IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE UBIAJA JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
29TH DAY OF JULY, 2020.

BETWEEN: SUIT NO: HUB/5/2019

CLAIMANTS/APPLICANTS

1. ONOGIE, PETER SUNDAY EBOHON (AMAECHE II OF ULLOSHI)
2. CHIEF, GABRIEL CHUKWUAJU (AJOKO OF ULLOSHI)
3. CHIEF, AUGUSTINE EMOFOR (ATAMA OF ULLOSHI)
4. AKPETI JOSEPH OJIMAH (INDIGENE OF ODIEKE QUARTERS, ULLOSHI)
5. ONAKEMO EBOHOR (INDIGENE OF ARUKOFE QUARTERS, ULLOSHI)
6. OJOKO CHARLES (INDIGENE OF URURO-AGBOGOR QUARTERS, ULLOSHI)
7. OKPALA ODI (INDIGENE OF AJAMUMAH QUARTERS, ULLOSHI)
8. JOHN ABIE (INDIGENE OF OGEMERE QUARTERS, ULLOSHI)
9. JOHN EWO (INDIGENE OF EFUOFE QUARTERS, ULLOSHI)
10. ISAAC ESHIBURG (INDIGENE OF OGEMERE QUARTERS, ULLOSHI)
11. OJOKO FRIDAY (INDIGENE OF UKURO QUARTERS, ULLOSHI)
12. KEMA SAMUELOKWUUDIFELE (INDIGENE OF ODIEKE QUARTERS, ULLOSHI)
13.OZEMENE IGALOH (INDIGENE OF OGEMERE QUARTERS, ULLOSHI)
14. BONIFACE CHIADIKA (INDIGENE OF AROKOFE QUARTERS, ULLOSHI)

(SUING FOR THEMSELVES AND ON BEHALF OF EACH AND EVERY INDIVIDUAL MEMBER/INDIGENE OF ULLOSHI CLAN OF ESAN SOUTH EAST LGA OF EDO STATE EXCLUDING THE 2ND TO 14TH DEFENDANTS)

AND

DEFENDANTS/RESPONDENTS

1. SKAFF INTERNATIONAL AGRO FARMS LTD.
2. SAMUEL OFFOR (DISPUTED/PURPORTED ONU OF UROH)
3. MICHAEL CHIGBATA (PURPORTED REPRESENTATIVE OF ULLOSHI)
4. SUNDAY ENYE (PURPORTED REPRESENTATIVE OF ULLOSHI)
5. EGOWA IDIKI (PURPORTED REPRESENTATIVE OF AROKOFE)
6. JEREMIAH AGOCHI (PURPORTED REPRESENTATIVE OF OCHECHE)
7. SUNDAY AGBOBIOF AJAMAH (PURPORTED CHIEF)
8. SIMOH I. DIBA (PURPORTED AGEEKODIBA)

9. FRANK ABAMU (PURPORTED CHIEF OF IGBAMAKA)
10. INNOCENT ORICHE (PURPORTED CHIEF OF ODOGUME)
11. LUCKY ABAMU (PURPORTED YOUTH LEADER OF ODOGUME)
12. JONATHAN MAWA
13. SAMUEL OJOBOR
14. LUCKY AFAGWU (PURPORTED YOUTH CHAIRMAN OF UROH)

## RULING

This is a Ruling on a Motion on Notice, filed on the 18th of December, 2019 erroneously brought pursuant to Order 38 and 39 of the High Court of Delta State (Civil Procedure) Rules, 2009 and under the Inherent Jurisdiction of this Honourable Court.

By the Motion, the Claimants/Applicants are seeking the following reliefs:

1. AN INTERLOCUTORY INJUNCTION to restrain the Defendants/Respondents and their agents, servants and/or workmen from further entry and destruction of crops upon the 5, 000 Hectares of Land lying and situate at Ulloshi Clan of Esan South East LGA of Edo State – until the determination of the Substantive Suit; AND/OR
2. AN INTERLOCUTORY INJUNCTION restraining the Defendants and their agents, servants and/or workmen from evicting the customary tenants and members of the Claimants' Ulloshi Clan of Esan South East LGA of Edo State from the 5, 000 Hectares of Land lying and situate at Ulloshi Clan of Esan South East LGA of Edo State or commencing any construction works or erecting any building thereon – until the determination of the Substantive Suit.
3. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances of this Application.

