IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
3RD DAY OF NOVEMBER, 2016.

BETWEEN: SUIT NO: B/187/16

1. MR. OSAYEMWENRE EDWARD
2. PA ASHIA OKABOR for and on behalf of
3. CHIEF OSADOLOR OKAHON Okabere Community } CLAIMANTS/APPLICANTS
4. MR. PATRICK IMASUEN
5. MR. GODWIN IGBINOSUN

AND

1. MR. OSAMEDE IYAMU (aka Armani)
2. MR. MONDAY OGBOMWAN … } DEFENDANTS/RESPONDENTS

RULING

This is a Ruling on a Motion on Notice, dated 14th March, 2016 and filed on the 23rd of March, 2016, brought pursuant to Order 36 Rule 1 (1) and Order 37 Rules 1 and 2 (1) the Edo State High Court (Civil Procedure) Rules 2012 and the inherent jurisdiction of the Court. The application is seeking the following relief:

AN ORDER of interlocutory injunction restraining the 1st and 2nd Defendants/Respondents from parading themselves as Youth Leader and Chairman Community Development Association respectively of Okabere Community, Ikpoba Okha Local Government Area, Benin City and from acting and/or functioning as such respectively by and in any guise pending the final determination of the main suit.

AND for such further Order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by a 14 paragraphs affidavit deposed to by the 1st Claimant/Applicant. Attached to the affidavit in support of this motion are Exhibits A; B; C; D; E; and F.

Arguing the motion, the learned Counsel for the Applicants, O.B.Ilebode Esq., formulated the sole issue for determination thus:

> *"Whether on the state of the affidavit evidence and the applicable laws, this Honourable Court ought to grant the application for interlocutory injunction pending the final determination of the main suit before this Honourable Court."*

He submitted that in an application of this nature, the courts are guided by the following principles:-

i. Applicant must show he has a legal right to be protected;

ii. The balance of convenience;

iii. Irreparable damage or injury;

iv. Conduct of the parties; and

v. Existence of alternative remedy.

He submitted that an order of interlocutory injunction is granted to maintain the *status quo* until the final determination of the main suit. He argued that from the affidavit of the Applicants, particularly from paragraphs 5 and 6 thereof, the Respondents were removed from office by the same authority that appointed them and referred the Court to Exhibits A, B and C.

On the principle of the legal right to be protected, he submitted that by virtue of Exhibits A, B and C respectively, the Applicants have shown that they have a legal right to protect. He maintained that at this stage, all the applicants need to show is that there is a probability that they are entitled to the right whose violation they complain of. He referred the Court to the case of: Egbe v Onogun (1972) 1 ALL NLR (PT 1) 95 where the Court stated thus:

> *"The mere fact that there is doubt as to the existence of such right is not sufficient to prevent the court from granting an interlocutory injunction. It is not for the court at this stage to determine finally as between the parties the legal rights the violation of which is subject matter of the claim in the writ. Once he establishes such prima facie case or a probability that he is entitled to the right whose violation he complains, the governing consideration is the maintenance of the status quo pending the trial".*

He therefore urged the Court to grant this application and maintain the status quo as at 27th October, 2014 and the re-affirmation of same on 15th April, 2015 *vide* Exhibits A, B and C.

On the requirement of substantial issue to be tried, Counsel submitted that from the affidavit evidence and Exhibits A, B, C, D, E and F there is a substantial issue to be tried in this suit. He also referred to the case of: *KUFEJI V KOGBE (1961) 1 ALL NLR 113 AT 114,* where it was held that:

> *"In an application for interim relief by way of injunction, it is not necessary that a plaintiff or applicant should make out a case as he would on the merits, it being sufficient that he should establish that there is a substantial issue to be tried at the hearing".*

He submitted that this position was followed by the Supreme Court in the case of: *Obeya Memorial Hospital v A-G Federation (1987) 3 NWLR 325 at 3*

On the balance of convenience, he submitted that the balance of convenience is in favour of the Applicant. He argued that by the depositions in paragraphs 8, 9,10,11,12 and 13 of the supporting affidavit, if this application is refused, the community land will be completely devoured in a short while. He argued that there is a likelihood that law and order will completely breakdown as there is a limit to which the applicants and other members of the community can continue to tolerate the violence the Respondents are visiting on the community members. He added that the entire community will be subjected to the rigors and expenses of litigation to recover the parcels of land being illegally allotted by the respondents.

