexed and marked as Exhibits H 1-3."

See paragraphs 3, 4, 7, 9, 11 and 15 of the supporting affidavit.

Upon receipt of this Motion on Notice, the Defendant/ Respondents filed a counter-affidavits of 25-paragraphs with deponent as Oyibo Stephen Oyibo. The said counter-affidavit is dated and filed on 20/2/2023. The relevant facts as germane to this application under scrutiny are found in paragraphs 4, 5, 6, 8, 9, 11, 12 & 13. I reproduce them below:

Paragraph 4:

"That the 2nd Respondent/Defendant is the Original Allotee and owner in possession of Plot 222 Lugbe 1 Layout Abuja-FCT measuring 1,104.54 square meters by virtue of a Conveyance of Provisional Approval dated the 27th June, 1996. The said Conveyance of Provisional Approval is hereto attached as EXHIBIT D1."

Paragraph 5:

That the said 2nd Defendant sold all his rights, interests and donated all his powers in Plot 222 Lubge 1 Layout measuring 1,104.54 square meters to the 1st Defendant for the sum of N30,000.00 (Thirty Thousand Naira) only in 2001 and handed over his title documents and unencumbered possession of the said property to the 1st Defendant by virtue of a Power of Attorney and a Deed of Assignment dated the 4th September,

2001. The said Power of Attorney and Deed of Assignment are hereto attached as EXHIBIT D2 and D3 respectively."

Paragraph 6:

"That the 1st Defendant took further steps to secure his possession of the plot of land by erecting perimeter fence (Beacons) at each corner of the Plot and fenced the property

Paragraph 8:

"That the 1st Defendant perfected his title further by processing a change of ownership and was duly issued the offer of terms of grant/conveyance of approval in his own name. The said Offer of Terms of Grant/Conveyance of Approval and a document titled Right of Occupancy Rent and Fees dated the 10th May, 2002 are hereto attached as EXHIBIT D4."

Paragraph 9:

"That the 1st Defendant further perfected its title and possession by processing a survey plan/data for the plot and obtained same from Abuja Municipal Area Council. The said Survey

Plan/Map/data is hereto attached as EXHIBIT D5."

Paragraph 11:

"That the 1st Defendant bought blocks and other building materials and deposited same at the plot of land and commenced Development on the plot. The picture of construction work carried on by the 1st Respondent are hereby attached as EXHIBIT D7."

Paragraph 12:

"That after commencing building construction, the Claimants started trespassing on the land leaving the Defendants with no choice than to file a Complaint at the Lubge Police Station to stop the Applicants/Claimants from further trespass."

Paragraph 13:

"That several attempts by the Applicants/Claimants to unlawfully take possession from the Defendant having failed, the Claimant has filed this Motion to frustrate the Defendants."

Paragraphs 15 – 22 of the same counter-affidavits are legal arguments and conclusions. They offends Section 115 of the Evidence Act and are therefore struck out.

Now, it is clear to me that the parties are laying claim to the same plot of land from the same source. The Respondent are actively building on the land. They had earlier approached a Court wherein they abandoned the case and my lord Otaluka J. struck out the case.

On 21/2/23 this application was moved in Court. Learned Counsel to the applicant, Adekola Mustapha SAN, moved the application summarily. The learned Silk relied on all the processes he filed, adopted his written address as his argument and urged the Court to grant the application. He had earlier in his written address, cited the following cases:

(1) **ACB LTD VS. AWOGBORO (1996) 2MAC 130**
(2) **OKODU VS. ANIMKWOI (2003) 18 NWLR (PT. 851) 1**
(3) **OWERRI MUNICIPAL COUNCIL & ORS. VS. ONUOHA & ORS. (2009) LPELR 8422**
(4) **OBEYA MEMORIAL HOSPITAL VS. A.G. FEDERATION (1987) 3 NWLR (PT. 60) 325**
(5) **KOTOYE VS. CBN (V. 989) 1 NWLR (PT. 247) 266**

