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ECJ 25th April 2024

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA



SUIT NO: FCT/HC/CV/ 7141/2023
MOTION NO: M12460/2023

BETWEEN

AFRIGOS FILM & MEDIA ACADEMY LTD

PLAINTIFF

AND

1. PUBLIC SERVICE INSTITUTE OF NIGERIA (PSIN)
2. ABDULGANIYU OBATOYINBO
(Chief Administrator)
3. SAHEED YUSUF
(Director Admin and Human Resources)

DEFENDANTS

4. HEAD OF SERVICE OF THE FEDERATION

1st, 2nd AND 3RD DEFENDANTS' COUNTER AFFIDAVIT TO THE MOTION
ON NOTICE DATED 8TH AUGUST 2023.

I, Ayodele Micheal Aiyegbusi, Male, Adult, Christian of the Public Service Institute of Nigeria under the Office of Head of Civil Service of the Federation OHCSF in the (Presidency), Kubwa, Expressway Abuja, Federal Capital Territory hereby make oath and states as follows:

- 1) That I am conversant with the facts and circumstances of this suit by virtue of my position as the employee of the Federal Government and on posting to the Defendant's office as a litigation officer in the Legal Department.
- 2) That I depose to this Affidavit with the knowledge and consent of my employer.
- 3) That Muhammad Danjuma Alhassan Director legal Services (PSIN) Counsel handing this matter informed me on 24th August 2023 at about 10:00 am in his office at the Public Service Institute of Nigeria (PSIN) Kubwa and I verily believe him as follows:

Official
28/8/23

- 4) That the deposition in support of the motion on notice is false and misleading and further to this I state that paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 are false and misleading.
- 5) That in answer to the plaintiff deposition/witness on oath herein I state as follows:
- 6) That sometimes in 2019 the plaintiff approached 1st defendant and signified interest to lease the computer building within the premises.
- 7) That after negotiation an offer letter dated 8th day of the July 2019 was given to the plaintiff.
- 8) That during the course of the negotiation it was agreed that the plaintiff should pay Three Million Naira (N3,000,000.00) per annum for three (3) years lease of the premises.
- 9) That it was left for the plaintiff to accept the terms of the offer by writing an Acceptance letter to the 1st defendant which was not done.
- 10) That the offer letter Exhibit A1 has stated that the plaintiff is to liaise with the legal adviser in order to complete the process of the negotiation and Contract Agreement execution which will then become a Contract.
- 11) That **Exhibit A1** does not confer the status of a contract relationship between the plaintiff and the 1st defendant.
- 12) That the keys of the premises given to the plaintiff was preparatory to signing of a formal Agreement, and for him to prepare cost of repairs and extent of renovation needed, no approval was granted the plaintiff to move in because no agreement has been signed.
- 13) That the 1st defendant was not aware that the plaintiff brought any equipment to the premises, and there was no approval, inventory or joint inspection of the property before the plaintiff moved in.
- 14) That upon the discovery that the plaintiff had moved in to the premises without formalizing of the process or payment of the Agreed sum in the letter of offer, 1st defendant thereafter restrained his access to the premises.
- 15) That there was no payment of any sum of money to any of the defendants, apart, from the initial deposit of **Five Hundred Thousand naira (N500,000.00)** and that financial transaction in the Institute, as a government body is usually accompanied by issuance of a receipt.

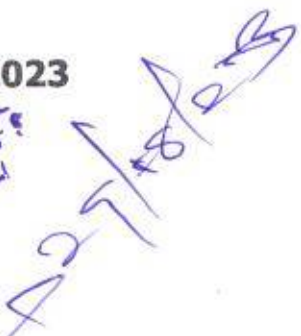
- 16) That plaintiff had series of meetings with the plaintiff towards the resolution of the matter and on the 18th April, 2023 a joint inspection of the property was made by the plaintiff and the 1st defendant, and plaintiff was told to make a formal application for the Institute to reopen the premises.
- 17) That it was after this that the plaintiff alleged that his equipment were missing as stated in **Exhibit A8 i** of the deposition in support of the statement of claim.
- 18) That the issue of the missing equipment made the 1st defendant to lodge a complaint to the Police who are presently investigating the matter. The complaint to the Police are attached as **Exhibit PSIN 1 and PSIN 2.**
- 19) That it is for the above reasons that the plaintiff has been restrained pending comprehensive Police investigation.
- 20) That the order of access being sought by the plaintiff if granted will work hardship and foist a fait-accompli on the subject matter of litigation.
- 21) That the refusal of the order sought will be in the interest of justice and rule of law.
- 22) That I make this oath in good faith believing same to be true and in accordance with the Oaths Oct.



