

IN THE HIGH COURT OF JUSTICE
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
26TH DAY OF JULY, 2018.

BETWEEN:

SUIT NO:HCU/29/2018

- | | | |
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| 1. REV. DR. FERDINAND ORIAZOWAN
2. REV. FELIX ORIAZOWAN
3. REV. ERIC ORIAZOWAN
4. MR. BENJAMIN ORIAZOWAN
5. MR. ABRAHAM ITUA ORIAZOWAN
(Suing for and on behalf of Oriazowan
Family of Egbele, Uromi in Esan North
East Local Government Area) | } | ...CLAIMANTS/APPLICANTS |
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AND

- | | | |
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| 1. MR. EHIAGWINA ODIANOSEN
2. GODWIN IGENE | } | DEFENDANTS/RESPONDENTS |
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RULING

This is a Ruling on a Motion on Notice, dated 19th and filed on the 20th of June, 2018, brought pursuant to Order 36, Rule 1 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 this Court granting an order of Interlocutory injunction restraining the Defendants, their Agents, Heirs, Servants, Assigns or Privies from further trespassing into the piece of land lying, being and situate on the right hand side of Agba road when moving from Mission road/Agba road junction towards the High Court premises and the Esan North East Local Government Council Secretariat, Uromi which parcel of land is better described in the survey plan attached to the affidavit in support of this motion and called Exhibit "A" or selling, alienating or

assigning any portion of the land to any person(s) or doing anything on the land or interfering or competing title over the land with the Claimants or doing anything on the land in a manner inconsistent with the right of the Claimants pending the determination of this suit.

2. AND for such other order or orders as this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by a four paragraphs affidavit and a written address of Counsel.

In his rather brief Written Address, the learned counsel for the Claimants/Applicants, J.I.Erewele Esq. referred the Court to the following decisions: ***BUHARI VS. OBASANJO (2004) 114 LRCN page 2723 R.6, AYORINDE VS. A-G. OF OYO STATE (1996) 35 LRCN page 257 R. 2, 3, 4,5,6,7 & 8. ACB VS. AWOGBORO (1991) 2 NWLR page 711 R. 1,2,3,4 & 5 and THE PRAYING BAND OF C & S. VS. UDOKWU (1991) 3 NWLR page 716 R. 1 & 5.***

He submitted that the Applicants have satisfied all the requirements of the Law in granting this application particularly the eight conditions set out by the Supreme Court in ratio 6 of the case of: ***BUHARI VS. OBASANJO supra***. He also relied on ratio 5 & 8 of the case of: ***PRAYING BAND OF C & S VS. UDOKWU supra*** where Courts were admonished to protect the land in dispute to prevent the final judgment in the suit being rendered nugatory if the property is destroyed before the final determination of the case.

He therefore urged the Court to grant this application.

Upon service of the Motion on the Respondents, P.E.Ayewoh Odiase Esq. filed a Counter-Affidavit of 33 paragraphs and a Written Address on behalf of the 1st Respondent. The 2nd Respondent did not respond to the application.

In his address, the learned Counsel for the 1st Respondents formulated a sole issue for determination as follows:

“Whether, in the circumstance of the case the Claimants are entitled to the relief of interlocutory injunction sought”.

Arguing the sole issue, learned counsel submitted that the Applicants are not entitled to the reliefs sought on the face of the motion paper because the conditions for the grant of an injunction have not been met. He posited that an injunction is an equitable remedy and the discretion of the Court must be exercised judicially and judiciously.

He said that it is settled law that an applicant seeking to invoke the discretionary powers of the Court must furnish the court with reasons through valid admissible evidence to show that he deserves the equitable reliefs sought. He relied on the following decisions: *Obeya Memorial Hospital VAG Federation (1987) 7SCN.J 198*; *Ajewole V. Adetimo (1996) 2 NWLR (Part 431) 391* and *Orji V Zaria Ind. Ltd (1992) 1 NWLR (Pt. 216) 124*.

He submitted that the equitable relief of interlocutory injunction must be refused in all cases where the Court finds out that:

- (a) The application for injunction is in respect of a completed act;
- (b) The Applicants have not shown irreparable damage;
- (c) The balance of convenience is in favour of the Respondents; or
- (d) Applicant has not shown any ability to meet an undertaking as to damages.

Counsel submitted that the Defendants will suffer more by the grant of this application if in the end the substantive suit fails. That the balance of convenience is in favour of the Defendants.

He further submitted that the Applicants have not established that the balance of convenience is in favour of granting the application and that being the case, the application should be refused.

