

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 45 SITTING IN WUSE ZONE 2 – ABUJA

BEFORE HIS LORDSHIP HON JUSTICE ELEOJO ENENCHE

DELIVERED ON 2nd FEBRUARY 2023

MOTION NO. M/7652/22

BETWEEN

INCORPORATED TRUSTEES OF DOCTORS ON

THE MOVE FOR MEDICAL MISSIONS IN.....CLAIMANT/APPLICANT

AFRICA INITIATIVE

AND

- 1. ROCKBRIDGE SYNERGY LTD**
- 2. COMMODORE K.M BUSHI..... DEFENDANT/RESPONDENTS**
- 3. KASFAT NIGERIA LTD**

RULING

This ruling is with respect to motion M/7652/2022, dated 8th June 2022, brought pursuant to Order 4 Rule 9, Order 42 Rule 8 and Order 43 Rule 1 of the Federal Capital Territory High Court Civil Procedure Rules 2018. By the application, the Applicant/Claimant prayed the Court for the following reliefs:

1. AN ORDER OF INTERLOCUTORY INJUNCTION preserving the status quo ante bellum by restraining the Defendants/Respondents whether by themselves ,agents servants or any other person acting or purporting to act on the Respondent’s instruction ; or otherwise whosoever from further interference with the subject matter of this suit , known and described as a plots/units No-18, 20 and 21 that are within plot 559, Aqua Planet Resort Estate, Kukwaba, F.C.T, Abuja pending the hearing and final determination of the substantive suit .

2. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants/Respondents, whether by themselves, agents, servants or any other person acting or purporting to act on the Respondents’ instruction, or otherwise whosoever from further interference with the rights and interest of the Applicant’s over the subject matter of this suit known and described as a plots/unit No – 18, 20 and 21 that are within plot 559, Aqua Planet Resort Estate, Kukwaba, F.C.T Abuja pending the hearing and final determination of the substantive suit.

3. The OMNIBUS PRAYER.

Supporting the motion is a twenty-nine-paragraph affidavit deposed to by Joseph Haruna Kigbu with accompanying annexures as well as Counsel's written address.

The said affidavit provided me with the center point of the application, which is, that the Claimant/Applicant purchased three plots/units from the 1st Respondent, numbered plots 18, 20 and 21 and paid fifteen million naira for each plot. All three plots are situate at, Aqua Planet Resort District, Abuja. Payment was, as directed by the 1st Respondent, allegedly made to an account bearing the name ***Idrisma Global Concepts Ltd*** and three letters of allocation titled "***Letter of Allocation Aqua Planet Resort plot No 559, Cadastral Zone B00, Kukwaba, Abuja F.C.T***" was given to the Claimant, by the 1st Respondent, for the respective plots/units. Annexed herein are, the allocation papers dated 20th July 2018, and marked ***EXH A1***.

In furtherance, Applicant averred that both parties entered and executed a sales of land agreement on the 13th August in respect to the plots/units, the said agreement is herein annexed and marked ***EXH A2***.

Referencing Applicant's averment, he commenced work on the plots up to the foundation level but was shocked to find 2nd and 3rd Respondents building on same plot/unit, an act which 1st Respondent denied knowledge of when he, (the Applicant) accosted him.

In response to Applicant's application, the 2nd and 3rd Respondents filed a Counter affidavit of nineteen paragraphs, dated 15th August 2022, deposed to by Comrade James Majekodunmi, as well as marked annexures and Counsel's written address.

The Respondents vehemently refuted the averments of the Applicant, stating further that contrary to Applicant's claims, he purchased plots **No. 6, 7, 25, 28** and **31**, same was exhibited

with allocation documents annexed and marked **A1-A5, B1-B5, C1- C4, D1-D5 and E1-E5** respectively. Further annexed are site plans and photos of roofed buildings marked Exh**H** and Exh**i1-14**. It is Respondent's submission that no one commenced any development on his property as he started and finished same. In further averment, he stated that the Applicant is aware that the act he seeks to restrain is already completed.

It is pertinent to note that the 1st Respondent did not file any process.

Both Counsel for the respective parties distilled issues for determination arising from the motion filed by the Claimant/Applicant.

In addressing me, Counsel to the Applicant cited the case of **KOTOYE Vs CBN (2000) 16 WRN 71, OBEYA MEMORIAL Vs AGF (2000) 24 WRN 138** and a host of other cases while urging that the Court exercise its discretion to grant the interlocutory injunction in the Applicant's favour.

It is Counsel's argument that, the Applicant is deserving of the grant of his application, having met the requirements for an application of this nature being;

1. The existence of a legal right to be protected
2. That there must be a serious question to be tried
3. That the balance of convenience is on his side
4. That damages cannot be an adequate compensation for his damages or injury if he succeeds
5. That his conduct is not reprehensible and
6. That he is willing and able to give undertaking as to damages in the event of a wrongful exercise of the Courts discretion in granting the injunction

On the other hand, Learned Counsel to the 2nd and 3rd Respondents while affirming that the above listed are indeed requirements, he however argued that Applicant must clearly identify the land over which he seeks to restrain the respondent.

Counsel to the Respondent, insists that the description on the Respondent's site plan is different from the Applicant's plot Citing OGUNTADE J.C.A in **ABU BAKERE SUNMONU&3 ORS Vs**

NIGERIA SYNTHETIC FABRICS LTD (2001) 51 WRN AT 191 to buttress his argument, Counsel maintains that in an application for interlocutory injunction, the land in which an application for injunction is sought must clearly be defined.

Counsel to the Claimant formulated a lone issue for determination to wit;

Whether the Claimant/Applicant has satisfied the conditions for the grant of an interlocutory injunction pending the determination of the substantive suit.

