

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/51416

1. PA MICHAEL ISIBOR OGBOMO
(Odionwere of Ikpe Community)
2. HIGH PRIEST MICHAEL AMADIN AGBONLAHOR
(Ohen of Ikpe Community)
3. PA. THOMPSON OMOROTIOMWAN
4. CHIEF FRANK OBAZEE
(Ikpe C.D.A. Chairman)
5. MR. CHARLES ILEBOR
(Youth Chairman)
6. PASTOR OSADEBAMWEN ERHABOR
(Secretary, Ikpe Community)
(For themselves and on behalf of Ikpe Community)

CLAIMANTS/
APPLICANTS

AND

1. MR. FELIX OSUNDE
2. MR. ACTOR AGHAKU
3. MR. PETER IDAHAGBON
4. MR. FESTUS AIGHOBAHIE
5. MR. ROLAND OGBOMO
(For themselves and those who claim to
be Uyinmwendi Community, Ikpoba
Okha Local Government Area,
Edo State.)

DEFENDANTS/RESPONDENTS

RULING

This is a Ruling on a Motion on Notice, dated and filed on the 16th day of August 2016, brought pursuant to Orders 36, Rule 1 and 37 Rules 1,2,5 and 8 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:

1. AN ORDER of interlocutory injunction restraining the Defendants/Respondents herein, their agent, servants or privies from selling land or from embarking on bulldozing of any land or establishing or causing to be established any road on any portion of land in Ikpe Community, comprising of Ikpe and Idun-Ohen (Uyinnwendin) land area having boundary with Avbiakagba, Utesi, Ukhiri and River Orhiomwon in dispute pending the determination of the substantive suit herein.

And for such further order or other Orders as this Honourable court may deem fit to make in the circumstances of this case.

The Application is supported by an affidavit of 36 paragraphs and a Written Address of Counsel.

Arguing the motion, the learned Counsel for the Applicant, G.A.Izevbigie Esq., formulated a sole issue for determination as follows:

“Whether from the fact and circumstance of the case, the Claimants/Applicants are not entitled to the order of interlocutory injunction sought to preserve their communal land pending the hearing and determination of the substantive suit”.

Opening his arguments, the learned Counsel submitted that the purpose of an interlocutory injunction is to maintain the status quo and preserve the *res* pending the hearing and determination of the substantive suit. He maintained that the Court has a duty to preserve the *res* and maintain the status quo while the action is pending and relied on the case of: *Dekit Const. Co. Ltd V Adebayo (2010) 15 NWLR (PT 1217) 590 AT PAGE 606 Paragraph C Ratio 3.*

Furthermore, he submitted that the Court has the power to grant or refuse an applicant for interlocutory injunction and in exercising same; the Court must act judicially and judiciously, taking into consideration some factors. For the factors to be

taken into consideration for the grant of an interlocutory injunction, he relied on the cases of: *Dekit Const. Co. Ltd(supra)at page 606 paragraphs D-H Ratio 4;*and *Adeleke v. Lawal (2014) 3 NWLR (pt 1393) 1 at page 31 paras A-D Ratio 10.*

Counsel enumerated the factors as follows:

1. SERIOUS QUESTION TO BE TRIED:

He submitted that from the Writ of summons and Statement of Claim, the Applicants have established that their communal land is at the risk of being taken over and a new Community is about to be established thereon. He maintained that structures are about to be erected thereon and that the bulldozing and partitioning for sale of the Applicants Communal land will lead to devastation and waste of their farm land. He referred the Court to paragraphs 22 ó 34 of the supporting affidavit and submitted that this is very serious and not frivolous;

2. THE EXISTENCE OF A LEGAL RIGHT TO BE PROTECTED

He submitted that there exists a legal right to be protected by the Applicants which is the preservation of their communal land which is in danger of being encroached upon, rendered unfit for agricultural purposes and sold off by the Respondents. He referred the Court to paragraph 22 ó 34 of the Affidavit in Support;

3. BALANCE OF CONVENIENCE IN FAVOUR OF APPLICANT

Counsel submitted that the very existence of the Applicants as a Community and as individual farmers is being threatened by the action of the Respondents. He argued that if the Respondents are not restrained, they would set up an independent settlement on Applicantsø land and lease or sell off or otherwise alienate vast portions of their communal land to their detriment. According to him, the Respondents do not have much on the balance if they are to abide the hearing of the matter on the merits. He said the granting of this application is also to avoid a breakdown of law and order and referred the Court to paragraphs 30 and 31 of the affidavit in support of the motion.

4. DAMAGES CANNOT ADEQUATELY COMPENSATE FOR LOSS

Counsel submitted that the Applicants will be exposed to loss of livelihood in perpetuity which cannot be compensated by any amount of damages and referred the Court to paragraph 32 (b) of the Affidavit in Support.