The motion is supported by a 45 paragraph affidavit and a Written Address of their counsel.

Arguing the motion, the learned Claimants/Applicants' counsel, ***S. I. Dumbili Esq.*** adopted his Written Address as his arguments in support of the application.

In his Written Address, learned counsel submitted this Application is sought to mitigate the suffering of the Claimants/Applicants so that they will not be in unnecessary hardship during the pendency of the substantive suit. He maintained that the application seeks to prevent an injustice that cannot be cured at the end of the substantive suit if it is not granted at this stage. To support this position, he cited the case of ***The Military Administrator & Anor. V. Aro (2000) 1 NLLC 161 at 172 B – C.***

Learned counsel identified the ***sole issue for determination*** in this application to be as follows:

***"Whether the injustice of the trespass on the Claimants/Applicants' landholding is such that it cannot be cured properly at the end of the substantive case, if an Interlocutory Injunction is not granted, as to be entitled to mitigation from the unnecessary hardship they presently suffer – pending the determination of the Substantive Suit?"***

Arguing the sole issue for determination, learned counsel submitted that the Court in deciding whether or not to grant an Interlocutory Injunction is often guided by the following

considerations: ***(1) serious issue to be determined with prospect of success; (2) balance of convenience; (3) status quo as a proper remedy (Orji v. Zaria I. Ltd & Anor (2000) 1 NLLC 207 at 223 H); (4) relative strength of the case of the parties (5) conduct of the parties (6) inadequacy of payment of damages; American Cynamid Co. v. Ethicon Ltd. (1975) A.C. 396 at 407 – 409;*** and ***Falomo v. Banigbe (2003) 2 NLLC 539 KP***.

Thereafter, he proceeded to articulate his arguments on the guiding principles seriatim.

**SERIOUS ISSUE TO BE DETERMINED WITH PROSPECT OF SUCCESS:**

He posited that on the question of the Claimants/Applicants' real prospect of success in the right claimed, the Court at the outset must be satisfied that the Claimants/Applicants claim is 'not frivolous or vexatious' and that 'there is a serious question to be tried at the hearing of the substantive suit.'

He said that this ingredient is a fundamental requirement that has been established by the Claimants/Applicants for an Order of Interlocutory Injunction. That it is only where the Claimants/Applicants fail to satisfy this basic requirement, that this Application will be defeated. See ***Re Lord Cable (1977) 1 WLR 7***.

He contended that the Affidavit in support of the Motion on Notice reveals that there are serious questions of proprietary rights and tenure, exclusive possession, custody and control of family land thereto and issues of trespass, to be tried between the Claimants/Applicants and the Defendants/Respondents at the hearing of the suit.

**INADEQUACY OF PAYMENT OF DAMAGES:**

Counsel submitted that besides the serious questions to be tried, the contention of the Claimants/Applicants is that damages would not be adequate to compensate them for the loss they would have sustained as a result of the Defendants/Respondents' continuing to do what was sought to be restrained between the time of this application and the pendency of the substantive suit. See ***Falomo v. Banigbe (2003) 2 NLLC 539 KP***.

He posited that in their affidavit in support of this application, they averred that the Defendants/Respondents are not in a financial position to pay any damages that may be awarded as to be meritoriously entitled to that alternative. He said that on the other hand, in their affidavit evidence the Claimants/Applicants have expressed their willingness and ability to pay a price and furnish consideration for the grant of the interlocutory injunction. That this is to fortify and protect the Court if it decides to do justice in their favour. See ***Kotoye v. CBN [Notable Case No. 1] (1989) 1 NWLR (Pt. 98) 419at 450.***

Learned counsel submitted that at this point, the affidavit evidence has revealed that damages would not be adequate to compensate the loss the Claimants/Applicants will suffer from any interference.