He submitted that no amount of damages awarded will compensate the Applicants.

Counsel further submitted that in paragraph 13 of the affidavit in support, the applicants have expressed their willingness and readiness to enter an undertaking to pay damages. He maintained that there is nothing the Respondents will suffer if this application is granted. He submitted that the respondents are neither employees of the community nor are they on salary. He said that while they are supposed to influence development in the community, they are devouring the commonwealth of the community and have taken the entire community hostage. He referred the Court to the case of: *AYORINDE V. AG OYO STATE (1996) 2 SCNJ 198 AT 211* where the Court held that:

"Where damages will suffice as adequate remedy, injunction *will be refused, but if on the other hand the defendant will be adequately compensated in damages should the case fail, then same will be granted".*

On the issue of irreparable damage or injury, Counsel submitted that failure to grant this application will cause the applicants such damage and injury that they cannot be compensated by damages. Furthermore, he submitted that if this motion is refused, Okabere community may have ceased to exist by the time this suit is finally determined judging by the conduct of the Respondents.

On the conduct of the parties, he submitted that the conduct of the Respondents has been most reprehensible at all times material to this suit and even before. He referred the Court to paragraphs 8. 9, 10, 11, 12, and 13 of the affidavit in support to buttress this submission. He stated that the Applicants have conducted themselves in a manner worthy of commendation and have resisted every temptation to resort to self help outside the due process of law.

He posited that an injunction is an equitable relief, so the court must consider the conduct of the parties both before and at the time of the application and relied on the case of: *LADUNNI V KUKOYI (1972) 1 ALL NLR (PT 1) 133*.

On the existence of an alternative remedy, learned counsel submitted that having established that no amount of damages will suffice as adequate remedy to the Applicants; the only remedy will be to grant this application pending the final determination of the suit.

He finally urged the Court to grant the application.

Upon service of the Motion on the Respondents, their Counsel filed a Counter-Affidavit of 31 paragraphs and a Written Address.

In his address, the learned Counsel for the Respondents, Chief A.B.Thomas, opposed the application for interlocutory injunction and relied on all the

paragraphs of the counter- affidavit as well as the documents annexed as Exhibits "C", "D", "E" and "F" respectively.

Learned Counsel submitted that the sole issue for determination is:

"Whether the applicants are entitled to the injunctive relief sought".

He submitted that the Applicants are not entitled to the injunctive reliefs sought on the ground that they have no legal right to protect as they are trying to usurp or overthrow the legitimate tenure given to the Respondents through a valid election conducted at the community town Hall on the 18/9/2012 as stipulated by the Constitution of the Okabere Community Development Association. He stated that the 2nd Applicant signed the said Constitution which is extant as same has not been declared null and void.

Counsel further submitted that if there is any legal right to be protected, it enures in favour of the Respondents who have five years tenure from 18/9/12 to the eve of 18/9/2017. He argued that these legal rights in favour of the Respondent can be gleaned from paragraphs 6, 7, 8, 9, 10, 11 and 12 of the Counter-affidavit.

Counsel posited that in granting an interlocutory injunction the court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. He maintained that the party that has a right to be protected here are the Respondents who were validly elected into office under a Constitution, and inaugurated for a period of five years. He submitted that the Applicants are purportedly claiming to have dissolved the executive without regards to the constitution.

On the factors the Court must consider in an application for interlocutory injunction, Counsel referred the Court to the dictum of the court in the case of: *Okomu Oil Palm Co. vs. Tajudeen (2016) 3 NWLR Part 1499, 284 at Pp 317 – 318 paras H-A; 320, paras E-G; 322, para F, thus:*

> *"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. An applicant for interlocutory injunction is no longer expected to show a strong prima facie case. The legal requirement has long been whittled down. Once the applicant establishes that there is a substantial issue to be tried*

at the hearing, the burden on the applicant is discharged. The applicant is not required to establish indefeasible rights to the relief sought. In consideration of the balance of convenience, the material status quo is the status quo ante bellum, the status quo before the hostility ensued distinguished from a created status quo, created by the alleged wrong doer"

He also referred to the case of: *NNB V UDOBI (2001) 14 NWLR (Pt732), 1 at pp 9 – 10 paras F –B.*

He submitted that when the Respondents' rights were being threatened, the Respondents filed suit No. B/147/0S/2014 for the Court to determine whether by the Constitution of their Community, they can be removed from office without due process. He informed the Court that the suit is pending at the High Court No. 3, Benin City.

