IN THE HIGH COURT OF JUSTICE
IN THE AGENEBODE JUDICIAL DIVISION
HOLDEN AT AGENEBODE
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON MONDAY THE
17TH DAY OF JULY, 2017.

BETWEEN: SUIT NO: HAG/4/2017

HIGH CHIEF SALIHU S. IZUAGBE
For himself and on behalf of Ivizuagbe
Kindred of Iviukhua Weppa Wanno } .....CLAIMANT/APPLICANT

AND

CHIEF IZUAGIE OPOGAH
For himself and on behalf of Iviogidigbo
Kindred of Iviukhua, Weppa Wanno } .....DEFENDANT/RESPONDENT

RULING

This is a ruling on a Motion on Notice brought pursuant to Order 36 (1) and Order 37 (2) of the Edo State High Court (Civil Procedure) Rules 2012 and under the inherent jurisdiction of this Court. The applicant is praying this court for the following reliefs:

1. AN ORDER of Interlocutory injunction restraining the defendant/respondent Chief Izuagie Opogah from holding himself out or parading himself or allowing himself to be held out or being paraded as the Ukpi drummer/village head (Onoghie) of Iviukhua village in Egori Ruling House of Weppa Wanno pending the determination of the substantive suit;

2. AN ORDER of Interlocutory injunction restraining the defendant/Respondent from presenting himself or allowing himself to be presented, introduced or held out as the Ukpi drummer/village head (Onoghie) of Iviukhua village in Egori Ruling House of Weppa Wanno during the installation ceremony of the Senior Ukpi Drummer ("Oghiolumua") of Egori Ruling house holding on 15/4/2017 or any other date pending the determination of the substantive suit;

3. AN ORDER of Interlocutory injunction restraining the defendant/respondent from presenting himself or allowing himself to be presented for the purposes of being installed or being presented with the Ukpi drum as the village head of Iviukhua pending the determination of the substantive suit;

4. AN ORDER of Interlocutory injunction restraining the defendant/respondent from performing any of the functions, rites, duties, associated with the office of village head of Iviukhua and/or receiving any perquisites, customary gifts in whatever form pertaining to the office of village head of Iviukhua pending the determination of the substantive suit;

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 a 33 paragraph affidavit deposed to by the claimant/ applicant. Exhibit M is the document stating the order of succession to the position of Ukpi drummer and village head of Iviukhua, while exhibit M1 is an affidavit of urgency of 8 paragraphs deposed to by claimant/applicant.

The application is also supported by a written address of counsel.

Arguing the motion, the learned Counsel for the Applicant, S.K.Mokidi Esq., relied on his supporting affidavit and adopted his written address as his arguments in support of the application.

In his written address, the learned counsel formulated a sole issue for determination as follows:

"Whether this is an appropriate case for the court to grant the reliefs sought?"

In his written address, the learned counsel submitted that the purpose of an injunction is to preserve the res and maintain the ***status quo ante bellum***. He maintained that for an interlocutory injunction to be granted, the applicant has to establish the following:

1. That there is a substantial issue to be tried,

2. That he has a legal right the violation of which needs protection,
3. That the balance of convenience is on his side,
4. That irreparable damage will be done to his case if the injunction is not granted, and
5. That he is prepared to give an undertaking as to damages.

For this view, he referred the Court to the cases of: ***Obeya Memorial Specialist hospital V Attorney General of the federation (1987) 3 NWLR (Pt 60) 325 and Kotoye V CBN (1989) 1 NWLR (PT 98) 419.***

MAINTENANCE OF STATUS QUO

On maintaining the status quo, learned counsel submitted that the whole purpose of an interlocutory injunction is to maintain the status quo ante bellum pending the determination of the right of the parties in the substantive suit. He said that the status quo to be maintained is the status ***quo ante bellum*** i.e., 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.

He contended that where litigation immediately follows a peaceful state of affairs, the ***status quo*** to be maintained is that peaceable state before the litigation. But where the status has been disturbed or interfered with, resulting in a law suit, the status quo is not the unlawfully created one immediately preceding the suit, but the original peaceable state before it was apparently unlawfully altered. See: ***Udo v I.T.C.M.E.C. [2010] All FWLR (Pt.507) 88 at 102***

Counsel posited that where there is a dispute or rival claims to a vacant stool, the court has power and duty to preserve the *res* and *status quo ante bellum* and referred the Court to the case of**: *Sunmonu V M. Oladokun (1991) 4 NWLR (Pt 186) 500, at 515.***

He submitted that in a Chieftaincy matter the *res* sought to be preserved is the vacant stool, as in this case which the claimant has commenced the process of filling by going into ***Ifako*** and 'calling' the community as required by custom while awaiting formal installation. He submitted that this is the status quo to be maintained because this was the state of affairs before the commencement of hostilities.

