

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA
TODAY THURSDAY 24TH, AUGUST 2023
BEFORE HIS LORDSHIP O.I ADELAJA

COURT NO: 42 SITTING AT KUBWA.

SUIT NO: FCT/HC/HC/CV/2634/2021
MOTION NO M/12457/2023

DATE: 24TH AUGUST 2023

BETWEEN

1. AHMED SULEIMAN
2. MICHEAL UWALAKU
3. ADELEKE. S. OLUWATOYIN
4. RUFELIS INVESTMENT LIMITED
5. GRACE BOMMA BENSON (all suing for themselves and as representatives
of the other 434 tenants/occupants of the shop
in the Area 7 Shopping Complex Garki Abuja) CLAIMANTS/APPLICANTS

AND

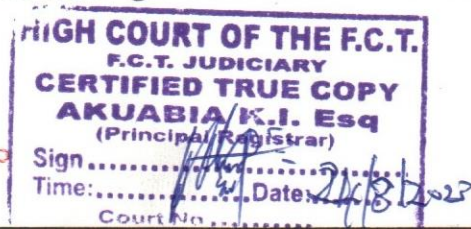
1. HON. MINISTER OF THE FEDERAL CAPITAL TERRITORY
2. FEDERAL CAPITAL DEVELOPMENT AUTHORITY
3. ABUJA MARKET MANAGEMENT LIMITED
4. ABUJA INVESTMENT COMPANY LIMITED
5. URBAN SHELTER LIMITED
6. INSPECTOR GENERAL OF POLICE
7. OBINNA OKOLIE DEFENDANTS/RESPONDENTS

RULING ON MOTION EXPARTE MOTION NO 12457

The Claimants/Applicants by an earlier application prayed this Court for leave to file the instant Application during the period of Court vacation and the Order was granted as prayed. The instant application is a motion Exparte No 12457 brought pursuant to Order 43 rules 1 & 3, Order 42 rule 1 of the High Court of the Federal

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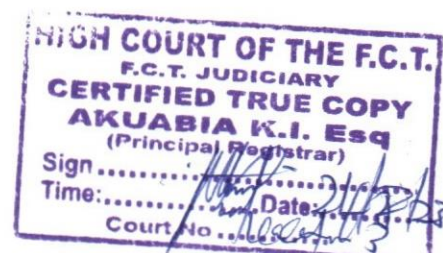


Capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court. it prays the Court for the grant of the following Orders:

1. **An order** of interim injunction restraining the Defendants/Respondents particularly 5th Defendant/Respondent either by itself or agents, privies, assigns, or howsoever described from going ahead with any allocation of shops to any person either in the form of reservation of temporary shop space for both verified and non-verified operators in the form of permanent shops to be built at the Area 7 shopping complex recently unlawfully demolished by 5th Respondent in contravention of the valid and subsisting Court Order pending the hearing and final determination of the Applicant's Motion on Notice already filed in this suit.
2. **AN ORDER** of interim injunction restraining Defendants/respondents more particularly, 5th Defendant/Respondent either by itself or agents, privies, assigns, or howsoever described from carrying on any or further construction work and or doing anything howsoever in the furtherance of its planned remodeling of the Area 7 shopping Complex, Garki, Abuja recently unlawful demolished by 5th Respondent in blatant disregard of a subsisting Court Order pending the hearing and final determination of the Motion on notice.
3. **AN ORDER** of interim injunction restraining and barring the 6th Defendant/Respondent either by itself or agents, privies, assigns, or howsoever described from further providing official protection to the 5th Defendant/Respondent or any other person carrying on any construction work and or doing anything in furtherance of the planned remodeling of the Area 7 Shopping Complex, Garki, Abuja recently illegally demolished by 5th Respondent in violation of subsisting Court Order pending the hearing and final determination of the Motion on Notice.
4. **AND FOR SUCH FURTHER ORDER(S)** as the Honorable Court may deem fit to make in the circumstances of this application.