DEPONENT

SWORN to at the High Court Registry, FCT

This ____ day of _____ 2023


COMMISSIONER FOR OATHS
COMMISSIONER FOR OATHS



PUBLIC SERVICE INSTITUTE OF NIGERIA (PSIN)

Office of the Administrator / CEO

08071160981
08036297499
09082777756

08036297499 (Active)

PSIN/AF/1117/Vol.1/49

Commissioner of Police
Federal Capital Territory,
Abuja.

P.M.B. 08 Kubwa
Dutsen - Alhaji Junction,
Kubwa Express Way, Abuja.



17/05/2023

Attention: Officer In charge State Criminal Investigation Department:

**RE: REQUEST FOR A COMPREHENSIVE INVESTIGATION INTO THE MISSING ITEMS
ALLEGED BY AFRIGOS FILM & MEDIA ACADEMY LTD**

Above subject matter refers.

- The above company In July 2019 applied to lease one of PSIN's properties for the purpose of carrying on business. PSIN considered the company's proposal and was desirable to lease one of its properties, which led to the granting of access to the company to inspect for suitability and subsequent formalisation to the lease Agreement upon payment of the agreed lease price. The access granted by PSIN to the company was abused by the company because it refused to pay the three Million (N3,000,000.00) rental fee for the year, as agreed by the parties and did not sign the lease Agreement.
- It was until management restrained his access to the said premises that he hurriedly made a deposit of Five Hundred Thousand naira (N500,000.00) only of the total rental fee of Six Million naira (N6,000,000.00) for two years which was grossly inadequate to permit his further operation. This led to a stalemate between the parties that endured fifteen (15) months since February 2022.
- PSIN in the exercise of its corporate/organisational responsibility towards the citizenry and the need to do justice in the matter, initiated in March 2023 an amicable settlement of the matter wherein the said premises was reopened for a joint inspection but in a twist of events the counsel on behalf of the company chronicled several missing items from the said premises which has for us as a Government criminal implication. It is against this background that management of PSIN has in its wisdom resolved that police being a neutral party be brought in for a comprehensive investigation into the matter, so that appropriate recommendation will be made for further action by the Government.
- Please accept the assurances of the Administrator/CEO highest esteem.


D. A. Muhammad
08033112403

Director Legal Services
For: Administrator/CEO

website: www.psin.gov.ng

Email: obatoyinboz@psin.gov.ng, info@psin.gov.ng



PUBLIC SERVICE INSTITUTE OF NIGERIA (PSIN)

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08036297499 (Active)

PSIN/AF/1117/Vol.1/450

Commissioner of Police
Federal Capital Territory,
Abuja.



8/08/2023

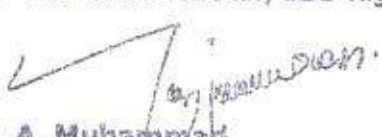
REMINDER

Attention: Officer In charge State Criminal Investigation Department:

**RE: REQUEST FOR A COMPREHENSIVE INVESTIGATION INTO THE MISSING
ITEMS ALLEGED BY AFRIGOS FILM & MEDIA ACADEMY LTD**

Above subject matter refers.

2. I am directed to draw your attention to the petition dated the 17th May 2023 on the above named subject matter which was delivered on the 18th of May 2023 to your office requesting a comprehensive investigation in to the contents contained therein. I am accordingly further directed to urge your good offices to expedite action in a professional manner regarding the said petition so that the matter can be brought to rest once and for all in the interest of all parties. Kindly find attached the said petition for ease of reference and further necessary action please.
3. Please accept the assurances of the Administrator/CEO highest esteem.