He maintained that in the instant case, the defendant/respondent has not entered into seclusion (***Ifako***) or called Iviukhua to entertain them as required by custom, he has not been installed as village head of Iviukhua and he is not performing any functions or receiving any perquisites pertaining to the office of village head of Iviukhua. He referred to paragraphs, 21 and 22 of the affidavit in

support of the motion. He said that the steps mentioned in the aforementioned paragraphs are necessary to give finality to the filling of the vacant stool of Iviukhua village head.

He therefore submitted that preventing the defendant from taking any of these steps is a preservation of the *res* and a way of lessening the inconvenience to all the parties concerned, and the attendant bitterness that would be engendered in the event of the applicant succeeding. He referred the Court to the unreported cases of: ***David Dada and Anor V. Ifelodun Local Government Chieftaincy Committee and Chief Adio Shonekan & Anor. V. Military Governor Ogun State and ors, cited in Afe Babalola: Injunction and Enforcement of Orders page 210 -211***.

He therefore urged the court to grant the orders sought to preserve the *res* and *status quo ante bellum* which is the position before the commencement of hostilities.

SUBSTANTIAL ISSUE TO BE TRIED

Learned counsel submitted that there are substantial issues to be tried in this case which are not frivolous or vexations. He referred to paragraph 2 of the supporting affidavit where he reproduced the reliefs sought by the claimant/applicant.

He said that from the reliefs, the claimant/applicant is calling on the court to determine whether the defendant can unilaterally declare himself as village head. He said that this court is also being called upon to determine whether the defendant who is not from Ivizuagie kindred that is entitled to produce the village head of Iviukhua is qualified to ascend the throne after the death of High Chief A.B. Eshiebor.

He maintained that the issues raised by paragraphs 5 to19 of the affidavit are matters of custom which are substantial and not frivolous or vexatious. He submitted that there are serious questions/issues to be tried in this case.

ON WHETHER APPLICANT HAS LEGAL RIGHT

Counsel submitted that the applicant has shown from his affidavit evidence that he has a recognizable and enforceable legal right which needs the protection of the court. He referred to paragraphs 2, 3, 12, 13, 14, 15 and 16 of the supporting affidavit to show that the applicant is from the kindred that is now entitled to produce the village head of Iviukhua. He also referred to exhibit M which shows

that the defendant's kindred are below the claimant's kindred in the order of succession.

He said that the Applicant has also shown that he was the ukpi drummer of his kindred and the deputy to late High Chief A.B. Eshiebor the immediate past village head of Iviukhua. He maintained that having undergone ***Ifako*** (seclusion) as a step in the installation process, the applicant has acquired a right which the defendant is trying to take away from him. He said that the applicant has approached the court to protect that right and the court has a duty to prevent this and referred to the case of: ***Akapo V. Hakeem-Habeeb [1992] 6NWLR (Pt. 224)*** *266* as to what is a legal right in an application of this nature.

BALANCE OF CONVENIENCE

He submitted that the balance of convenience tilts in favour of the applicant who has moved up the last step in the Ukpi ladder with the demise of High Chief A.B. Eshiebor. He said that he has entered the ***Ifako*** and called Iviukhua community and entertained them. He referred to paragraphs 12, 13, 14 15 and 16 of the supporting affidavit and submitted that it is the applicant that has more to lose if this application is refused. He said that the claimant has started performing the functions of the village head of Iviukhua

On the question of who will suffer more inconvenience if the application is not granted, he maintained that in this case it is the applicant.

ADEQUACY OF DAMAGES

Counsel submitted that from the deposition in paragraphs 21 and 26 on the balance of convenience, it is clear that an award of damages would not be adequate to compensate the claimant/applicant for the loss he would sustain.

UNDERTAKING AS TO DAMAGES

He referred to paragraph 27 of the supporting affidavit where the claimant/applicant undertook to pay damages and further stated that he has the means of satisfying the undertaking as to damages that may be required of him by court.