5. UNDERTAKING TO PAY DAMAGES.

Finally he referred the Court to paragraph 34 of their affidavit where they gave an undertaking to pay damages if it turns out at the conclusion of the case that the order of interlocutory injunction ought not to have been made in the first place.

At the hearing of this application, the learned Counsel for the Applicants informed the Court that he had some further submissions to make in addition to his written address. He submitted that from Exhibit CC attached to the Counter Affidavit, it confirms paragraph 9 of their affidavit to the effect that Uyinmwendin is a street in Ikpe. He maintained that it is an admission against their own interest and he relied on the case of: Onovo vs. Mba (2014) 14 NWLR (Pt.1427) 393 at 402; and Onyege vs. Ebere (2004) 13 NWLR (Pt.889) 20 at 26.

Furthermore, he submitted that Uyinmwendin being a street in Ikpe village, they all enjoy the same farmland area known as Iyawo. He maintained that it is not particularly owned by any street. He submitted that since the admission was not controverted, it is deemed admitted.

He urged the Court to grant the application.

Upon service of the Motion on the Respondents, their Counsel filed a Counter-Affidavit of 42 paragraphs and a Written Address.

In his address, the learned Counsel for the Respondent, G.E.Oaikhena Esq. opposed the application for interlocutory injunction and relied on all the paragraphs of the counter- affidavit and adopted his Written Address.

Opening his address, learned Counsel informed the Court that the Respondents are the Ohen and Elders of Uyinwendi Community and they have a common boundary with the Applicants community.

He referred the Court to Exhibit AA attached to their Counter-Affidavit which is the book containing the history of the Respondents' community and Exhibit BB which is the annual calendar of all the Benin Ohens including the 1st Respondent. He also referred to: Exhibit CC, a letter from the Benin Traditional Council approving the payment of salary to the 1st Respondent as a traditional ruler and Exhibits EE, FF and HH which are letters and invitation to the Respondents' community by different government agencies concerning the welfare of all the communities within the local government area. He identified Exhibits II, JJ and KK as the constitutions of the community and the CDA registration issued by the Edo State Government.

Learned Counsel formulated a sole issue for determination to wit:

“Whether the claimants/applicants are entitled to the relief claimed, that is an order of interlocutory injunction against the defendants/respondents”

He submitted that an order for interlocutory injunction is an equitable remedy which a Court can grant to a party at an interlocutory stage to restrain a defendant from doing any particular act pending the hearing of the substantive case.

He submitted that an applicant for an interlocutory injunction must satisfy the following conditions:

1. That he has a right to the *res*.
2. That that right has been threatened or violated by the defendant or his agent.
3. That there is a serious triable issue between the parties.
4. That the balance of convenience is on the side of the applicant.
5. That the applicant will suffer irreparable damages that cannot be compensated by monetary award.
6. That the applicant will pay damages if it turns out that he is not entitled to the order of injunction in the first instance.

He submitted that besides the above conditions, the applicants must establish with certainty the area which is in dispute.

He posited that from the motion paper and the affidavit in support, the applicants have not specified the area on which they want an injunction. He maintained that the area on which the Applicants are seeking an injunction is vague and uncertain.

He submitted that the Respondents in their counter affidavit and Exhibits ðAA to KKö have shown the autonomous and independent status of the Community. He referred the Court to paragraphs 37 and 38 of the counter affidavit where the Respondents deposed to the fact that they have communal farm lands and that they rely on those farm produce for their survival and have their respective places of residence within their community.

He argued that from the affidavit evidence, the Applicants have not been able to establish that they have a legal right over the Respondents' communal land for which they seek an injunction. Contrariwise, he maintained that the Respondents have shown that they exist as a community and have been so recognized by the Government of Edo State, the Oba of Benin and other Government Bodies and Historical Authors.

Counsel submitted that for an applicant to succeed in an interlocutory injunction he must show that he has a right to the *res* and that the right is being threatened. According to him, where an applicant has failed to establish their right to the *res* the court cannot grant an order of interlocutory injunction. He relied on the case of: *UNION BEVERAGES LTD VS. PEPSI COLA INTERNATIONAL LTD AND 3 ORS. RATIO 1 AT PAGE 60*.

Again, learned Counsel submitted that an applicant who seeks an order of interlocutory injunction must ensure that there is a serious issue to be tried at the hearing between the parties, which should not be speculative. He argued that the Applicants merely want an injunction to be granted by attaching pictures of structures belonging to unknown persons in unknown locations. Again, he relied on the case of: *UNION BEVERAGE LTD supra*.

On the Balance of Convenience, Counsel submitted that it is in favour of the Respondents communities who have their farms in the disputed area. He submitted that the Respondents will be deprived of their livelihood if an order of interlocutory injunction is granted against them to prevent them from carrying out their farming activities.

For this submission, he relied on the case of: *BUHARI VS. OBASANJO (2004) 114 LRCN ratio 8*.