**BALANCE OF CONVENIENCE:**

Counsel submitted that once it is established that the Claimants/Applicants' claims are not frivolous or vexatious and that there are serious questions to be tried, the governing consideration must then be the balance of convenience. See ***American Cynamid Co. v. Ethicon Ltd., supra, 407.*** He submitted that even if the balance of convenience does not clearly favour either party (and this is not the case as it actually lies in favour of the Claimants/Applicants in this case), then the preservation of the *status quo ante bellum* will be decisive. See ***Harnman Pictures N.V. v. Osborne (1971) 1 WLR 723; Cynamid Co. v. Ethicon Ltd., supra; Falomo v. Banigbe, supra, 539UJ***.

He contended that the balance of convenience that will be protected cannot be any fancied ego or personal pride of the Claimants/Applicants but a substantial right that is fit for legal protection. See ***Vee Gee (Nig.) Ltd. V. Contact (Overseas) Ltd. (1992) 9 NWLR (Pt. 266) 503 at 515; Falomo v. Banigbe , supra, 543Z.***

**RELATIVE STRENGTH OF THE CASE OF THE PARTIES**:

He submitted that on an application for an order of Injunction in aid of the Claimants'/Applicants' right, the Court, in an appropriate case, may wish to consider the relative strength of the cases of the parties.

**CONDUCT OF THE PARTIES:**

Learned counsel posited that the Court may also consider the conduct of the parties to ascertain whether the Claimants'/Applicants' case is so clear and free from objection on equitable grounds that it ought to interfere to preserve the property or res in issue without waiting for the right to be fully established. See ***Eastern Trust Co. v. McKenzie, Mann & Co. Ltd. (1915) A.C. 750; Falomo v. Banigbe, supra, 539AO and 540A.***

He submitted that in the English case of ***Hubbard v. Vosper (1972) 2 QB 84 at 96***, Lord Denning opined that the remedy of interlocutory injunction is so useful that it should be kept flexible and discretionary and must not be made the subject of strict rules. He also cited in support, the Nigerian case of ***Falomo v. Banigbe supra at p.540***.

He maintained that the Claimants/Applicants will depend on the Honourable Court's judicial and judicious office to submit that in an application for interlocutory relief, it is not necessary to prove proprietary interest in the property to be protected. That all that is needed is proof of lawful occupation or ownership. See ***Obeya Memorial Hospital V. A.G.F. (1987) 3 NWLR 325.***

Counsel posited that the Claimants/Applicants in measuring the Balance of Convenience on the practice and procedure that, where only the violations of the Claimants/Applicants' rights are evidentially and corroboratively denied; but not their existence, the court considers the balance of convenience. He said that if the Court decides that the claim is not frivolous or vexatious based on the existence of their rights, it will also find that the greater harm and more loss would result and accrue to the Claimants/Applicants by a refusal of their prayers for an injunction, than the Defendants/Respondents may ever suffer.

He therefore urged the Court to grant the order of interlocutory injunction and referred the Court to the following decisions: ***Obeya Memorial Hospital V. A.G.F., supra 345. Ezebilo v. Chinwuba [1997] 7 NWLR (Pt. 511) 108; All States Trust Bank v. Nsofor [2004] All FWLR (Pt. 201) 1719 at 1737, Paras. A-B.***

Counsel submitted that interlocutory injunctions are sought for the object of keeping the matter of possession in status quo until the question at issue between the parties in the substantive suit is determined. That this is meant to preserve the res, the legal, possessory and customary right to the piece of the agricultural land and to prevent it from being wasted, damaged and frittered away by the Respondent before the determination of the substantive suit. He said that the status quo in the context of the instant application is the position of the piece of land in dispute before the trespass. That the trend of decisions is that status quo means ***"the previous position; the position in which things were before; the unchanged position"***. He referred the Court to the case of ***Ezebilo v. Chinwuba [1997] 7 NWLR (Pt. 511) 108 at 123, Paras*** where the Court held that in the grant of interlocutory injunction, the nature of the res is an important factor.

He submitted that the balance in the instant application is that some prayers relate to the facet of the res, the land, which is not perishable but is only suffering from continued invasion of the Defendants/Respondents. See ***Ladoke & Ors. Olabajo & Anor [1997] 8 NWLR (Pt. 261) 605 at 624***. He said that the res at this point has not been destroyed and is still in existence even as the wrongful act is repeatedly continued and threatened to be completed on the un-trespassed portion.