The grounds upon which this application is predicated are as follows:

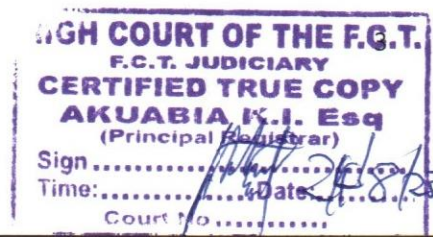
1. The Claimants/Applicants are bona fide tenants/occupants to the 1st and 2nd Defendants/Respondents in respect of the over 400 shops previously occupied at the Area 7 Shopping Complex, Garki, Abuja.



2. The 5th Defendant/Respondent sometime in October, 2021 suddenly appeared and without any due notice, attempted to illegally demolish the Claimants/Applicants' shop on the claiming it has the mandate of the 4th Defendant to remodel the Complex.
3. The Hon Court on the 1st December, 2021 made an Order enjoining all parties to the suit to maintain status quo ante bellum pending the hearing of the Applicants' Motion on Notice which the 4th and 5th Defendants/Respondents disobeyed with disdain.
4. While the said Order is still subsisting, 5th Defendant/Respondent has in utter disrespect, disregard and defiance to the Hon Court's Order, and all authorities went ahead to forcefully and illegally demolish the said shops and in the process destroyed and exposed the merchandise of the Applicants to looting.
5. The construction work is ongoing at the Complex while the substantive matters in this Suit are yet to be determined.
6. Equally, the 5th Defendant has commenced allocation of the new shops to be built to members of the public meanwhile construction work is ongoing to the exclusion of the claimants/Applicants who are original tenants/allottees and entitled to the rights of first refusal.

Filed in support of the application is a 46 paragraphs affidavit sworn to by Godfrey Ojarikre, a tenant/occupant and the current chairman of Board of Trustee Area 7 shopping complex. Annexed to the affidavit are:

1. Letters of allocation referred to in as Exhibit A in paragraph 4 of the affidavit in support.
2. Proof of payment of yearly and services charges by tenants referred to as Exhibit A1 in paragraph 5.
3. Order of the High Court for parties to maintain status quo- Exhibit B
4. Notice of demolition referred to in paragraph 15 as Exhibit C
5. Pictures of a man referred to in paragraph 16 and marked Exhibit D
6. Photographs referred to in paragraph 20 marked Exhibit E
7. Letters written to authorities and dignitaries referred to in paragraph 21 marked Exhibits F & F1-F4.
8. Pictures of demolition referred to in paragraph 22 marked Exhibits G & G1-G5
9. Pictures referred to in paragraph 23 marked Exhibits I a-e



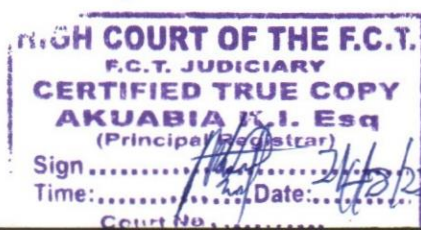
10. Pictures referred to in paragraph 25 marked Exhibit H
11. Letter of demand by the 3rd Respondent to the tenants/occupants -Exhibit J in paragraph 26
12. Proof of further payment of yearly rent and service charges -Exhibits K 1&2
13. Document referred to as Exhibit L in paragraph 32.
14. Picture referred to in paragraph 33 marked Exhibit L1
15. Picture of bill board referred to in paragraph 34 -Exhibit M.
16. Picture referred to in paragraph 36 – Exhibit N

Also filed in support of the application is a 9 paragraphs further and better affidavit wherein the deponent a litigation secretary stated that the motion on notice on which the instant motion Exparte is predicated was filed on 12th July 2023 and the Defendants/Respondents were duly served the certified true copy of the motion on notice and hearing notice are annexed and marked Exhibits A, B and C.