Furthermore, Counsel referred the Court to the case of: *Edosomwan vs. Erebor (2001) 13 NWLR (Pt. 730), 265 at P 290, paras E-F*, where the Court of Appeal held thus:

"While interlocutory injunction cannot be granted merely because there is a dispute between two parties, it will be granted in support of a legal right, that is a right cognizable in law. In other words, an interlocutory injunction will be granted to protect the violation of a legal right".

He argued that from the above, the Respondents have been able to show that they are the duly elected members of the Executive of the Okabere Community development Association with tenure of five years from 18//9/2012 – 18/9/2017 and therefore have a legal right to protect.

He further submitted that the "res" to be protected is the office/tenure of the Respondents which will finally come to an end on the eve of 18/9/2017. He maintained that if changed it may be impossible to salvage it to its original form or content. He argued that no amount of damages can compensate for such duly

elected office if restrained. He submitted that the Applicants are the ones violating the rights of the Respondents which cannot be compensated in damages should an injunction be granted.

Counsel submitted that the Okabere community is not the personal estate of the 2nd Applicant wherein he can just appoint some person(s) and hire them at his pleasure. According to him, there is a Constitution regulating the activities of those elected into office of the Okabere Community Development Association which stipulates five year tenure. He maintained that the said constitution was co-signed by the 2nd Applicant and other senior elders of Okabere Community. He argued that the affidavit evidence of the Respondents have shown that they came into office through a legitimate election conducted on 18/9/2012 at the town hall meeting wherein all the Claimants participated. He submitted that it will be absurd for a tenured office as provided under the constitution of Okabere Community to be truncated by one man and thereafter appoint 1st, 4th and 5th Applicants at his will.

Counsel further submitted that the Respondents WERE NEVER APPOINTED BUT ELECTED at the Community Town Hall and were also inaugurated there by the elders of Okabere Community including 2nd Applicant.

On the balance of convenience, he submitted that it is "that person who is in possession and have something to lose, that the law needs to protect."
He referred to the dictum of the Court in the case of: *W.A.O.S. Ltd V Pelfaco Ltd (1994) 1 NWLR part 319, 164 at P. 187, paras D – E* thus:

> *"Generally, the balance of convenience is on a Party in possession of land with an established enterprise thereon. In the case in hand, it was evident that before the cause of action arose the respondent was mortgagor in possession of the mortgaged property. It had an established business of renting the port complex to some companies. The appellant was never in possession really does it no harm(sic) compared to the respondent in possession that would be ejected forcibly and its business interrupted and thus suffer consequential loss of business and goodwill which cannot be compensated in*

damages".

He argued that assuming but without conceding that there is a dispute and the status quo needs to be maintained, it is the Respondents who have been in power and still in power that will remain in office and not those who are claiming that they were appointed by the Odionwere (2nd Applicant) contrary to the Constitution of Okabere Community Development Association.

He submitted that where damages will be enough to remedy a wrong the court will be hesitant to grant an injunction and referred to the case of: *Edosomwan Vs Erebor (Supra) Pp. 286 – 287 paras H – D*:

He submitted that the Applicants should be patient for the Respondents to complete their tenure so that an election can be held in accordance with the Constitution of the Okabere Community CDA.

On whether an act that has been completed can be restrained by court, Counsel, answered in the negative and relied on the case of: *Buhari V Obasanjo (2003) 17 NWLR part 850, 587 at Pp 638 paras E – G, 662 paras A – C; 640 – 641 paras H – G; 639 – 640 paras G – A.*

Counsel referred the Court to paragraph 24 of the counter-affidavit where the Respondents stated that the Claimants are men of straw who cannot pay damages if an injunction is granted in error and cited the case of: *ITA V. NYONG (1994) 1 NWLR, PART 318, P. 56 at P. 59; Ratio 6.*

Counsel submitted that since the Respondents have filed their Originating Summons and Motion on Notice for interlocutory injunction in Suit No. B/147/0S/2014 on 19/12/2014 which is pending at the High court No. 3, Benin City, a Court of Co-ordinate jurisdiction, it would be un-procedural for this court to grant the present applicants the injunction they are seeking.

Finally, he submitted that they have fully joined issues with the Applicants by filing their pleadings so the suit is ripe for hearing.

At the hearing of this application, the learned Counsel for the Respondents made some oral submissions in addition to his Written Address. He submitted that the Court cannot grant this application without going into the merits of the

substantive suit. He said this will be contrary to the decision of the Supreme Court in the case of: *Akapo vs. Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266 at 271-274*.