D. A. Muhammad

08033119403

Director Legal Services
For: Administrator/CEO

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

SUIT NO FCT/HC/CV/7141

BETWEEN

**AFRIGOS FILM & MEDIA ACADEMY LTD
PLAINTIFF**

AND

- | | | |
|---|--|-------------------|
| <ul style="list-style-type: none">1. PUBLIC SERVICE INSTITUTE OF NIGERIA (PSIN)2. ABDULGANIYU OBATOYINBO
(Chief Administrator)3. SAHEED YUSUF
(Director Admin and Human Resources)4. HEAD OF SERVICE OF THE FEDERATION |  | DEFENDANTS |
|---|--|-------------------|

**1st, 2nd AND 3RD DEFENDANTS' COUNTER AFFIDAVIT TO THE
MOTION ON NOTICE DATED 8TH AUGUST 2023.**

1.0 INTRODUCTION / STATEMENT OF FACT:

- 1.1** This is a written address in opposition to the Motion for Interlocutory Injunction dated 8th August, 2023.
- 1.2** The 1st Defendant is a training institute for Public service of the Federation
- 1.3** The Plaintiff sometimes in 2019 approached the 1st Defendant with the intention to lease one of its property. After negotiations, a letter of offer was made to him by the 1st Defendant

- 1.4 The Plaintiff never wrote any letter of acceptance and without an Agreement or approval , or inspection by the 1st Defendant in relation to inventory of what he is bringing into the premises ,went into same .
- 1.5 The court is enjoined to note that there is no Agreement between the Plaintiff and the Defendants.
- 1.6 The negotiated sum of three million naira per annum was never paid by the plaintiff to the 1st Defendant when he moved into the premises and this was what led to the stalemate .
- 1.7 A joint inspection was made for an amicable settlement so that the place can be reopened as a way forward for the parties ,It was after this joint inspection that Plaintiff alleged that his equipments were missing as detailed in his **Exhibit A8i** of the his writ.
- 1.8 It was at this juncture that the 1st Defendant as a respectable organisation of Government deemed it fit to lay a formal complaint with the Police for a comprehensive investigation as can be seen in exhibit PSIN 1 and 2 anexed to the 1st 2nd and 3rd Respondent Counter-Affidavit.
- 1.9 This necessitated the closure of the premises pending the police investigation. Meanwhile ,the Plaintiff has approached this court while investigation is ongoing.

2.0 ISSUE FOR DETERMINATION

2.1 The 1st , 2nd and 3rd Defendants hereby formulate a sole issue for determination in this suit as follows:

Whether considering the facts and circumstances of this case, the Plaintiff/Applicant is entitled to the relief of Interlocutory Injunction being sought, pending the determination of the substantive suit.

3.0 LEGAL ARGUMENTS ON ISSUE FOR DETERMINATION

3.1 We submit my lord that the Applicant is not entitled to the reliefs being sought on the face of the Motion paper, first the motion is incompetent both in form and substance and the conditions for the grant of an Order of

Interlocutory Injunction has not been fulfilled by the Plaintiff/Applicant, so as to warrant this Honourable Court to grant an Order of Injunction in his favour.

3.2 Thus, my lord, it is trite principle of law that an Order of Injunction is an equitable remedy at the discretion of the Court. However, such exercise of discretion by the court must be done judicially and judiciously.

3.3 In addition, my lord, it is settled law that for an Applicant to invoke the discretionary powers of the court, he must furnish the court with reasons through valid admissible evidence to show that he deserves the equitable reliefs, being sought.

3.4 Flowing from the above my lord, the superior courts of Record in Nigeria including the Supreme Court had over the years developed the principles or conditions upon which an application for an Order of Injunction could be favourably considered or refused as the case may be. These amongst others as formulated in the KOTOYE V CBN (2006) 2 LC,625 Includes.

- a) **Existence of Legal Right**
- b) **Serious issue to be tried**
- c) **Balance of convenience**
- d) **Adequacy of Damages**
- f) **Whether the Applicant has shown irreparable damage**
- g) **Whether the Applicant has given an undertaking as to damages and has shown an ability to meet such an undertaking as to damages.**
- h) **Existence of Alternative Remedies**

3.5 Having stated some of the conditions to be fulfilled by an applicant for an Order of Interlocutory Injunction, the next question that calls for consideration is whether the Plaintiff /Applicant in his case has met these conditions in order to succeed in his application before your lordship.

4.0 EXISTENCE OF LEGAL RIGHT:

4.1 First and foremost, we submit my lord that the major condition to be fulfilled by the Plaintiff in order to succeed in its application is whether it has any recognizable legal right or interest in the subject matter of litigation upon which their reliefs could be tied.

4.2 On this issue, we submit my lord that from the available evidence it is crystal clear that the Plaintiff does not have any legal right which has been violated.

4.3 There was no contract between the Plaintiff /Applicant and the Defendants .There is no written agreement as can be gleaned in the Plaintiff's writ of summons , the statement of Claim thereof.The Plaintiff referred to an agreement that was not signed by parties.It is trite law that an unsigned document goes to no issue.The Plaintiff cannot also rely on the letter of offer to let which is an invitation to treat which may be accepted by the plaintiff.

