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 FRIDAY THE
9TH DAY OF SEPTEMBER, 2016.

BETWEEN: SUIT NO: B/504/16

DR. SUNDAY OKOJIE. é é é é é é é é é .. CLAIMANT/APPLICANT

AND

MR. ODION IYEREé é é é é é é é é é DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice, dated and filed on the 11th day of August 2016, brought pursuant to Order 37 of the Edo State High Court (Civil Procedure) Rules 2012 and under the inherent jurisdiction of this Court.
The application is seeking the following relief:

> AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendant/Respondent, his agents, servants and privies from further trespassing howsoever on any part of or the whole of the Claimant/Applicantôs piece or parcel of land measuring approximately 100feet by 200feet lying and situate along Old Irrua-Ewu Road, Irrua, which piece or parcel of land is very well known to the parties herein pending the determination of the substantive suit.

And for such other order(s) as this Honourable Court may deem fit to make in the circumstance.

The Application is supported by an affidavit of 30 paragraphs to which Exhibits A, B, C, C1 and C2 are attached.

Arguing the motion, the learned Counsel for the Applicant, D.A.Uhunmwangho Esq., submitted that in an application of this nature, the Applicant must establish the following:

a. Existence of a legal right;
b. Substantial Issue to be tried;
c. Balance of convenience;
d. Irreparable damage or injury;
e. Conduct of the parties; and
f. Undertaking as to damages

*See: ADELEYE V. LAWAL (2014)3 NWLR (PT1393)1 @17, PARAS F-H.*
*BUHARI V. OBASANJO (2003) 17 NWLR (PT. 850)587 @648 – 649;*
*SULU – GAMBARI V. BUKOLA (2004) INWLR (PT. 853) 122;*
*EZEBILO V CHINWUBA (1997)7 NWLR (PT. 511)108.*

On the existence of a legal right, learned Counsel referred the Court to paragraph 7 of the affidavit in support where the Applicant stated that his elder brother who is now deceased devised the land in dispute to him. He also referred to Exhibits ñAò and ñBò to buttress the fact that the Applicant has an existing legal right to the land in dispute.

On whether there is a substantial issue to be tried in this suit, Counsel maintained that the Applicant deposed to the fact that he is the owner of the land in dispute and that the Respondent unlawfully entered into the land, dug a foundation for a house, also dug a well and planted a sign post. He also referred the Court to paragraphs 18, 19, 21 and 22 of the supporting affidavit.

On the balance of convenience, he submitted that it is on the side of the Applicant because the character of the land will be permanently altered if the Respondent is not restrained by the order of the court. He maintained that the Respondent will have nothing to lose if this Court makes an order restraining him from continuing his acts of trespass on the land in dispute pending the determination of this suit and cited the case of: *MADUBUIKE v. MADUBUIKE*

*(2001)9 NWLR (PT. 719)698.* Furthermore, he referred the Court to paragraph 25 of the supporting affidavit where the Applicant deposed to the fact that he cannot be compensated in monetary terms if the Respondent is allowed to perfect his acts of trespass on the land.

Counsel submitted that the conduct of the Applicant is not reprehensible and that he only discovered the Respondentôs acts of trespass on the 9th day of August, 2016.

Finally, Counsel submitted that in paragraph 27 of the supporting affidavit the Applicant undertook to pay damages if it turns out that the Court ought not to have granted the application and urged the Court to grant the application in the interest of justice.

Upon service of the Motion on the Respondent, his Counsel filed a Counter-Affidavit of 16 paragraphs and a Written Address.

In his address, the learned Counsel for the Respondent, J.I.Erewele Esq. opposed the application for interlocutory injunction and relied on all the paragraphs of the counter- affidavit, particularly paragraphs 3 ï 15 thereof.

He submitted that the principles of law that guide the Court in an application of this nature are spelt out in many decided cases. He commended the following cases to the Court:

*(i) BUHARI VS OBASANJO (2004) 114 LRCN 2723 R. 6.*

*(ii) AYORINDE VS AG OF OYO STATE (1996) 36 LRCN 257 R. 1,3,4,5,6,7, and 8.*

*(iii) A.C.B. VS AWOGBORO (1991) 2 NWLR (PT 176) 711 R 4 and 5.*

*(iv) PRAYING BAND OF C.S. VS UDOKWU (1991) 3 NWLR (PT. 182) 716 R. 7*

Learned Counsel referred specifically to the case of: Buhari and Obasanjo supra ratio 6 and conceded to the Claimantôs submission that there is a subsisting action in the Court. He however refused to agree with the Claimant that there is a substantial issue to be tried.