Mr. E. B. Ochuma of Counsel to the 1st and 2nd Defendant/Respondents took his turn to oppose the grant of this application. He referred their 25-paragraphs counter-affidavits with Exhibits D1 – D7 annexed and adopted his written address as his argument. Learned Counsel cited the case of **SARAKI VS. KOTOYE** in support of his submission that there are laid down principles for guidance of Courts in consideration of this type of application. Mr. Ochuma later sent in the authority of **UDEZE VS.**

CHIDEBE (1990) 1 NWLR (PT. 125) 141 where the Supreme Court held thus:

> ***" 'Occupation' as used in relation to land entails mere physical control of the land in the time being. It is a matter of fact and such a control may have originated from permission from the true owner or it may have been by stealth or it may be a tortuous trespass. Possession of land, on the other hand, may sometimes entail or even coincide with occupation of it but it is not synonymous or conterminous with it. Thus, for instance, a man such as a landlord who collects rents from his tenants may be in legal possession of the land even though he does not set his foot on it. (P. 162, paras. E-F)."***

Mr. Ochuma finally urged me to refuse the application.

It is without dispute that an interlocutory injunction is an equitable remedy usually granted at the discretion of the Court and on the satisfaction of certain conditions, of which those conditions are as follows:

(a) There must be a subsisting action;
(b) The subsisting action must clearly donate a legal right to which the applicant must protect;
(c) The applicant must show that there is a serious question or substantial issue to be tried;
(d) The applicant must show that because of paragraph C above, the status quo should be maintained pending the determination of the substantive action; and
(e) The applicant must show that the balance of convenience is in favour of granting the application

(f) The applicant must show that there was no delay in bringing the application;
(g) The applicant must show that damages cannot be adequate compensation for the injury he wants the Court to protect;
(h) The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the Courts description in granting the application.

There are plethora of judicial authorities empowering this Honourable Court to grant an application of this nature provided that all condition precedent toward the grant of the application is satisfied, thus in: **OKOMU OIL PALM CO. VS. TAJUDEEN (2016), 3 NWLR, PART 1499, PAGE 284@296;**

> ***"The principal factors to consider in an application for interlocutory injunction include the existence of a legal right, the existence of a serious issue for trial and the question of the balance of convenience…..once the applicant establishes that there is a substantial issue to be tried at the hearing, the burden on the applicant is discharged…."***

See similarly in **ADELEKE VS. LAWAL (2014) 3 NWLR PART 1393 PAGE 1 @ 5.**

Putting into consideration the Applicant's reasons for the application as contained in the affidavit supporting the application vis-à-vis the ingredients that is required in granting the application of this nature as provided for by the judicial authorities sited above, it could be seen that the Applicant's application is in line with the requirement as in authorities sited above.

See also **KOTOYE VS. CBN (1989) 1 NWLR 98 PAGE 419; BAA VS. ADAMAWA EMIRATE COUNCIL (2014) 8 NWLR, 1410 PAGE 539 @ 542.**

Application of this nature has also been statutorily provided for by virtue of Order 42 Rule 1 and 2 and Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) 2018 and necessary factors warranting the grant of application of this nature has also been provided for by virtue of the Orders of the rules as follows:

ISSUANCE OF THE ORIGINATING PROCESS

Order 42 Rule 1 and 2 and Order 43 Rule 1 of the High Court of the Federal Capital Territory (Civil Procedure) 2018 provides inert alia

> ***"When an application is made before trial for an injunction or other order and at any time before or during the hearing, it appears to the Court that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the merits on affidavit or other evidence for the purpose of the application, it shall make an order for such trial and such other order as the justice of the case may require."***

In compliance with the above Rule, Originating Process, has been filed before this Honourable Court.

EXISTENCE OF A LEGAL RIGHT

It is trite that for there to be a successful or valid grant of an interlocutory injunction, the Applicant must exhibit the fact that his right as it relates to the subject matter of the application is been violated or is about to be violated. The Applicant must also show that he has a right over the subject matter the relief is sought. This can be seen in the affidavit supporting the application.