4.4 On this note, having established that the Plaintiff have no legal right in the area where the Plaintiff is seeking an Order of Court to protect, this application should be refused.

4.5 In conclusion, I submit that since the Plaintiff has no recognizable legal right in this matter, then this court has no any other option than to refuse this application.

5.0 EXISTENCE OF SERIOUS ISSUES TO BE TRIED

5.1 On this issue, I submit my lord that having established that the Plaintiff has no legal right in this matter, there are no serious issues to be tried in this matter.

6.0 BALANCE OF CONVENIENCE

6.1 On the Issue of Balance of Convenience, we submit my lord that the balance of convenience weighs more in favour of the Defendants in this suit. This submission is based on the fact that the Defendants would stand to lose

more, if an Order of Injunction is granted till the final determination of this case.

6.2 In addition, I refer your lordship to paragraphs 8 of the Plaintiff/Applicant Affidavit whereby he stated that there is **no tenancy agreement as marked by Exhibit A2**. Moreover, the Plaintiff has not even paid the agreed sum of three million naira per annum which was the condition for letting out the premises. Furthermore, the Plaintiff's allegation of missing items has necessitated the police investigation into the matter. **Exhibit PSIN 1 and PSIN2 is a letter of invitation to the Police**. It therefore stands to reason that the reopening of the premises while a police investigation is going on will foist upon the court a situation of fait accompli. Therefore, it will then be improper for the Defendants to be restrained without any just cause.

6.3 Furthermore, we submit further that the Plaintiff would not lose anything if this application is refused. Because, the Plaintiff can be adequately compensated in damages should they succeed in their action against the Defendants. Moreover, it is imperative at this juncture to inform your lordship that, investigation is ongoing in the matter.

6.4 In conclusion, we submit that it is settled law that in considering the question of Balance of Convenience, **the court always concerned itself with the competing rights of the parties whereby should the Applicant succeeds in its claim, whether he could be adequately compensated by award of damages against the respondent and more importantly, that the Respondent is financially in position to pay the damages awarded.**

6.5 Flowing from the above proposition of law, we submit that since the Plaintiff can be adequately compensated by an award of damages should he succeed in his claim, and the 1st Defendant being a Government agent, are in good financial standing or position to pay such an award, then it would not be in the interest of justice to grant this Application. More so, from the totality of the facts of this case, the balance of convenience tilts in favour of the Defendants.

6.6 On this proposition of law, I refer your lordship to the case of **ORJI Vs ZARIA IND. LTD (1992) INWLR (PT. 216) page 124 at 139, paras E-F per Wali JSC stated:**

"At this stage, it is my view that it is immaterial whether or not the appellant asked for damages in the alternative or any other relief that he might have been entitled as the guiding principle is that where damages in the measure recoverable at common law would be adequate, and the Respondents would be in a financial position to pay, the court will not grant the Interlocutory Injunction however, strong the appellant case may appear to be. It is a matter weighing the balance of convenience between the parties and each case will depend on its own circumstances and peculiarities"

7.0 ADEQUACY OF DAMAGES:

7.1 On this issue, I submit my lord that since payment of damages would be adequate compensation for the Plaintiff should the Plaintiff succeed in his claim, and the Defendants are in financial position to pay, then, however, strong the Plaintiff's claim appeared to be at the trial, no Interlocutory Injunction should normally be granted. This amongst other things was the position of the court in the case of ORJI Vs ZARIA IND. LTD (SUPRA)

7.2 In conclusion, on this issue, I submit my lord that since payment of damages can adequately compensate the Plaintiff in this matter should the Plaintiff succeeds, and it is not in doubt that the 1st Defendant is in strong position to pay such damages (if any), it is in the interest of justice for your lordship to withhold the grant of an Order of Interlocutory Injunction in this matter. And I urge your lordship to so hold.

9.0 IRREPARABLE DAMAGE:

9.1 On this issue, we submit my lord that for an applicant including the Plaintiff in this case to succeed in an application for an Order of Injunction, the Applicant must have shown that he would suffer irreparable damage.

However, in this case my lord, the Plaintiff has not been able to show that irreparable damage would be incurred or suffered if this Order is not granted.

