IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT COURT 57, LANDS DIVISION
TODAY, TUESDAY THE 10TH DAY OF DECEMBER 2024
BEFORE HONOURABLE JUSTICE AKINKUNMI O. IDOWU– JUDGE

SUIT NO: LD/15415LMW/24

BETWEEN:

DR. OJO OLUWATOSIN ADEMOLA ... **CLAIMANT**
(Suing through his lawful attorney Ademola Ekundayo Esq.,)

AND

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1. **STARMARK FINANCE COMPANY LIMITED**
2. **MR. STEPHEN AJIBADE ABISUGA** — **RESPONDENTS**
3. **MR. TUNJI SOLAJA**
4. **ENGINEER PETER OMOTOSHO**

RULING

By a Motion on Notice dated the 5th June, 2024 brought pursuant to Order 42 Rule 8, Order 43 of the High Court of Lagos State (Civil Procedure) Rules 2019 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant is praying for the following:

(1) An order of interlocutory injunction restraining the Defendants/Respondents whether by themselves, their servants, or agents or privies or otherwise, whosoever from trespassing, harassing or going into the land or carrying out any activities whatsoever on the land, lying and situate at Plot 1, Block 4, Lekki Pennisula Scheme 1, Admiralty Road, Eti Osa Local Government Area of Lagos State measuring 1,147.124 square meters vide Deed of Assignment registered as No. 69, Page 69, in Volume 2741 of the Land Registry, Ikeja, Lagos State pending the hearing and determination of the suit.

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(2) An order for interlocutory injunction restraining the Defendants/Respondents whether by themselves, their servants, or agents or privies or otherwise, whosoever from using force, thugs, the Police and other agencies of the Government to harass, intimidate, break into the Claimant's property lying and situate at Plot 1, Block 4, Lekki Pennisula, Scheme 1, Admiralty Road, Eti Osa Local Government Area of Lagos State measuring 1,147.124 square meters vide Deed of Assignment registered as No.69, Page 69, in Volume 2741 of the Land Registry, Ikeja, Lagos State, pending the hearing and determination of the Suit.

(3) And for such further or other Order(s) as this Honourable Court may deem for to make in the circumstance.

The application is supported by an Affidavit, with Exhibits A-G, deposed to by the Ademola Ekundayo Esq., the Attorney of the Claimant who is the owner and in possession of the subject matter land by virtue of a Deed of Assignment registered as No. 69 at Page 69 in Volume 2741 of the Land Registry, Ikeja, Lagos State. The original allottee from the Lagos State Government was Mr. Adetunji Ola who was granted a Certificate of Occupancy dated 16th January, 1990 and registered as 54/54/1990 and he transferred to Churchgate Limited, the immediate predecessor-in-title of the Applicant vide Deed of Assignment dated 10th June, 2004 registered as 16/16/2119.

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The Applicant has been in possession since 2021 when he took over ownership and at the time of taking possession the land was fully fenced with a gate and an uncompleted 2 storey structure on it and the Applicant had sought permission to demolish the aforesaid development, which he did in 2023, to enable him build what was suitable for his purpose and for which he had made the fees as assessed by the building approving authority. He also mobilized a contractor to move building materials and equipment to site and it was on the 23rd September,

2023 that the security man he had placed on the site informed him that some Policemen and other persons invaded and forcefully entered the premises.

The Deponent met the 3rd Defendant/Respondent who claimed he was from the Lagos Task force and upon report to the Divisional Police Officer (DPO) of Maroko Police Station, the latter invited them to find out their authorization for invading the land and thereafter ordered them to leave the land which they did and the deponent locked the gate with a new padlock and he made a complaint at the Nigeria Police Force Headquarters Annex, Alagbon as an unregistered mortgage had been shown to be the basis of the Defendants claim. While the Police were investigating the claims, the Defendants went back onto the land, broke the padlock and chased everyone off the land.

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The Defendants thereafter caused the office of the Deputy Inspector General, Force Criminal Investigation Department (FCID) Abuja to take over the case from Alagbon and turned the Claimant/Applicant into the accused and again on the 2nd March, 2024, the 1st Defendant and its agent led Policeman and thugs to invade the subject matter and it was by the intervention of Police Officers from Zone 2, Onikan, Lagos that the brother of the Security man placed by the Applicant on the land, with his wife who had been arrested, were released. The newly constructed Storehouse and site office and other materials of the Applicant were destroyed.

That if the Defendants are not restrained from further acts of trespass and harassment on the land, they will cause irreparable damage to the Claimant's property and the Applicant undertakes to indemnify the Respondents against any loss that may be incurred as a result of the grant of this application.

A Further Affidavit, with Exhibits, sworn to on 30th August, 2024 was also deposed to in support of the application.