Counsel referred the Court to paragraphs 11 and 12 of the Counter Affidavit to show that in order to resolve the crisis/divisions that followed the judgment of the Ubiaja High Court, the Claimant/Respondent submitted to the Arbitration of H.R.H. Alhaji W.O. Momodu 11 (JP) (CON) the Ojirrua of Irrua and Okaijesan of Esan Land in Council which panel resolved that the Claimant/Respondent should hand over the land to Mr. Isikhuemen Okojie, the first son of Dr. C.G. Okojie for the use of his children.

He submitted that the Claimant/Applicant is guilty of delay and therefore not entitled to the relief sought. According to him, the Respondent entered the land and started developing it since 2011. He maintained that the Applicant stood by and watched the Respondent develop a building project on the land only to come out in 2016 to ask that the Respondent be stopped from completing his building project. He therefore submitted that the Applicant is guilty of delay.

Submitting further, Counsel argued that assuming without conceding that the Claimant/Applicant has a title capable of being protected, damages can be adequate compensation if the relief is refused and the Respondent completes his building and eventually, the judgment is in favour of the Applicant. On the other hand, he argued that damages cannot adequately compensate the Respondent if the relief is granted and the building project is wasted (sic).

He therefore urged the Court to refuse this application.

I have carefully examined all the processes filed in this application together with the arguments of both counsel on the matter.

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 applicant has satisfied the above enumerated conditions to warrant the exercise of the discretion of this Court in his 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 Applicant has identified a legal right which he seeks to protect. His learned Counsel referred the Court to paragraph 7 of the affidavit in support where

the Applicant stated that his elder brother who is now deceased devised the land in dispute to him. He also referred to Exhibits ñAò and ñBò to buttress the fact that the Applicant has an existing legal right to the land in dispute. The learned Counsel for the Respondent did not dispute the fact that the Applicant has a legal right to protect.

I am of the view that at this stage, the Applicant has adduced sufficient evidence to establish the fact that he has 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 think this is a necessary corollary from the foregoing that there are serious and substantial issues to be determined in the main suit. In the case of: *Onyesoh vs Nze Christopher Nnebedun & Others (1992) 1 NWLR (Pt.270) 461* at 462, the Court 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."*

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. Presently, the applicant is apprehensive that the character of the land will be permanently altered if the Respondent is not restrained by the order of the court. Here again, the Respondent Counsel did not address the issue of balance of convenience. The Respondent has not shown what he stands to lose if this Court makes an order restraining him from continuing the building.

From the available evidence, the balance of convenience tilts in favour of the applicant.

Next is on the requirement of inadequacy of damages. In the case of: *American Cyanamid Co.vs Ethicon Ltd. (1975) supra*, the court 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 referred the Court to paragraph 25 of the supporting affidavit where the Applicant deposed to the fact that he cannot be compensated in monetary terms if the Respondent is allowed to perfect his acts of trespass on the land. Furthermore, in his oral arguments in Court, he referred the Court to the reliefs claimed in the Writ of Summons and the Statement of Claim and emphasized that there is no claim for damages.

The respondent countered this by simply asserting that damages will be adequate compensation. Weighing the two arguments, I do not think damages can adequately compensate the applicant if the respondent is allowed to complete the building. It is significant to note that the Applicant is not even claiming damages in the main suit.

On the condition of whether the Applicant was prompt in bringing the application, Respondentôs Counsel submitted that the Claimant/Applicant is guilty of delay. According to him, the Respondent started building on the land in 2011 and the Applicant stood by and watched the developments until 2016.However, Applicantôs Counsel explained that the Applicant only discovered the alleged acts of trespass on the 9th day of August, 2016. I am quite satisfied with the explanation.Furthermore, I do not think the delay was inordinate in the circumstance.

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 27 of his affidavit in support of this application, the Applicant gave an undertaking to pay damages.

On the whole, I am satisfied that the Applicant has 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 Defendant/Respondent, his agents, servants and privies from further trespassing howsoever on any part of or the whole of the piece or parcel of land measuring approximately 100feet by 200feet lying and situate along Old Irrua-Ewu Road, Irrua, which piece or parcel of land is very well known to the parties herein pending the determination of the substantive suit.***

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

P.A.AKHIHIERO
JUDGE
09/09/16

COUNSEL:

D.A.UHUNMWANGHO ESQ., é é é é é é é é ..CLAIMANT/APPLICANT

J.I.EREWELE ESQ. é é é é é é é é é ..é é DEFENDANT/RESPONDENT