Again, counsel maintained that the Applicants are supposed to give an undertaking as to damages before the Court can grant the application. This they have failed to do.

He maintained that the Applicants have not given any evidence/particulars of their financial position and the application must be refused on account of this. He referred to the case of: **Oyesola vs. Nnebedum (1992) 3NWLR (Pt. 299) 315**, where Nnaemeka-Agu JSC stated the position of the law thus:

“I wish to point out straight away that although, as I stated in *Kotoye V. CBN (1989) 1 NWLR (Pt. 98) 419 at 450, an undertaking as to damages is the price which every applicant for an interlocutory injunction has to pay for it and save in recognised exceptions, it ought not to be granted if no undertaking is given.*”

For the foregoing reasons, the 1st Respondent’s counsel urged the Court to dismiss the application.

Upon receipt of the Counter-Affidavit, the Applicants filed a Further and Better Affidavit of 26 paragraphs in support of this application. The Further and Better Affidavit was mainly to controvert the counter-affidavit of the Respondents and to adduce further evidence of their title to the land.

As earlier stated, the 2nd Respondent was served with the Motion papers but failed to appear in Court, neither did he file any response to the application. In effect, the 2nd Respondent did not oppose the application.

It is settled law that where facts contained in an affidavit are not countered, they are deemed to have been admitted. See the cases of: ***NWOSU V IMO STATE ENVIRONMENTAL PROTECTION AGENCY 1990 2 NWLR Pt. 135, 688; and EGBUNA V EGBUNA 1989 2 NWLR Pt. 106 773, 777.***

Thus, the 2nd Respondent is deemed to have admitted all the facts contained in the Applicants affidavit in support of this application. However, the mere fact that the application is not opposed does not guarantee the success of same against the 2nd Respondent. The Applicants still have the burden to convince the Court to exercise its discretion in their favour.

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) 1 at 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. They adduced evidence of how the Claimants' father, Mr. Sylvester Inetianbor

Oriazowan by way of purchase from two previous owners obtained title to the parcel of land in dispute in 1962/1965, took possession, molded 7, 000 (seven thousand) blocks on the land for building purposes but died before he commenced building on the land. That the 1st Claimant, having performed the burial of his father, inherited the land and commenced building on the land. That in 2018, the 1st Defendant entered the land and chased away the Claimants and sold the land to the 2nd Defendant who started to dig a foundation on the land for building purposes.

The learned Counsel for the 1st Respondent however denied the fact that the Applicants have a legal right to protect and deposed to contrary facts and tried to establish the title of the 1st Respondent to the land.

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 2nd Defendant who is embarking on building on the land will certainly destroy the character of the land and the land will no longer be useful for the purpose the Claimants intended the land for. That monetary compensation will not be sufficient for the damages that will be suffered by the Claimants if this application is not granted. That if this Application is granted, the character of the land will remain and whoever is victorious after the case will not suffer any injury.

The 1st Respondent countered this position by asserting that the balance of convenience is in his favour. However, he did not state what he would suffer if the injunction is granted. From the facts disclosed, I think the balance of convenience tilts 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”

As earlier stated, the Applicants have deposed to the fact that monetary compensation will not be sufficient for the damages that they will suffer if this application is not granted.

Apart from a bare denial, the 1st Respondents did not counter this argument by asserting that damages will be adequate compensation for the Applicants. 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.

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 3(x) of the 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, their Agents, Heirs, Servants, Assigns or Privies from further trespassing into the piece of land lying, being and situate on the right hand side of Agba road when moving from Mission road/Agba road junction towards the High Court premises and the Esan North East Local Government Council Secretariat, Uromi which parcel of land is better described in the survey plan attached to the affidavit in support of this motion and called Exhibit "A" or selling, alienating or assigning any portion of the land to any person(s) or doing anything on the land or interfering or competing title over the land with the Claimants or doing anything on the land in a manner inconsistent with the right of the Claimants pending the determination of this suit.***

I award the sum of N10, 000.00 (ten thousand naira) as costs in favour of the Applicants.

P.A.AKHIHIERO
JUDGE
26/07/18

COUNSEL:

J.I.EREWELE ESQÍ .í í í í í í í í í í ..CLAIMANTS/APPLICANTS

P.E.AYEWOH-ODIASE ESQÍ í í í í 1ST DEFENDANT/RESPONDENT

UNREPRESENTEDí í í í í í í í í 2ND DEFENDANT/RESPONDENT