URGENCY

He submitted that there is urgency in this application and referred to the affidavit of urgency deposed to by the applicant.

He contended that the continuous parade by the Defendant as the Onoghie of Iviukhua is causing restiveness amongst the youths and elders of the Iviukhua community and that if the Defendant is not urgently restrained, his conduct might lead to a breakdown of law and order in the community and referred to paragraphs 25 and 26 of the supporting affidavit. He said that this court has a duty to ensure that peace reigns in that community.

Finally, he that submitted that there is no delay in bringing this application.

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

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

In his Written Address, the learned counsel formulated the following five Issues for Determination in this application:

1. ***Whether it is proper in law for a Court to order interlocutory injunction against the defendant considering the fact that the act upon which the restraining order is sought has already taken place before the filing and service of motion for interlocutory injunction on the Defendant/Respondent?***

2. ***Whether interlocutory injunction can be granted where there are no perishable res to be preserved and where the subject matter of the substantive litigation is not a perishable commodity?***

3. ***Whether considering the totality of the Affidavit evidence of the parties, whether the Court will not at this interlocutory stage determine the same issue that would arise for determination in the substantive Suit?***

4. ***Whether interlocutory injunction is granted as a matter of course and whether there exist "exceptional circumstances" to warrant the grant of an order of injunction?***

5. ***Whether a grant of the application will not result to abuse process of Court.***

ARGUMENTS OF THE ISSUES:

ISSUE 1:

Learned counsel submitted that an interlocutory injunction is not a remedy for an act which had already been carried out and will not be granted where the act complained of has already been carried out. See: ***FRANCIS MORGAN UDO VS INCORPORATED TRUSTEES OF CHRISTIAN METHODIST EPISCOPAL CHURCH (2010) ALL FWLR (pt. 507) Pg 88 @ Ratio 9 & @ 106 Paras C-D;JOHN HOLT NIGERIA LTD VS. HOLTS AFRICAN WORKERS UNION OF NIGERIA & CAMEROONS (1963) 1 ALL NLW 379;CHIEF EZEKIEL ANOSIKE & ANOR VS THE GOVERNOR OF IMO STATE & 30RS (1987) 4 NWLR (pt. 66) Pg 663 @ 666 Ratio 12.***

He submitted that in this instance, the Defendant was conferred with the title of the Onoghie (The Village Head) of Iviukhua in Weppa-Wanno Kingdom since 21st March, 2017 and had continued in that capacity pursuant to Weppa-Wanno Native Law and Custom. He said that it will be wrong to grant an interlocutory injunction in the circumstance.

He maintained that the Village Head of Iviukhua i.e the Okpe Ukpi of Iviukhua in Weppa-Wanno Kingdom has already been approved, installed and conferred by the Okumagbe of Weppa-Wanno Kingdom and had since been given a certificate of office pursuant to Weppa-Wanno Native Law and Custom.

He reiterated that an interlocutory injunction will not be granted where the act complained of has already been carried out by the Defendant through the Okumagbe of Weppa-Wanno Kingdom and recognized as such.

He maintained that the only option left is to accelerate the hearing of the substantive suit. He relied on the cases of: ***CHIEF EZEKIEL ANOSIKE & ANOR VS THE GOVERNOR OF IMO STATE & 30RS (Supra) @ 666 Ratio 7;***and **GWABO GEVER & 2 OTHERS VS. JAMES TYOTSAR CHINA (1993) 9 NWLR (pt. 315) Page 97.**

ISSUE 2:

On the preservation of the *res*, counsel submitted that the subject matter of the present Suit (HAG/4/2017), that of the stool (office) of the Onoghie (The Village Head/Ukpi Drummer of Iviukhua in Egori Ruling House of Weppa-Wanno Kingdom) is not a perishable commodity and the litigation on whether the

Defendant should be restrained from parading himself as the Onoghie of Iviukhua in Egori Ruling House of Weppa-Wanno Kingdom is not a perishable commodity.

He maintained that the defendant is still within time to file and serve his statement of defence and intends to file and serve a counterclaim also. He contended that this is a matter where time and convenience would be saved by hearing of the substantive action itself where pleadings are fully exchanged instead of arguments on interlocutory injunction. He said that everything ought to have been done to avoid trying the same questions and issues on two occasion at the interlocutory stage and at the substantive stage. He said the better course will be achieved to accelerate the proceedings and fix the case for trial in view of the fact that the defendant is within time as provided by the rules within which to file and serve his statement of defence.