Counsel submitted that the Claimants/Applicants have properly identified the res in the Exhibits annexed to the affidavit in support, which clearly identifies the boundary of the land in dispute to forestall the risk of the Court's order straying into another area of land which is not the subject matter of the litigation. See ***Ezebilo v. Chinwuba, supra at 125, Paras. D-E.***

Finally, counsel submitted that the Rules of the Court confers the Court with the discretion to grant an injunction and he urged the Court to exercise that discretion in favour of the Claimants/Applicants.

In opposition to this application, the learned counsel for the 1st Defendant/Respondent, ***Prof. A.D.Badaiki*** filed a Counter-Affidavit of 39 paragraphs together with a Written Address of Counsel.

In his Written Address which he adopted as his arguments in opposition to this motion, the learned counsel identified a sole issue for determination as follows:

***"Whether the Claimants/Applicants have made out a case for the Honourable Court to grant the Claimants/Applicants' application for order of interlocutory injunction as prayed by the Claimants/Applicants in their Motion on Notice or at all."***

Arguing the sole issue for determination, the learned counsel submitted that an application for interlocutory injunction is not granted as a matter of course. That being a discretionary remedy, like all judicial discretions, it is exercised judicially and judiciously. He maintained that an interlocutory order is granted only upon proof of the fundamental requisites

for it and an applicant must satisfy the relevant requirements of the law. He posited that the 1st – 14th Applicants have failed to prove the fundamental requisites for it. That they have also failed to satisfy all the requirements of the law in this case.

He submitted that the principles a court considers in an application for interlocutory injunction have been stated in a plethora of cases, and they include ***the existence of a legal right, the existence of a serious or substantial issue for trial, balance of convenience, irreparable injury, undertaking as to damages, conduct of the parties, relative strength of the case of the parties, whether the act sought to be restrained has not already been done or completed and whether there is delay which may hamper grant of injunction***. See: ***Egbe v Onogun (1972) 1 ALL NLR 95 at 409; Kufeji v Kogbe (1961) 1 ALL NLR 113 at 114; Obeya Memorial Hospital v A-G of Federation & Another (1989) 7 S.C. 52; (1987) 3 NWLR (Pt. 60) 326; Satoil (Nig.) Ltd. v. SDWP Ltd. (2015) 16 NWLR (Pt. 1485) 361; Okomu Oil Palm Co. v. Tajudeen (2016) 3 NWLR (Pt. 1499) 284; SPDCN Ltd. v. CLNR Ltd. (2016) 9 NWLR (Pt. 1517) 300, Orji v. Zaria Industries Ltd & Another (1992) 1 NWLR (Part 216); American Cyanamid v Ethicon Ltd. (1975) A.C. 396 at 407.***

On the requirement of substantial or serious issue to be tried, learned counsel submitted that there is no substantial or serious issue to be tried. That the burden of proof on the Claimants/Applicants at this stage of proceedings, has not been discharged by the quality and quantity of the affidavit evidence which the Claimants/Applicants are required to establish in support of their application for interlocutory injunction. He maintained that the affidavit and counter-affidavit evidence do not show that the Claimants/Applicants were or are in occupation or possession of the 5000 hectares of land leased to the 1st Defendant/Respondent. He said that it does not also show that they had or have farms or planted crops on the said 5000 hectares of land.

Counsel posited that the 1st Claimant/Applicant is merely predicating this application on the non-existent throne of Onogie of Uloshi and his debacle in the contest for the kingship of Uroh community for which he had instituted an earlier court action which is yet to be determined.

He submitted that in the above premise, there is no substantial issue to be tried with prospect of success at the hearing of the substantive suit. He maintained that they have not proved lawful occupation or possession showing existence of a legal right which ought to be protected. For this view, he relied on the following decisions: ***Vee Gee (Nig.) Ltd. v Contact (Overseas) Ltd. (1992) 9 NMLR (Pt. 266) 503 at 515; Commissioner for Works, Benue State v Devcon Ltd. (1988) 3 NWLR (Part 83) 407 at 432.***

Learned counsel submitted that although the legal requirement has long been whittled down from the applicant showing a strong prima facie case to showing a substantial issue to be tried at the hearing, yet, the burden on the Claimants/Applicants has not been discharged.