The learned counsel to the Applicant Chukwuma-Machukwu Ume SAN filed a written submission in support of the Application wherein he submitted one issue for determination which is **“Whether the Claimant/Applicants are entitled to the reliefs sought having regard to the urgent circumstances and material facts placed before the Honourable Court.**

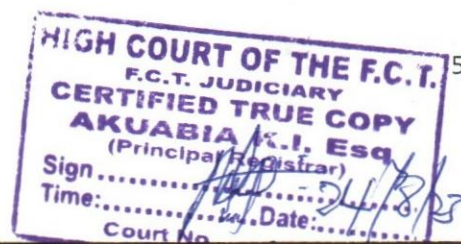
He addressed the Court on the purpose of an interim order. He submitted it is to prevent a particular act from taking place or continuing to take place as in the instant case. He relied on UYOKPEYI V UKUEKU (2017) LPELR-42649 (CA), He submitted the Applicant only need to prove that there are substantial issues to be tried by the Court. He relied on ONYESOH V NNEBEDUN & ORS (1992) LPELR-2742 SC. He submitted the Applicants have been able to meet all the conditions laid down for the grant of interim injunction in OBEYA MEMORIAL SPECIALIST HOSPITAL V AG FEDERATION (1987) 3 NWLR (Pt 60) 18. He addressed on the factors seriatim as follows:

- That the Claimant/Applicant has shown there is a serious issue to be tried. He submitted that the facts before the Court are that the Applicants are vested with possessory rights in the shops over which the Respondents have trespassed and continued to trespass. He relied on UTB LTD & ORS V DOLMETSCH PHARMACY (NIG) LTD (2007) LPELR-3413 SC.
- Whether the Claimant have legal Right deserving protection. He relied on the affidavit in support and submitted the Applicants have the legal right to exclusive possession of their shops without any interference from the



Respondents outside the law. He stated the necessary statutory notices were not served on the Claimants/Applicants. He referred the Court to BOLA CHEMIST V FAJEMISIN & ORS (2016) LPELR-50722 (CA).

- He submitted the balance of Convenience is on the side of the Claimants/Applicants. He relied on AKAPO V HAKEEM (1992) NWLR (Pt 247) 291. and submitted that the Court has the burden to weigh the competing rights of the parties. He stated the law will always protect vested interest and lean against arbitrary divestiture. He relied on VEE GEE (NIG) LTD V CONTRACT (OVERSEAS) LTD (1992) 9 NWLR (Pt 266) 503. He stated that a careful reading of the affidavit in support gives credence to the fact that the 5th Respondent is about to completely dispose the Applicants from their duly allotted shops. He stated the 5th Respondent having unlawfully demolished the Applicants shops is about erecting illegal structure in the complex and has begun allocating shops to shop operators to the exclusion of the Applicants. He referred the Court to OBEYA MEMORIAL SPECIALIST HOSPITAL V AG FEDERATION (supra). he submitted the balance of convenience is on the side of the Applicants who have suffered and will continue to suffer if the Defendants/Respondents are not restrained.
- Whether the Applicants have shown that injunction is necessary to preserve the Res which is in imminent danger of being destroyed. The learned counsel submitted that the conducts of the Defendant/Respondents particularly the 5th has shown that only an injunctive Order will save the Res from further destruction. He stated the only res now left to be protected is the possessory rights and business goodwill of the Applicants.
- Are damages not adequate compensation and have the Applicants given undertaken as to damages should the application turn out to be frivolous? The learned counsel submitted that damages will not be adequate compensation in the circumstances of this case, he stated the applicant will lose business goodwill which will cause irreparable damage if the 5th Respondent is allowed to proceed with the construction of the shop and allocation to members of the public to the exclusion of the Applicants.
- The learned counsel relied on paragraphs 36-45 of the affidavit in support and stated there is extreme urgency necessitating the grant of interim

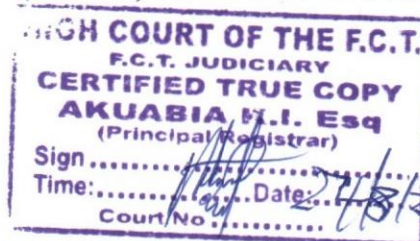


injunction. He relied on POLARIS BANK LTD V BELLVIEW AIRLINES LTD & ANOR (2021) LPELR-56258 (CA) a number of other judicial authorities were also cited in support of the established position of the law.