ISSUES 3:

Counsel maintained that the Court in determining an application for Interlocutory Injunction should not determine the "same issues" that would arise in the substantive suit. He said that it is trite law that in an application for a grant of Injunction pending the determination of the substantive claim, the Judge has a duty to ensure that he does not determine the same issues that would arise for determination in the substantive suit. See: ***AFRICAN CONTINENTAL BANK LTD & ANOR VS. PRINCE A. O. AWOGBORO & ANOR ((1996) 35 LRCN Pg 354 @ 356 Ratio 1 & @ 362 Para E; GEVER VS. CHINA (Supra) @ 100 Ratio 7 & @ 109 Para D;*** and ***OBEYA MEMORIAL SPECIALIST HOSPITAL ANI-OYEMA FAMILY LTD VS. ATTORNEY-GENERAL OF THE FEDERATION & ANOR (1987) 3 NWLR (pt 60) Pg 325 @ 329 Ratio 14 & @ 346 Paras C-E.***

Counsel contended that he question of who is the Onoghie of Iviukhua in Egori Ruling House of Weppa-Wanno Kingdom is the subject matter of the substantive Suit and can only be determined not at the stage of the application for injunction but at the substantive action. He said that if these questions are determined at this stage, the Court after taking evidence from the parties and their witnesses will again determine the same questions at the substantive action

ISSUES 4 & 5:

Counsel submitted that Interlocutory Injunctions are not granted as a matter of course but some factors must be met. They include:

1. *There must be a subsisting action. The subsisting action must clearly donate a legal right which the application must protect;*

2. *The Applicant must show that there is a serious question to be tried, i.e. that the Applicant has a real possibility, not a probability of success at the trial, notwithstanding the Defendant's technical defence (if any);*

3. *The Applicant must show that the balance of convenience is on his side, that is, that more justice will result in granting the application than in refusing it;*

4. *The Applicant must show that damages cannot be adequate compensation for the injury he wants the Court to protect, if he succeeds at the end of the day;*

5. *The Applicant must show that there was no delay on his part in bringing the application;*

6. *The Applicant must make an understanding to pay damages in the event of wrongful exercise of the Court's discretion in granting the injunction*

See: ***FRANCIS MORGAN UDO VS. INCORPORATED TRUSTEES OF CHRISTIAN METHODIST EPISCOPAL CHURCH (Supra) @ 92/93 Ratio 7 & @ 103 Paras C-H, 104 Para A;*** and ***OBEYA MEMORIAL SPECIALIST HOSPITAL ANI-OYEMA FAMILY LTD VS. ATTORNEY-GENERAL OF THE FEDERATION & ANOR (Supra) @ 325 pp @ 325-329 Rationales 1 – 15.***

On the balance of convenience, counsel maintained that the deposition in paragraph 28 of the Claimant/Applicant's Affidavit in Support without

"particulars" to show how the balance of convenience is in favour of the Claimant/Applicant is not sufficient in law, and practice to grant a restraining order on the Defendant/Respondent.

He contended that the Respondent will suffer more inconvenience than the Claimant / Applicant if the order of interlocutory injunction is made.

He said that "HARDSHIP" to the Defendant is a relevant consideration.

He submitted that in the instant case, facts exist in the Counter Affidavit that the stool of the Onoghie of Iviukhua had already been occupied by the Defendant/Respondent and the people of Iviukhua Community had accepted and recognized the Defendant/Respondent as the Village Head of Iviukhua.

He argued that these Iviukhua people are "Innocent third parties" whose interest in the stool occupied by the Dependent/Respondent will be affected by the restraining order.

On undertaking to pay damages, he submitted that deposing to the fact that the Applicant "undertakes to pay damages" is not enough. He said that such an undertaking should be in writing, signed by the undertaker and attached to the affidavit. He said that this is evidently lacking in this application.

Learned counsel submitted that the Court when considering an application for Interlocutory Injunction should not try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend or decide difficult questions of law which call for detailed argument and matured consideration. See: ***OBEYA MEMORIAL HOSPITAL VS. A-G FEDERATION (Supra) @ 327/328 Ratio 2***

He maintained that the Affidavit in Support and Counter-Affidavit of the Parties are in conflict on facts and questions of law which calls for detailed arguments and mature consideration which can not be achieved by mere depositions of facts without oral evidence(s) from the Parties.