Learned Senior Counsel, Dr. Adekunle Ojo SAN, in the Written Address formulated an issue for determination, to wit;

> *"Whether on the face of facts and evidence before this Honourable Court, the Court ought to grant the interlocutory injunction and preserve the res in this matter pending the hearing of the suit."*

In opposition, the Defendants/Respondents by the Counter Affidavit, with Exhibits, dated 8th October, 2024, deposed to by Hon. Hakeem Alobo Bakare, a Director of the 1st Defendant, stated that the original Certificate of Occupancy registered as 54/54/1990 and dated 16th January, 1990 is in the custody of the 1st Defendant having been deposited by ADETUNJI OLA as collateral for a loan facility to develop the land it covers being Plot 1, Block 4, Scheme 1, Lekki Pennisula, Lagos. The Mortgagor, Adetunji Ola, commenced construction on the land. The Claimant has no title to the subject matter in dispute based on the investigation by the Nigerian Police that suggest the Deeds of Assignment referred to by the Claimant were forged and the Churchgate Nigeria Limited which purportedly was the Assignee in the Deed of Assignment dated 10th June 2005 is not a company registered at the Corporate Affairs Commission and was never in possession until September, 2023 when this trespass was carried out.

He deposed that this application is without merit and the balance of convenience is in favour of refusing it.

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The Deponent deposed to a FURTHER AND BETTER COUNTER AFFIDAVIT dated 24th October, 2024.

In the Written Address adopted by Learned Counsel Olusegun Ogunbode Esq., an issue for determination was formulated, to wit;

> *"Whether the Claimant has in view of the title and interest of the 1st Defendant, has availed the Court the sufficient grounds*

to enable the Court exercise its discretion to grant the Order of Interlocutory Injunction as prayed."

The Claimant/Applicant filed a FURTHER AND BETTER AFFIDAVIT AND A REPLY ON POINT OF LAW both dated 10th October, 2024.

All Affidavit evidence in respect of this application and the submissions of respective Counsel are incorporated into this Ruling and this Court upon its careful consideration of all processes before it hereby formulates this issue for its consideration in the determination of this application, to wit,

"Whether in the circumstances of the facts presented, this Honourable Court should grant the relief sought."

The essence of an injunction is to protect an existing legal right from unlawful invasion by another. It is concerned principally with the protection of the res and maintaining the status quo. It is the status quo ante bellum, (the State of affairs before the beginning of hostilities) and not the status quo ante litem (which is the state of affairs before the parties began to litigate).

See: ***UDO V. INCORPORATED TRUSTEES CHRISTIAN METHODIST EPISCOPAL CHURCH (2010) ALL FWLR (PART 507) 88 AT 102.***

It is settled law that a party praying for an order of Interlocutory Injunction must satisfy the Court that:

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i) It has the legal right which he seeks to protect,
ii) There is a substantial issue to be tried,
iii) The balance of convenience is in his favour,
iv) Irreparable damage or injury will occur if the Respondent is not restrained,
v) Conduct of the parties,

vi) That he has undertaken to pay damages for any loss the Respondent may suffer as a result of granting the application.

See ***KOTOYE V. CBN (1999) 1 NWLR (PART 98) 419***

OBEYA MEMORIAL SPECIALIST HOSPITAL V. ATTORNEY GENERAL OF FEDERATION & ORS (1987) 3 NWLR (PART 60) 162.

I shall now go on to examine these established criteria in the light of the Affidavit evidence and processes already filed by the parties to the suit.

The first consideration is legal right. In ***ATTORNEY GENERAL, LAGOS V. ATTORNEY-GENERAL, FEDERATION (2004) 12 SCNJ 1 at 71***, the Supreme Court per NIKKI TOBI JSC defined legal right as follows:

> *"What is a legal right? A legal right is a recognizable in law. It means a right recognized by law and capable of being enforced by the Plaintiff. It is a right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the Plaintiff, even though no action is taken. The determination of the existence of a legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action."*

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The Defendants/Respondents have traced their title to the subject matter to the 1st Defendant being in custody of the original title granted by the allocating authority, Lagos State Government, to the title holder ADETUNJI OLA vide a Certificate of Occupancy registered as No 54 at Page 54 in Volume 1990 at the Lands Registry, Ikeja pursuant to the latter using same as a collateral to secure a facility from the 1st Defendant.

The 1st Defendant had instructed its Solicitors to initiate the process of the perfection of the Mortgage of the property in favour of the 1st Defendant by applying for the Governor's Consent to the Mortgage vide a letter of 9th October, 1991.

For the Claimant/Applicant, he derived its title to the subject matter vide a Deed of Assignment registered as No. 69 at Page 69 in Volume 2741 of the Lands Registry, Ikeja which is dated 16th July 2021 and his predecessor-in-title, Churchgate Limited, derived its own title vide a Deed of Assignment dated 10th June, 2004 and registered as No. 16, Page 16 in volume 2119 at the Lands Registry, Ikeja from MR. ADETUNJI OLA who had been granted the above referred Certificate of Occupancy which the Claimant/Applicant also claim to have the original in his possession. Certified True Copy

In the determination of any interlocutory application pending the trial of the substantive case, care should be taken not to make pronouncements which may prejudice the trial of the claims filed and still pending before the Court, to do otherwise is to prejudge the matter in respect of which evidence is yet to be led.

