IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UROMI JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
12TH DAY OF FEBRUARY, 2020.

SUIT NO: HCU/5/2008

BETWEEN:

ANDREW EHIDIAMEN……..CLAIMANT/APPLICANT

AND

EJELE ESELE…..……..……. DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice, dated and filed on the 25th of June, 2019 brought pursuant to Order 40 Rules 1and 5 of the Edo State High Court (Civil Procedure) Rules 2018 and under the Inherent Jurisdiction of this Honourable Court. By the Motion, the Claimant/Applicant seeks the following reliefs:

An Order of Interlocutory Injunction restraining the Defendant/Respondent by himself, his servants, agents or privies from entering or further entering, selling, developing, building, doing anything on the land in dispute measuring 160ft x 340ft lying and situate at Idumu-Esele quarters, Egbele Uromi, Edo State, which piece of land has boundary with Mr. Oziegbe, pending the hearing and 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 motion is supported by a 29 paragraph affidavit sworn to by the Claimant and a Written Address of his counsel.

Arguing the motion, the learned Claimant/Applicant's counsel, ***Mrs. H.E.Akpasubi*** adopted her Written Address as her arguments in support of the application.

In her Written Address, learned counsel submitted that the sole issue for determination in this application is –

"Whether the Claimant/Applicant has made out a prima facie case to warrant the grant of this Application."

Arguing the sole issue, learned counsel submitted that an injunction is an equitable remedy which can only be granted in support of a right known to law or equity and cited the case of: ***AIC Ltd V. NNPE (2005) 129 LRCN 1678 at 1718***.

She urged the Court to grant the Applicant's prayer since the Applicant's processes disclose rights known to law.

She posited that the factors the court considers in granting or refusing an Interlocutory Injunction have been settled over the years in a plethora of cases. Counsel enumerated the guiding principles to be as follows:

(1) There must be a subsisting action;
(2) There is a serious issue to be tried;
(3) The action subsisting must denote a legal right;
(4) The balance of convenience;
(5) That there is no delay in bringing the action;
(6) That damages will not be adequate to compensate the applicant; and
(7) The Applicant undertakes to pay damages in the event the court ought not to make the order in his favour.

For the above principles counsel relied on the following cases:

(a) OBEYA MEMORIAL SPECIALIST HOSPITAL LTD V. A.G. FEDERATION & ANOR (2000) 24 WRN p 138.

(b) BUHARI V. OBASANJO (2004) VOL. 114 LRCN 2723 AT 2726-2727

(c) AYORINDE V. A. G. OYO STATE (1996) 3 NWLR (Pt 43423)

(d) KOTOYE V. CBN (1989)1 NWLR (PT 98) 419

On the first factor, learned counsel submitted that since there is an originating process with a suit number as indicated above, this is evidence of a subsisting action.

On the principle that the subsisting action must denote a legal right to the Applicant, she submitted that a glance at the Applicant's processes before the court will show that there is a legal right capable of protection. She contended that section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) gives every citizen the right to acquire and own immovable property anywhere in Nigeria. Furthermore, that section 44 (1) of the same Constitution also makes it clear that no movable or any interest in an immovable property shall be compulsorily acquired and no right over or interest in such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law.

Learned counsel posited that from the facts stated in the affidavit in support of this motion and the brief statement of facts in this address, it is evident that the Applicant has some interest to protect in the landed property which the documents exhibited clearly support.

That with the facts provided above, the Applicant has shown that there is a serious question or a substantial issue to be tried.

On the balance of convenience, counsel submitted that the balance of convenience tilts on the side of the Claimant/Applicant. That the Applicant will suffer more if no order is made. That if the Respondent is allowed to continue with his activities on the land, the Applicant's source of

livelihood, which is, farming would be greatly jeopardized. That the character of the land would also be irreversibly altered and these injuries cannot be compensated by damages.

Counsel submitted that there is also an undertaking to indemnify the Respondent in the event that the order of injunction is found to have been wrongly obtained. That if they are restrained and eventually successful, damages will be adequate compensation to the Defendant/Respondent.

She submitted that there is urgent need to protect the ***res*** which is the subject matter of this suit. That the Defendant/Respondent is working vigorously to sell off the land and change its character even before the case is determined. She therefore urged the Court to exercise its discretion in favour of the Claimant/Applicant.

Finally, counsel urged the Court to grant this application in the interest of justice and to avoid a breach of peace.

In opposition to the application, the Defendant/Respondent filed an 18 paragraph Counter Affidavit, and a Written Address of Counsel.

In his Written Address, the learned counsel for the Respondent, ***C.O.Aimionowane Esq.*** relied on all the depositions and adopted his Written Address as his arguments in opposition to this motion.

In his Written Address, the learned counsel for the Respondent submitted that the Claimant/Applicant has not been able to establish the following factors:

1. That there is a serious question or substantial issue to be tried;
2. That because of the serious issue to be tried the status quo should be maintained pending the determination of the substantive action;
3. That the balance of convenience is in favour of granting the application; and
4. That damages cannot be adequate compensation for the injury he wants the court to protect.