He submitted that the **"status-quo"** to be maintained is *"status quo ante bellum",* as the aim of an order of Interlocutory Injunction is to protect **existing legal right** with the object of keeping matters in status quo and not to create new legal rights. According to him, the rights of an Applicant for Injunction, which would be protected by the grant of the order, are the rights existing with regards to the state of things prevailing before the acts complained by the Applicant. He said that where litigation immediately follows a peaceful state of affairs or status, the

status quo to be maintained by an order of Interlocutory Injunction is that peaceful state before the litigation. He said where such state has been disturbed or interfered with, resulting in a law suit the status quo is not the unlawfully created one immediately preceding the suit, but, the original peaceable or peaceful state or status before it was apparently unlawfully altered. See: ***UDO VS. INCORPORATED TRUSTEE OF CHRISTIAN METHODIST EPISCOPAL CHURCH (Supra) @ 91 Ratio 4 & @ 102 Paras C-D***

He said that in the instant case, the Defendant since 21st March 2017 and thereafter had functioned as the Village Head of Iviukhua of Weppa -Wanno. That was the peaceable or peaceful state of affairs or status before the litigation. It is that state of affairs or status before the litigation or law suit that is the status quo to maintain and not the unlawfully created and apparently unlawfully altered state.

He enjoined the Court to look at all the exhibits before it, particularly exhibit M (the document dated 28th May, 2007 and titled Approved order of succession to the Village headship of Iviukhua in Egori Ruling House" which was signed on behalf of the Okumagbe of Weppa-Wanno Kingdom by High Chief G.K Omiogbemi who was the secretary to the Okumagbe in Council attached to the affidavit in Support of the Claimant/Applicant which contains a clause to show that the chance can always be given to the next kindred on the queue to prevent any vacuum.

He urged the Court to refuse the application and dismiss the application with punitive costs for abuse of the process of Court.

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 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 Applicants to establish that he has a legal right which is 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. He deposed to paragraphs 2, 3, 12, 13, 14, 15 and 16 of the supporting affidavit to show that he is from the kindred that is now entitled to produce the village head of Iviukhua.

The Applicant has also stated that he was the ukpi drummer of his kindred and the deputy to late High Chief A.B. Eshiebor the immediate past village head of

Iviukhua and that he has undergone ***Ifako*** (seclusion) as a step in the installation process, and has acquired a right which he alleged the defendant is trying to take away from him.

The learned Counsel for the Respondent however denied the fact that the Applicant has a legal right to protect. According to him, it is the Respondent who has taken steps to become the next Village head.

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 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 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 Applicant has adduced facts to show he has entered the ***Ifako*** and called Iviukhua community and entertained them and is already performing the functions of the village head of Iviukhua .

Again, the Respondent countered this position by asserting that the balance is in his favour because he has already been installed as the Village Head.

Once again, it is impossible to decide such conflicting account at this stage. Thus, it is difficult to ascertain the balance of convenience at this stage.

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"***

The Applicant has deposed to the fact that damages cannot adequately compensate him if the application is refused and he eventually wins the case. He did not explain why damages will be inadequate. All he stated in paragraph 26 of his affidavit is that: ***"… if the defendant is not restrained I shall suffer irreparable damages because I have customary functions which I perform that are not quantifiable in monetary sum."***

The difficulty here is that the Respondent is also alleging that he has already been installed and he is carrying out the functions of the Village Head. Again, this is a material conflict which cannot be resolved at this interlocutory stage.

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

On the whole, it is evident that the Applicant has been unable to satisfy the conditions to warrant the exercise of the court's discretion in his favour because of some salient facts which cannot be resolved at this stage. I agree with the learned counsel for the respondent that at this stage, the Court cannot resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend or decide difficult questions of law which call for detailed argument and matured consideration.

Consequently, this application is refused and the order of interim injunction earlier granted is hereby discharged. The substantive suit will be given accelerated hearing.

Costs is assessed at N10, 000.00 (ten thousand naira) in favour of the Respondent.

P.A.AKHIHIERO
JUDGE
17/07/17

COUNSEL:
S.K. MOKIDI ESQ……..……..CLAIMANT/APPLICANT

P.I.BOSSEY ESQ….. ……..…DEFENDANT/RESPONDENT