This is an application Exparte there is therefore no submission from the other side. I will in the circumstances adopt the issue formulated for determination by the learned counsel to the Claimants/Applicants which is **“Whether the Claimant/Applicants are entitled to the reliefs sought having regard to the urgent circumstances and material facts placed before the Honourable Court.** I agree with the submission of the learned counsel that interim orders of injunction are granted in cases of real and extreme urgency in order to preserve the subject matter of the litigation, the Res; pending a named period or the determination of a motion on notice for interlocutory injunction. See PROVISIONAL LIQUIDATOR OF TAPP IND LTD & ANOR V TAPP IND LTD & ORS (1995) LPELR-2928 (SC) where the Supreme Court per OGUNDARE JSC held "An order of interim injunction is one granted to preserve the status quo and to last until a named date or definite date or further order or pending the hearing and determination of a motion on notice. It is for a situation of real emergency to preserve and protect the rights of the parties, before the Court from destruction by either of the parties. An interlocutory Injunction is to regulate the position of the Parties pending the trial and determination of the issue between them.....”

In RMM GLOBAL CO. LTD & ANOR V. STANBIC IBTC BANK PLC (2019) LPELR-48092(CA) (Pp. 9-11 paras. B) the Court of Appeal held "An order of injunction is interim and not perpetual when it is made Exparte to last for a short period or until the determination of the motion on Notice it is not made to spite or humiliate the Respondents rather the restraining order is made to last pending the determination of the Motion on Notice to sustain the status quo ante bellum and afortiori, keep the res intact. See: OKEKE V. OKOLI (2000) 1 NWLR (PT. 643) 641; KOTOYE V. CBN (1989) 1 NWLR (1989) 1 NWLR (PT. 98) 419; IGBINOBA V. IGBINOBA (2003) 2 NWLR (Pt. 803) 39.

The grant of an Order of interim injunction demands for the exercise of the discretionary powers of the Court which discretion is never exercised in vacuum but based on the peculiar facts of the case and the law is that the Court must exercise the discretion judicially and judiciously having regard to the facts of the case. See ADEYEMI V. THE ESTATE OF DR. (CHIEF) VICTOR AWOSIKA



(DECEASED) & ANOR (2013) LPELR-20213(CA) (Pp. 29 paras. C) where the Court of Appeal held "In an application for injunction, the power of the Court considering it is discretionary. The law enjoins the Court to exercise such discretion judicially and judiciously. Where discretion is not so exercised any such decision is liable to being set aside on appeal."

//In the instant the learned counsel to the Claimants/Applicant succinctly appraised the facts of this case as made out in the affidavit and the annexed exhibits and I understand that what the Claimants are at the moment fighting to protect is their possessory right over the Res subject matter of this litigation. Put in the words of the learned silk "the only res now left to be protected is the possessory rights and business goodwill of the Applicants." I agree with the Applicants that the possessory right is worth fighting for, the Claimants by the affidavit evidence and the annexed Exhibits were able to establish their interest in the subject matter which interest is worthy of the protection of the Court. The Claimants/Applicants did not waste time in commencing legal action to stop the Defendants/Respondents from trespassing and abusing their rights in the shops wherein they were lawful tenants. The Applicant went to Court as soon as the menace appeared, the facts before this Court is that a High Court of this Jurisdiction granted the Order for maintenance of status quo ante bellum but the Respondents particularly the 5th Respondent has been in wanton and flagrant disobedience of the authority of the Court. The law and the Courts frown at such disobedience as same can only lead the country into a state of anarchy. In the celebrated case of MILITARY GOV. LAGOS STATE V. OJUKWU (1986) 1 All NLR 233, 243, the Supreme Court per Obaseki, J.S.C., held thus:

"In the area where rule of law operates, the rule of self-help by force is abandoned. Nigeria being one of the countries in the world, even in the third world, which proclaim loudly to follow the rule of law, there is no room for the rule of self-help by force to operate... If the government of Lagos State wants possession from Chief Odumegwu Ojukwu, it should apply for an order of possession from the competent Court of law...

In the instant case there are ways of legally going about all that the Respondent intend to accomplish without offending the lawful tenants of the 1st and 2nd Defendant/Respondents. The Court where the substantive matter is pending is not only on vacation at the moment the Hon. Judge in charge of that Court is on National assignment and might not be available even after vacation. The shops



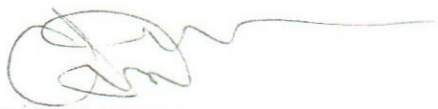
where the Claimants were doing their business have been demolished and as earlier observed the Claimants can only at this point fight for their possessory rights which is in their violated rights as lawful tenants in the shop. The Claimants at the moment want to be duly considered for allocation in the proposed new edifice the Defendants/Respondents intend to construct on that space, they want to be given the right of first refusal. They want their disrupted interest to be taken into consideration. The parties can amicably work things out such that the situation will be satisfactory to either side. Now that the Court might not be available maybe the parties can make the move at resolving their differences amicably. However the current issue before the Court will be addressed, the aggrieved Claimants/Applicant have approached this Court for the protection of their possessory rights/interest in the subject matter, they have demonstrated to the Court that the right exist in them which makes the right entitled to the protection of the law, they have shown there are triable issues between the parties and the facts of this case obviously show that the balance of convenience is in favour of the Applicants who will surfer greater hardship and irreparable damage if the instant application is not granted, it is also true considering the goodwill already established by the Claimants in those shop that it is unlikely that the Claimants can adequately get compensated in damages. The Applicants have satisfied the requirement of the law in Order 43 rule 3 (1) by predicating the instant motion Exparte on the motion on notice already filed and served. In the circumstances this Court finds that the Claimants/Applicants are entitled to the grant of the Orders sought. It is in effect ordered as follows:

1. **An order** of interim injunction is granted by this Court restraining the Defendants/Respondents particularly 5th Defendant/Respondent either by itself or agents, privies, assigns, or howsoever described from going ahead with any allocation of shops to any person either in the form of reservation of temporary shop space for both verified and non-verified operators in the form of permanent shops to be built at the Area 7 shopping complex pending the hearing and final determination of the Applicant's Motion on Notice already filed in this suit.
2. **AN ORDER** of interim injunction is granted by this Court retraining Defendants/respondents more particularly, 5th Defendant/Respondent either by itself or agents, privies, assigns, or howsoever described from carrying on any or further construction work and or doing anything howsoever in the furtherance of its planned remodeling of the Area 7 shopping Complex,



Garki, Abuja pending the hearing and final determination of the Motion on notice.

3. **AN ORDER** of interim injunction is hereby also granted by this Court retraining and barring the 6th Defendant/Respondent the Inspector General of Police either by himself or agents, privies, assigns, or howsoever described from further providing official protection to the 5th Defendant/Respondent or any other person carrying on any construction work and or doing anything in furtherance of the planned remodeling of the Area 7 Shopping Complex, Garki, Abuja.
4. All the Respondents, the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Defendant/Respondents are ordered to in the overall interest of the society maintain peace, law and Order in their relationship pending when the Court or the parties will resolve the issues between them.



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HON. JUSTICE O.I ADELAJA
FCT HIGH COURT NO 42
SITTING AT KUBWA.