Furthermore, he submitted that the Applicants Further Affidavit and Reply on Point of Law are defective having been filed more than 8 days after the filing of their Counter Affidavit and Written Address. He said this is contrary to Order 37 Rule 3(2).He also submitted that the said Reply is not on Law but on facts. He urged the Court to strike it out or discountenance the contents. He however conceded that the penultimate paragraph of the Reply is on Law.

Finally he submitted that the Supreme Court has warned against granting an injunction to restrain the performance of statutory functions.

He urged the Court to dismiss this application as one lacking in merit, brought by malice, vexatious and gold digging with substantial cost.

The learned Counsel for the Applicants filed a Reply on Points of Law. Therein he addressed the purported election of 18/9/2012, and submitted that he who alleges must prove. He argued that the Respondents have not proved that there was any election as nothing was placed before the Court besides their deposition. He stated that by paragraph 3 of their affidavit the 1st Applicant stated that the Respondents were appointed by the 2nd Applicant in 2000, long before the purported constitution came into being. He argued that the Respondents ought to do more than mere deposition on oath to show that there was an election on 18/9/2012.

Furthermore, he submitted that on the face of the purported counter affidavit served on them, the said counter affidavit was not sworn before nor endorsed by the Commissioner for oaths.

On the existence of a pending suit B/147/OS/2014 Exhibit E and F attached to the counter affidavit, he submitted that if such a suit ever existed, it has ceased to exist by virtue of Order 6 Rule 6 (1) (2) and Rule 7 Edo State High Court (Civil Procedure) Rules 2012; the said suit having not been served till date.

Furthermore, learned Counsel referred the Court to paragraph 30 of the counter affidavit where it was stated that the said suit No. B/147/OS/2014 was fixed for Monday 16th May, 2016 for hearing; meanwhile the said counter affidavit was filed on 25th May, 2016, nine days after the said 16th May, 2016 and there was no account of what transpired in court on that date. He submitted that the

paragraph is self contradicting and should be discountenanced. He maintained that the only reasonable conclusion is that the said suit does not exist.

He urged the Court to compare the purported signature of Mr. Monday Ogbonmwan on the counter affidavit herein with his signature on the affidavit in support of motion in B/147/OS/2014 attached to his counter affidavit herein as Exhibit E. Counsel submitted that a comparison will show that the counter affidavit was not signed by the purported deponent (Mr. Monday Ogbonmwan).He relied on section 101 (1) of the Evidence Act 2011;and the cases of: *MABOGUNUE V ADEWUNMI (2007) ALL FWLR (Pt. 347) 770 R. ; and TOMTEC NIG LTD V FHA (2009) 18 NWLR (Pt. 117) 358.*

He argued that by their Exhibits E and F attached to the counter affidavit the Respondents have admitted that they were removed from office by the 2nd Applicant who appointed them in the first place and their purported challenge of their said removal, being Exhibits E and F have ceased to exist vide order 6 Rule 6 (1), (2) and Rule 7 of the Rule of Court (supra). He submitted that the only status quo to maintain for now is the appointment of the 1st, 4th and 5th Applicants pending the determination of the main suit.

He finally urged the Court to discountenance the counter affidavit to the motion in its entirety and grant this application.

At the hearing, the learned Applicantsô Counsel made some oral submissions in reply to some of the objections raised by the Respondentôs counsel. On the issue of filing of the Reply out of time, he submitted that the respondents have waived their right to object, having taken steps to join issues on the motion. He relied on Order 5 Rule 2 of the High Court Civil Procedure Rules, 2012.

I have carefully examined all the processes filed in this application together with the arguments of both counsel on the matter. Before going into the merits of this application, it will be expedient for me to decide some ancillary objections which were raised by the Respondents in this application.

First; on the submission of learned Counsel for the Respondents that the Court cannot grant this application without going into the merits of the

substantive suit. He relied on the case of: *Akapo vs. Hakeem Habeeb supra*.It is settled law that it is improper to prejudge an issue to be decided as a substantive matter at an interlocutory stage by making definite pronouncements on the issue. See: *Orji vs. Zaria Ind.Ltd. (1992) 6 NWLR (Pt.216) 124 at 141; and Shell Pet.Dev. Co. vs. Lawson-Jack (1998) 4 NWLR (Pt.545) 249 at 278-279*.It will suffice for me to state that I will fervently abide by this established principle as I determine this interlocutory application.Furthermore,the application is for interlocutory injunction and nothing more. I will determine the application without making any definite pronouncements on the substantive issues in the main suit.