I will anchor the substance of my ruling on same sole issue raised.

Having critically perused all the affidavits filed, I am convinced that most of the facts deposed to if indulged will bite deep into the substantive suit. Thus, I am minded whilst limiting myself only to facts that touch the essence of this application, to call in aid the settled position of the law that Courts do not delve into and decide the merits of a case at an interlocutory stage of proceedings. See **NYORKSON VS. TANKO NASARAWA (2022) LPELR-57012(CA); OKOMO & ORS vs. UMOETUK & ORS (2003) LPELR- 7231(CA).**

I have also noted the Respondent's submission of an application before the Honorable, the Chief Judge seeking a consolidation of an ongoing case involving all parties currently in the High Court No 49.

The essence of interlocutory orders is clear and not in doubt. Such orders are made to preserve the Res and to avoid depletion of same, pending the hearing of the substantive suit. The grant of an injunction entails the exercise of judicial discretion. Judicial discretion is a familiar settled concept that the question of exercise of it is governed by several factors which include the judicious and judicial consideration of applications. Now, having regards to this call for exercise of discretion, the facts averred in the affidavit in support of this application and a critical study of the exhibited annexures, the question which agitates my mind and I will also ask is, why is the Applicant, who believes he has a right to be protected bringing this Application/Suit later rather than sooner.

It is pertinent to note that one of the conditions which influence the grant of an interlocutory Order is when it is brought timeously as I must resonate that injunctions are not granted at will; the Applicant must show to the Court the basis for making such a request and convince the judex that a real threat exists.

Going back to the affidavit in support of the application and the refutes made by the Respondent, the Applicant in paragraph

seventeen(17) had averred that his plots are numbered 18, 20 and 21 respectively stating further that he had started and completed the foundation level of the building. In paragraph seven (7) and eleven (11) of his counter affidavit the Respondent had stated that he is not in a position to deny or accept the Applicant's claim but that, he, however, developed his own property from start to finish and his property are, plot numbers 6, 7, 25, 28 and 31 respectively. I would assume that the discrepancy in the numbers should in common sense reasoning mean different plots, however, here we are.

I am opined that the refutes and claims as presented by the Respondents is deserving of a further and better affidavit from the Applicant to give the Court clarity especially on the singular claim of the development carried i.e., the fact that Applicant contended that it had foundations built on its own land while the 2nd & 3rd Respondent alleged that they built from scratch to the current stage. Further, there are glaring un-replied controversies as to the plot numbering. I do not have before me a refute to the 2nd & 3rd Respondent's claim as the Applicant had failed to file a further and better affidavit. A further affidavit as the name implies, must be further information of

the facts contained in the affidavit and deposition of new and separate facts. In essence, a further and better affidavit is needful when there is a counter affidavit that has denied and contradicted the weighty and substantial facts in affidavit evidence and further sets out new facts which are credible and if which believed by the Court, will lead to a finding in favour of the Respondent. See **OLA Vs UNILORIN&ORS (2014) LPELR-22781(CA)(pp.20 paras. A)**

Considering all the paragraphs of the affidavits, I must state that there is definitely contradiction and need for further clarity. I would have thought that the further affidavit would have gone further to punch a hole in the Respondent's deposition.

Just as failure on the part of the Respondent to file a counter affidavit will entitle the Court to believe and act on the affidavit of the Applicant, so also would the Court accept and act on any facts stated in a counter affidavit not answered or controverted by a further and better affidavit, this much was suggested by the Supreme court in **ALAGBE V ABIMBOLA (1978)2SC 39** and **BADEJO V FEDERAL MINISTRY OF EDUCATION (1996) 8NWLR**

(PT464) 15. The non-filing of a further affidavit in this case I hold is fatal to the case of the Applicant.

Further to this, it is apposite to reiterate again that before a Court can grant a declaration of title to land, there must be credible evidence describing the identity of the land with certainty. Likewise, an applicant who fails to clearly show that the land over which he intends to obtain an injunction is the same as the subject matter of the suit fails in a material element in the bid to secure an injunction. Such an applicant must show that the plots or boundaries of the land he claims, are same as that of the respondent. See **MARK SATI v. YAKUBU GARBA WAYA (2019) LPELR-47763(CA), OKWARANONOB I VS MBADUGHA (2013) 17 NWLR (PT. 1383) 255 AT 278** and **AYUYA VS YONRIN (2011) 10 NWLR (PT. 1254) 135.**

In this case I have looked at the exhibits attached both to the application and the counter affidavit and it appears to me that while the Applicant seeks this injunction over Plots 18,20 and 21 of Aqua Planet Resort, Plot No. 559 Cadastral Zone B00, Kukawa, Abuja FCT, Respondent's plots as exhibited are Plots No. 6 and 7 City Castel Estate Plot No. 559 Cadastral Zone B00, Kukawa, Abuja FCT and Plots Nos. 25,28, and 31 of Aqua

Planet Resort Plot No. 559 Cadastral Zone B00, Kukawa, Abuja FCT. It will seem that the plots are completely different.

I must add at this point that the 1st Respondent who allocated the Plots did not file any process. This is rather curious as the 1st Respondent being the one who sold the plots would have been in the best position to explain why and how the plot numbers are different. Why they choose to remain mute remains a wonder to me.

Premised on all the above stated, I am not convinced that the Applicant has satisfactorily met the requirement for a grant of this interlocutory application, AND I SO HOLD.

I will only add that I do not intend to take the undertaken as to damages made by 2nd and 3rd Defendants lightly should it turn out that I should have granted this injunction in the first place. This application for interlocutory injunction is consequently dismissed.

ELEOJO ENENCHE

2/02/23

JUDGE