He submitted that an application of this nature is not granted as a matter of course but upon establishment of the above factors amongst others. He referred the Court to the following cases:

1. ***TOTAL NIGERIA PLC V. VICTORIA ISLAND & IKOYI RESIDENTS ASSOCIATION (VIIRA) 2004 7 NWLR (PT.873) 446,***
2. ***SOYANNWO V. AKINYEMI (2001)8 NWLR (PT.714)95***
3. ***FADINA V. VEPEE INDUSTRIES LTD (2001) 2 NWLR (PT.698) 518,***
4. ***FALOMO V. VANIGBE (1998) 60 LRCN 4166***
5. ***C.G.C NIGERIA LTD V. BABA (2004) 10 NWLR (PT.882)658***

Learned counsel submitted that the Claimant/Applicant in his affidavit has not been able to establish the above stated ingredients to enable this Court to grant an interlocutory injunction in this matter. That the defendant/respondent from his counter affidavit evidence has satisfied the court that the grant of an interlocutory injunction in this matter will be prejudicial to him.

He further submitted that there is no serious issue to be determined with prospect of success by the Claimant/Applicant suit and cited the case of: ***ORJI V. SARIA I. LTD & ANOR (2000) 1 NLLC 2O7 AT 210 RATIO 1.***

He submitted that from the affidavit evidence of the defendant/respondent, it is evident that he will be more affected if this application is granted. That the balance of convenience is in

favour of the Respondent who has been in effective possession. See: ***FEDINA V.VEPEE (2000) 5 WRN 131 AT 132; and KOTOYE V. CBN (1989) 1 NWLR (P.698) 419 at 422 ratio 5.***

Counsel therefore urged the Court to strike out this application for interlocutory injunction with substantial cost for been incompetent and relied on the case of: ***FEDINA V. VEPEE SUPRA 131 at 133 ratio 5.***

I have carefully examined all the processes filed in this application together with the arguments of both counsels 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 Claimant/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 issue therefore is whether the Claimant has established *prima facie*, the existence of any legal right which he seeks to protect. From the available facts, the Applicant's case is that sometime in January 2008, the Defendant allegedly trespassed into his land which he allegedly purchased from one Mr. Frank Eriakha on the 26th October, 1975 vide a purchase receipt dated 26th October, 1975. That soon after he bought the said land, he took possession and started farming on the land with his brother's wives and permitted one Mr. Oriere to also farm on the land.

From the facts stated in the affidavit in support of this motion it is evident that the Applicant has some interest to protect in the land in dispute. The Defendant/Respondent is however disputing this position. I am of the view that at this stage, *prima facie*, the Applicant has shown the existence of a legal right which he seeks to protect.

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-emphasized 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".***

From the aforesaid facts and applying the foregoing principles, 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.

Presently, the Applicant maintains that he will suffer more if the application is not granted. That if the Respondent is allowed to continue with his activities on the land, the Applicant's source of livelihood, which is, farming would be greatly jeopardized. That the character of the land would also be irreversibly altered and these injuries cannot be compensated by damages.

From the available evidence, it is apparent that the Claimant/Applicant is carrying out some farming activities on the land. The Respondent did not depose to facts to show what he stands to lose if the application is granted. All he stated is that the Defendant/Respondent will be prejudiced if this application is granted and that it will be in the interest of justice not to grant this application. However, he did not explain how the Defendant will be prejudiced if the application is granted.

The Applicant is apprehensive that the entire ***res*** may be destroyed if the Respondent is not restrained at this stage. I think the balance of convenience is in favour of the Applicant. It appears he will suffer more if the Respondent is not restrained by an injunctive order.

Next is on the requirement of inadequacy of damages. In the case of: ***American Cyanamid Co. vs Ethicon Ltd. (1975) 1 All E.R 504***, 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"

On this requirement, in paragraph 23 to 25 of his affidavit, the Applicant stated thus:

"23 That unless the Defendant is restrained he will permanently alter the character of the land;

24 That the balance of convenience is in favour of a grant of the order of interlocutory injunction; and

25. That monetary damage cannot assuage my loss if the Defendant is not restrained."

Incidentally, in his Counter-Affidavit, the Respondent did not dispute the allegation of inadequacy of damages. Consequently, I am of the view that the above deposition is quite sufficient to sustain the condition of inadequacy of damages. In the event, I hold that the Applicant has fulfilled this requirement.

On the condition of whether the Applicant was prompt in bringing the application, I observed that in paragraph 16 of the supporting affidavit, the Claimant/Applicant stated thus: ***"That on the 11th of June, 2019 the Defendant/Respondent invaded the said land in dispute while in my peaceable possession"***. Subsequently, on the 25th of June, 2019 the Claimant/Applicant promptly filed this application. So the Applicant was not guilty of delay.

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, I observed that the Applicant made the undertaking to pay damages in paragraph 27 of his supporting affidavit.

On the whole, I am satisfied that the Applicant has fulfilled the conditions to enable this court exercise its discretion to grant this application.

Consequently, ***the Claimant/Applicant is granted an order of interlocutory injunction restraining the Defendant/Respondent by himself, his servants, agents or privies from entering or further entering, selling, developing, building, doing anything on the land in dispute measuring 160ft x 340ft lying and situate at Idumu-Esele quarters, Egbele Uromi, Edo State, which piece of land has boundary with Mr. Oziegbe, pending the hearing and determination of the substantive suit.***

I award the sum of N20, 000.00 (twenty thousand naira) as costs in favour of the Applicant.

P.A.AKHIHIERO
JUDGE
12/02/2020

COUNSELS:

1. PROF.A.O.O.EKPU……..CLAIMANT/APPLICANT

2. C.O.AIMIONOWANE ESQ…….……..DEFENDANT/RESPONDENT