The second objection is on the effect of the Respondents' Originating Summons and Motion on Notice for interlocutory injunction in Suit No. B/147/0S/2014 which is allegedly pending before High Court No. 3, Benin city. The processes in the said suit were attached as Exhibits E and F to the Respondents' Counter Affidavit to the application. Going through the said Exhibits, I observed that the parties in the said suit are not exactly the same parties in the present suit.Furhermore, although the issues are similar, they are not identical. Consequently, I do not see how this application can be affected by the other suit. The objection will therefore be discountenanced.

Next is on the challenges against the Applicants Further Affidavit and Reply on points of Law. The first objection is that they were filed after 8 days contrary to Order 37 Rule 3(2) of the Rules. It is settled law that non compliance with the rules of court will not in all cases result in the judgment being set aside. Once a step has been taken by the other party, he is deemed to have waived his right to complain of non compliance with the rules. See: *R.LAUWERS IMPORT-EXPORT v JOZEBSON IND.CO.LTD. (1988) 3 NWLR (Pt.83) 429; SHUAIBU v MUAZU (2014) 8 NWLR (Pt.1409) 207 at 219.* Furthermore, non compliance with the rules of court can only vitiate the proceedings if it resulted in a denial of justice. See*:*

OKOYE v N.C. & F.Co.Ltd.(1991) 6 NWLR (Pt.199)501;and SHUAIBU v MUAZU(2014) supra at 220.

I am in agreement with the learned counsel for the Applicants that by virtue of *Order 5 Rule 2 of the Edo State High Court (Civil Procedure) Rules 2012*,the failure to file the processes within time is a mere irregularity which cannot nullify the proceedings. The said Order 5, Rule 2 states thus:

> *" Where at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a failure to comply with the requirements as to time, place, manner or form , the failure shall be treated as an irregularity and may not nullify such step taken in the proceedings. The Judge may give any direction as he thinks fit to regularize such steps"*

Next is on the objection that the Reply is mostly on facts not on law. I have gone through the entire Reply and I agree with the learned counsel for the Respondents that the Reply is essentially on facts not on law. This contravenes Order 37 Rule 3 of the Rules. In the event, I will completely discountenance the Reply in the consideration of this application.

Having disposed of the ancillary objections, I will proceed to consider the merits of the application. An application for interlocutory injunction seeks a discretionary remedy. It is settled law that all judicial discretions must be exercised judicially and judiciously.

The essence of an interlocutory injunction is the preservation of *the status quo ante bellum*.The order is meant to forestall irreparable injury to the applicantôs legal or equitable right. See: *Madubuike vs. Madubuike (2001) 9NWLR (PT.719) 689 at 709; and Okomu Oil Palm Co. vs. Tajudeen (2016) 3NWLR (Pt.1499)284 at 296.*

The principal factors to consider in an application for interlocutory injunction are as follows:

I. The applicant must establish the existence of a legal right;
II. That there is a serious question or substantial issue to be tried;

III. That the balance of convenience is in favour of the applicant;

IV. That damages cannot be adequate compensation for the injury he wants to prevent;

V. That there was no delay on the part of the applicant in bringing the application; and

VI. That the applicant must give an undertaking to pay damages in the event of a wrongful exercise of the Courtôs discretion in granting the injunction.

See the following decisions on the point: *Kotoye v C.B.N.(1989) 1 NWLR (Pt.98) 419; Buhari v Obasanjo (2003) 17 NWLR (Pt.850) 587; and Adeleke v Lawal (2014) 3 NWLR (Pt.1393) 1at 5.*

The issue for determination in this application is whether the Applicants have satisfied the above enumerated conditions to warrant the exercise of the discretion of this Court in their favour.

The most important pre-condition is for the applicant to establish that he has legal rights which are threatened and ought to be protected. See: *Ojukwu vs Governor of Lagos State (1986) 3 NWLR (Pt.26) 39; Akapo vs Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266-289.*

The Applicants have identified a legal right which they seek to protect. Their learned Counsel referred the Court to Exhibits A, B and C attached to their supporting affidavit to show that the Applicants have a legal right to protect. The rights include: the appointment of the 1st Applicant as the Youth leader of the Community by the Odionwere (2nd Applicant); and the appointment of the 4th and 5th Claimants/Applicants as Community Development Association Chairman and Community Secretary respectively. The learned Counsel for the Respondents however denied the fact that the Applicants have a legal right to protect.