Counsel posited that the purpose of granting an interlocutory injunction is to maintain the *status quo*. According to him, the *status quo* is that the Respondents are in possession of their communal land where they are carrying out arable farming to feed themselves and this *status quo* should be maintained.

He relied on the authority of: *Attorney General of Ondo State V. Attorney General of Ekiti State (2001) 91 LRCN ratio 9*.

Furthermore, Counsel referred the Court to paragraph 33 of the Applicants' affidavit where they admitted the fact of the bulldozing and carrying out of the layout plan of the community between 2010 to 2011 and submitted that the act sought to be restrained has been completed.

He submitted that an interlocutory injunction cannot be granted against a completed act and relied on the case of: *BUHARI VS. OBASANJO (2004) 114 LRCN ratio 8 supra*.

Finally, Counsel submitted that an interlocutory injunction can only be granted where monetary damages may not be adequate at the end of the case. He stated that the Applicants have not deposed to the fact that monetary damages will not be adequate remedy assuming they succeed in the substantive suit at the end. He therefore urged the Court to refuse the application as it is unmeritorious and frivolous.

In his oral submission in Court, learned Counsel informed the Court that Exhibit CC is the title of the traditional ruler of the Defendant's Community and that the said exhibit should be read in conjunction with paragraph 11 of the Counter Affidavit.

Counsel submitted that the relief of injunction which they seek in the motion was not claimed in the substantive suit. He argued that since it is not tied to any substantive relief, it is bound to fail.

In a brief reply the Applicant's Counsel referred the Court to paragraph (d) of the Writ of Summons where they are seeking for an injunction.

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 applicant's 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 Court's 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 Applicants to establish that they have 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 Counsel raised the issue of the preservation of their communal land which is in danger of being encroached upon, rendered unfit for agricultural purposes and sold off by the Respondents. He referred the Court to paragraphs 22 ó 34 of the Affidavit in Support.

The learned Counsel for the Respondents however denied the fact that the Applicants have a legal right to protect. According to him, it is the Respondents who have adduced sufficient evidence to establish their ownership of communal farmlands in the area. He referred the Court to paragraphs 37 and 38 of their Counter Affidavit.

I am of the view that at this stage, the Court cannot resolve conflicts of affidavit evidence on facts in issue at the substantive trial. These are matters to be resolved at the trial. See: *Adesina vs. Arowolo (2004) 6 NWLR (Pt.870) 601 at 617*. Furthermore, it is not necessary at this stage, for the Court to go into the merits of the substantive case. See: *Globe Fishing Industries Ltd. vs. Chief Folarin Coker (1990) 7 NWLR (Pt.162) 265 at 281*.

Consequently, I hold that 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:

“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 main 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 Respondents would set up an independent settlement on the Applicants' land and alienate vast portions of their communal land to their detriment.

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 favour of the Respondents' community who have their farms in the disputed area and will be deprived of their livelihood if an order of interlocutory injunction is granted against them.

It is pertinent at this stage to note that the injunctive order which the Applicant are seeking is not to prevent anyone from farming on the land but to *inter alia* restrain them from "...selling land or from embarking on bulldozing of any land or establishing or causing to be established any road on any portion" of the land. I do not see how this injunction can deprive the Respondents of their livelihood.

Furthermore, the Applicants' apprehension of a consequential breakdown of law and order in the community appears to further tilt the balance in favour of the Applicants.

In the light of the foregoing facts, I am of the view that the balance of justice is in favour of granting this application. The Respondents have not shown what they really stand to lose if this application is granted. I therefore 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 510*, 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"

The Applicant's Counsel submitted that the Applicants will be exposed to loss of livelihood in perpetuity which cannot be compensated by any amount of damages.

The Respondents Counsel did not counter this argument by asserting that damages will be adequate compensation for the Applicants. Rather, he argued that the Applicants did not depose to the fact that damages will not be adequate compensation if they succeed at the end of the suit. I think the issue of whether damages will be adequate is a matter which can be deduced from the available facts. 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 win the substantive suit.

Finally, on the requirement of an undertaking to pay damages in the event of a wrongful exercise of the Court's discretion in granting the injunction, at paragraph 34 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 Defendants/Respondents herein, their agents, servants or privies from selling land or from embarking on bulldozing of any land or establishing or causing to be established any road on any portion of land in Ikpe Community, comprising of Ikpe and Idun-Ohen (Uyinnwendin) land area having boundary with Avbiakagba, Utesi, Ukhiri and River Orhionmwon in dispute pending the determination of the substantive suit herein.***

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:

G.A. IZEVBIGIE ESQí í ..í í í í í í í í í ..CLAIMANTS/APPLICANTS

G.E.OAIKHENA ESQí ..í í í í í í í í í ..í DEFENDANTS/RESPONDENTS