In respect of the above, refer to following judicial authorities; **KOTOYE VS. CBN (1989) 1 NWLR 98 PAGE 419, OBEYA MEMORIAL SPECIALIST HOSPITAL VS. AG FEDERATION (1987) 3 NWLR PART 60 PAGE 320, AKAPO VS. HAKLEEM-HABEEB (1992) 6 NWLR PART 247 PAGE 266.**

It is the decision of your learned brothers in respect to applications of this nature that;

> ***"The fundamental principle of the rule for granting injunction is that the Court will only grant injunction to support a threatened legal right".***

See **SECRETARY IWO LG VS. ADIGUN (1992) 6 NWLR PART 250 PAGE 723 AT PAGE 743 PARAGRAPH G-H.**

PRIMA FACIE CASE

The application for interlocutory injunction must show a strong prima facie case in support of the right it asserts. It is without dispute that the applicant has exhibited the fact that he was validly allocated the plot of land, the subject matter of this application and notwithstanding anything to the contrary, he has all reasons to believe that the land truly belongs to him and for that he is duty bound to protect same, hence the need for the grant of this application in maintaining the status quo pending the determination of the substantive suit pending before this Honourable Court.

To this effect, I refer to **PEREIMODE VS. MIEKORO (1992) 2 NWLR PART 224 PAGE 483 AT PAGE 490 PARAGRAPHS C-D,** where the Court of Appeal held that;

> ***"All that the Applicant needs to show at the stage of an application for interlocutory injunction is that***

> ***there is a substantial issue to be tried at the hearing."***

The apex Court held in **OBEYA MEMORIAL SPECIALIST HOSPITAL VS. AG FEDERATION (1987) 3 NWLR PART 60 PAGE 320,** as follows;

> ***"The Court must be satisfied that the claim is not frivolous or vexations, in other words, there is a serious question to be tried".***

Not only has the applicant established that there is a serious questions to be tried, but also a prima facie case has been established based on the supporting Affidavit to this application and all the accompanying Exhibits.

BALANCE OF CONVENIENCE

It is without dispute that an order of interlocutory injunction is not ordinarily granted as a matter of course but, a balance of convenience must be put into consideration as to who suffers most in an event that the application is granted or not, whether monetary compensation or damages may be enough.

The Supreme Court in this regards extensively dealt with this issue in the case of **KOTOYE VS. CBN** (Supra) and **OBEYA MEMORIAL SPECIALIST HOSPITAL VS. AG FEDERATION** (Supra). Where it held that:

> ***"Balance of Convenience with regards to interlocutory injunction means whether the Defendant will suffer great inconvenience, hardship, or injustice if the injunction is granted and he ultimately turn out to be right, or whether the Plaintiff will suffer more inconvenience, hardship or injustice if the injunction refused and he turn out to be right".***

It is my humble view that the Balance of Convenience weighs greatly in favour of the Plaintiff/Applicant, this could be inferred from the supporting Affidavit to this application and the

supporting affidavit to the Originating processes which has shown that the applicant has put in an effort and has also explored all avenues towards seeing that the 1st Defendant desist from continuing his act of constructions/development upon the plot of land, the subject matter of this application to no avail.

IRREPARABLE DAMAGE OR INJURY

An irreparable injury is such an injury that could not be compensated in damages. It seems to me that if the Defendants, are not restrained from continuing its act of trespass vide constructions/development in the land, the subject matter of this suit, it might/will be difficult for the Plaintiff/Applicant if they succeed at the trial to be adequate compensation by an award of damages. In this situation, damages cannot fully and adequately compensate the Plaintiff in any event.

Flowing from all the foregone, is my humble view in conclusion that the Applicant has by the affidavit supporting this application satisfied all the requirements for the grant of this application as all the factors to be put into consideration has been satisfied. The originating process has been filed and also served on the Defendants, it is also without dispute that there is an existence of a legal right by the Applicant, it is also obvious that there is a prima facie case against the Defendants, the balance of convenience in favour of the Applicant as applicant will suffer a great hardship in an event that this Applicant is not granted, also that monetary compensation will not be sufficient as the activities of the Defendants will amount/constitute irreparable damages on the subject matter of the application.

This application has merit and it is therefore granted as prayed.

SIGNED
S. B. Belgore
(Judge) …/2/23