I am of the view that at this stage, the Applicants have adduced sufficient evidence to establish the fact that they have a legal right to protect in relation to the issues to be determined in the substantive suit.

On the second condition of having a serious question or substantial issue to be tried, I am guided by the dictum of the Court in the case of: *Onyesoh vs Nze Christopher Nnebedun & Others (1992) 1 NWLR (Pt.270) 461* at 462, where it was re-emphasised that:

> ñ*It is not the law that the applicant must show a prospect of obtaining a permanent injunction at the end of the trial. It is sufficient for the applicant to show that there is a serious question between the parties to be tried at the hearing."*

Also, in the case of: *Ladunni vs.Kukoyi (1972) 1 All NLR(Pt.1) 133*, the Court opined that: *"...when a Court considers an application for interlocutory injunction, it is entitled to look at the whole case before it, all the circumstances which may include affidavit evidence, judgments or pleadings if these have been filed. All these show what is in the dispute between the parties".*

Applying the foregoing principle, I am of the view that there are substantial issues to be tried in the substantive suit.

On the balance of convenience, the applicant must show that the balance of convenience is on his side. In the classical case of *Kotoye v C.B.N. (1989) 1 NWLR (Pt.98) 419*, the Supreme Court explained that the applicant must establish that more justice will result in granting the application than in refusing it. The Applicants have adduced facts to show that unless this application is granted, the Okabere community land will be completely extinguished by the activities of the Respondents. They are equally apprehensive of a consequential breakdown of law and order in the community. The Respondents countered this position by asserting that the balance is in their favour since they have been in power and are still in power. The crucial questions to be answered at this stage are:

I. *Will more justice result in granting this application or in refusing it?*

II. Furthermore, if we juxtapose the interest of the Okabere community with that of the two respondents, in whose favour does it tilt?

In the light of all the facts disclosed in the affidavit and counter-affidavit, I am of the view that the balance of justice is in favour of granting this application in order to protect the overall interest of the entire community. The maxim is: "*salus populi est suprema lex*" (the welfare of the people is the supreme law). On the other hand, the Respondents have not shown what they stand to lose if this application is granted.

From the available evidence, I hold that the balance of convenience is in favour of the Applicants.

Next is on the requirement of inadequacy of damages. In the case of: *American Cyanamid Co.vs Ethicon Ltd. (1975) 1 ALL E.R. at 504 pp 5l0, the C*ourt stated that*:*

> *"If damages …would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage"*

In his written address, Applicantôs Counsel submitted that failure to grant this application will cause the Applicants such damage and injury that they cannot be compensated by damages. Furthermore, he submitted that if this motion is refused, Okabere community may have ceased to exist by the time this suit is finally determined judging by the conduct of the Respondents. Surprisingly, the Respondents did not counter this argument by asserting that damages will be adequate compensation for the Applicants.Rather,they asserted in paragraph 21 of their counter-affidavit that: "… Damages will not be ENOUGH COMPENSATION to the Defendants/Respondents if this application is granted". This is a rather curious approach.

On the facts, I do not think the Applicants can be adequately compensated with damages for the losses they may incur if this application is refused and they eventually win the substantive suit.

On the conduct of the Applicants, I do not think they are guilty of any delay in bringing this application

Finally, on the requirement of an undertaking to pay damages in the event of a wrongful exercise of the Courtôs discretion in granting the injunction, at paragraph 13 of their affidavit in support of this application, the Applicants gave an undertaking to pay damages.

On the whole, I am satisfied that the Applicants have fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and I ***hereby make AN ORDER of interlocutory injunction restraining the 1st and 2nDefendants/Respondents from parading themselves as Youth Leader and Chairman Community Development Association respectively of Okabere Community, Ikpoba Okha Local Government Area, Benin City and from acting and/or functioning as such respectively by and in any guise pending the final determination of the main suit.***

I award the sum of N5, 000.00 (five thousand naira) as costs in favour of the Applicants.

P.A.AKHIHIERO
JUDGE
03/11/16

COUNSEL:

B.O.ILEBODE ESQé é ..é é é é é é é é é ..CLAIMANTS/APPLICANTS

CHIEF A.B.THOMAS. é é é é é é é é ..é DEFENDANTS/RESPONDENTS