See: ***ADESINA V. AROWOLO (2005) ALL FWLR (PART 245) 1123 AT 1140***

GLOBE FISHING INDUSTRIES LTD V. CHIEF FOLARIN COKER (1990) 7 NWLR (PART 162) 265 AT 281

With this in mind, this Court finds that by the prima facie affidavit evidence provided by parties in respect of this application it holds that the sequence of perfected titles from the original title holder to the Claimant/Applicant has been unbroken since 1990 till date and the best that the Defendants/Respondents can rely on is an equitable interest based on the unregistered transaction between the original title holder and the 1st Defendant and for this I hold that the legal titles recited by the Claimant/Applicant is sufficient to sustain the application for injunction.

On the balance of convenience, this Court must engage itself in balancing the question of convenience and where it tilts. The Court in ***AKAPO V. HAKEEM-HABEEB (1992) 6 NWLR (PART 247) 266 AT 293*** has held that question of balance of convenience is a matter between the competing rights and in considering whether to keep matters in Status quo until trial, regard must be had to the rights of the parties and the balance of convenience and the extent to which any damage to the Applicant could be cured by payment of damages rather than by grant of the injunction.

See: ***ADEYEMI WORKS CONSTRUCTION (NIG.) LTD V. OMOLEHIN (2004) 6 NWLR (PART 870) 650 AT 665.***

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I find that from the Affidavit evidence and other processes filed by the Claimant/Applicant that he and his predecessors-in-title appear to have been in continuous possession of the subject matter since the allocation by Lagos State Government, (see paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 17, 26, 27 of the Affidavit in Support of the application, Exhibit H of the Further Affidavit of the Applicant) coupled with the above-referred legal right disclosed by it vis-à-vis the depositions in the opposing Affidavits particularly paragraph 7 of the Counter Affidavit which states thus'

> *"That the 1st Defendant initiated a move to commence works on the property (being the rightful and legal mortgage) and applied for Police Protection during that exercise. The 1st Defendant's Solicitors letter to the Lagos State Commissioner of Police to that effect dated the 20th day of September, 2023 is attached hereto and marked Exhibit HAB3."*

This deposition raises the question to answer of why the need for Police protection to retain possession and giving that the essence of an interlocutory injunction is to maintain the status quo ante bellum, I find that the balance of

convenience tilts in favour of the Claimant/Applicant which will suffer more if this application is not granted.

See: *AKAPO V. HAKEEM-HABEEB (SUPRA).*

I also note that the Affidavit evidence of the arrest of the Claimant/Applicant's personnel on site, subject matter of the suit, at the instance of the Defendants/Respondents was not controverted and it can only strengthen the finding of the continuous possession by the Claimant/Applicant.

In other words, more justice will result in granting this application than in refusing it.

See: *EGBE V. ONOGUN (1972) LPELR 1084 (SC).*

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I have considered the reliefs sought by the Claimant/Applicant alongside the Affidavit evidence and I am satisfied that the Applicant has claims that are not frivolous and there are serious issues to be tried relating to violation of his right which may not be compensated with damages and that irreparable injury will be done to the res if the res is taken away from him while parties litigate.

The Applicant has deposed in the Affidavit in Support his willingness to pay damages which undertaking is an enforceable promise at large to indemnify the Defendants/Respondents what they might suffer by way of damages to be determined at a later stage in the event that the Orders sought were wrongly made.

I find that the Claimant/Applicant has substantially satisfied the requirements established for the grant of an Interlocutory injunction and in the result I hereby makes the following Orders:

(1) An order of interlocutory injunction restraining the Defendants/Respondents whether by themselves, their servants, or agents or privies or otherwise, whosoever from trespassing, harassing

or going into the land or carrying out any activities whatsoever on the land, lying and situate at Plot 1, Block 4, Lekki Pennisula, Scheme 1, Admiralty Road, Eti Osa Local Government Area of Lagos State measuring 1,147.124 square meters vide Deed of Assignment registered as No.69, Page 69, in Volume 2741 of the Land Registry, Ikeja, Lagos State, pending the hearing and determination of the suit.

(2) An order for interlocutory injunction restraining the Defendants/Respondents whether by themselves, their servants, or agents or privies or otherwise, whosoever from using force, thugs, the Police and other agencies of the Government to harass, intimidate or break into the property lying and situate at Plot 1, Block 4, Lekki Pennisula Scheme 1, Admiralty Road, Eti Osa Local Government Area of Lagos State measuring 1,147.124 square meters vide Deed of Assignment registered as No. 69, Page 69, in Volume 2741 of the Land Registry, Ikeja, Lagos State pending the hearing and determination of this suit.

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The Applicant shall file an undertaking within 7 days of the grant of this application as same is a condition for the grant of the injunctive reliefs just granted.

This is the Ruling of the Court.

HON. JUSTICE AKINKUNMI O. IDOWU

Hon. Justice Akinkunmi O. Idowu
(Judge)

Akinwande O. P.
Commissioner For Oaths
High Court of Lagos, Ikeja

COURT OF LAGOS STATE HIGH

Sign:_____ Date:_____

CASH OFFICE, IKEJA