9.2. In addition my lord, we submit that since the Plaintiff could be adequately compensated by way of payments of damages, then, suffice it to say therefore, that no irreparable damage or injury would be suffered by the Plaintiff to warrant the court granting an Order of Interlocutory Injunction in his favour. More so, since the Plaintiff can be adequately compensated by way of payment of damages should the Plaintiff succeed in its action against the Defendants.

9.3 In conclusion, I submit that since the Plaintiff has not been able to show that he would suffer irreparable damage or injury that cannot be adequately compensated in payment of damages, this application should be refused by this Honourable Court.

10.0 UNDERTAKING AS TO DAMAGES:

10.1 I submit my lord that, it is a pre-condition for an Applicant to enter into an undertaking as to payment of damages as a precaution should the Order of Injunction is wrongly procured, or from the available evidence, the court ought not to have granted the Order. That being the case therefore, I have carefully gone through the Motion and the Affidavit in Support, and I have not seen where the Plaintiff has entered into bond or undertaking as to payment of damages, should the court grant the Order where it ought not to have done so.

10.2 In addition to the above, apart from entering into a bound or undertaking as to payment of damages, it is also incumbent on the Applicant, the Plaintiff in this case, to tender in evidence particular of its financial position to show ability to meet undertaking as to damages. That being so therefore, I submit that Plaintiff failure to enter into proper undertaking and also show evidence of payment of such damages when the need arises is fatal to its application. Because non entering into a proper undertaking as to damages presupposes that one of the conditions precedent for a grant of an Order of Interlocutory Injunction has not been met. Therefore, I urge your

lordship to refuse this application. On this proposition of law, I refer your lordship to

KOTOYE V CBN (SUPRA)

10.3 In conclusion, since the Applicant has not shown any ability whatsoever to meet the undertaking as to payment of damages which has not been given, I submit my lord that this application must be refused. See the case of **OYESOLA VS NNEBEDUM (1992) 3 NWLR (PT. 299) PAGE 315 AT 344.**
KOTOYE V CBN (SUPRA).

10.4 We urge MY LORD to note that if access to the premises is granted to the Applicant, the case would have been decided at inception at the interlocutory stage before the substantive matter. The Supreme court has admonished in a plethora of decided cases that courts should resist the temptation of going into the substantive issues in deciding matters of interlocutory nature at the interlocutory stage.

10.5 It is further submitted that the 2nd and 3rd Defendants in this suit are sued in their personal capacities while carrying out their official functions as employees of the Federal Government of Nigeria. It follows in law that they are not proper parties before this honourable court and therefore the court has no jurisdiction whatsoever to entertain any case pertaining to the duo. We refer the court to the age long case of **NKEMDILIM V MADUKOLU (2006) 2 LC 208**. In the circumstance, therefore, we urge my lord to strike out the names of the 2nd and 3rd Defendants from this suit as they are improper parties before you.

12.0 SUMMARY;

12.1 In summary, we urge your lordship to refuse this application because; the Plaintiff has failed woefully to meet the conditions precedent for grant of an Order of Interlocutory Injunction.

12.2 Additionally, the Plaintiff:

- a) Failed to show any legally recognisable right or interest if this application is refused.

12.0 SUMMARY:

12.1 In summary, we urge your lordship to refuse this application because; the Plaintiff has failed woefully to meet the conditions precedent for grant of an Order of Interlocutory Injunction.

12.2 Additionally, the Plaintiff:

- a) Failed to show any legally recognisable right or interest if this application is refused.
- b) The Plaintiff has not been able to show that there would be any serious or live issue to be tried in this suit because, the Defendants have no Contract with the Plaintiff.
- c) The balance of convenience in this matter tilts in favour of the Defendants in the sense that they would suffer much more hardship if the application is allowed.
- d) The fact that the Plaintiff could be adequately compensated, assuming but without conceding that, they succeed in their claim against the Defendants, it is not necessary to grant an Order of Interlocutory Injunction in this matter.
- e) The fact that the Plaintiff has not been able to show that it would suffer irreparable damage if an Order of Injunction is not granted, presupposes that payment of damages would suffice, should the Plaintiff succeed in its claim against the Defendants.
- g) The fact that the Plaintiff did not indicate the willingness or undertaking to pay damages, the application of the Plaintiff should be refused.

13.0 In conclusion, we urge your lordship to refuse this application and dismiss same for lacking in merit, while at the same time order the accelerated hearing of the substantive suit, since all the facts are already before the court.

Dated this 29th day of August, 2023.