On the principle of the balance of convenience, counsel submitted that the Applicants have not shown that the balance of convenience is in their favour. He referred the Court to the case of ***Obeya Memorial Hospital v A-G of Federation and Another (1987) 7 S.C. 52 at 86; (1987) 3 NWLR (Pt. 60) 325*** where ***Obaseki, J.S.C,*** stated the test of balance of convenience to

be as follows: ***"Who will stand to lose more if the status quo ante is restored and maintained till the final determination of the suit?"***

He said that in the light of all the facts placed before this Court in the affidavit and counter-affidavit, that the 1st Defendant/Respondent will suffer more if the status quo ante is restored and maintained till the final determination of the suit. He said that this is because if the Court refuses to order an interlocutory injunction, as he urges the Court to do, and this action is finally decided in favour of the Claimants/Applicants, they will suffer no injury. He said that the 5000 hectares of land will be declared to be their own; it will not be moveable; the land will continue to be used for farming and agriculture which purposes the land are presently being used by the 1st Defendant/Respondent; and no damage or lasting damage to the land will be done by the 1st Defendant/Respondent. He referred the Court to paragraphs 22, 23, 31 and 32 of the Counter-affidavit.

On the other hand, learned counsel submitted that the 1st Defendant/Respondent will suffer severe injury and losses that cannot be calculated and compensated in monetary terms if the interlocutory injunction is granted and the substantive action is decided in favour of the 1st Defendant/Respondent. He said that the massive investments, agricultural machinery including rice mills, farm and agricultural structures, billions of naira roads projects including six culverts one of which is a mini bridge already constructed for the purposes of the lease of the land, speak volume of the severe injury and losses that the 1st Defendant/Respondent will suffer. He referred the Court to the relevant paragraphs of the Counter-affidavit. He said that at a time when Edo State is yearning for investment by investors and urging private sector participation in reducing unemployment in the State, he urged the Court to refuse the prayer for an order of interlocutory injunction simply to satisfy the self-serving and selfish interest of the Claimants/Applicants. He urged the Court to also consider the "special factor" that the 1st Defendant/Respondent has provided employment for several persons in the community where the land is situated and will bring other developmental projects. He referred to paragraphs 26, 27 and 28 of the counter affidavit.

Furthermore, he submitted that the Claimants/Applicants will not suffer irreparable injury even if the Court refuses to grant an order of interlocutory injunction. He submitted that it is settled law that an order of interlocutory injunction will be granted if the injury complained of cannot afterwards be compensated for in damages. See ***Ladunni v Kukoyi & Others (1972) ALL NLR 136.*** Counsel submitted that assuming but not conceding that the Claimants/Applicants suffer injury as a result of the 1st Defendant/Respondent's occupation and use of the land, such injury can be compensated in monetary terms. He said that by the averments in the affidavit in support of motion, the land in dispute is being used for farming and agricultural purposes. He said that Paragraphs 69 of the counter affidavit is evidence that the 1st Defendant/Respondent applied and was leased the land for farming and agricultural purposes. That Paragraphs 31 of the counter-affidavit shows that the 1st Defendant/Respondent is using and will continue to use the land for farming and agricultural purposes. He posited that farming and agricultural purposes for which the 1st Defendant/Respondent is using the land does not change the character of the land. See ***Ubaezonu, JSA in Esebilo v Chinwuba (1997) 7 NWLR (Pt. 511) 108 at 133-134.***

Counsel submitted that since no damage or lasting damage to the land in dispute will be done by the 1st Defendant/Respondent's activities on the land, the Claimants/Applicants will not suffer any irreparable damage to warrant granting the interlocutory injunction. Furthermore, he contended that from the affidavit and counter affidavit evidence, none of the Claimants/Applicants is in possession of any portion of the land leased to the 1st Defendant/Respondent. He said that the customary tenants who were on the land have been re-located and settled elsewhere after compensation had been paid to them by the 1st Defendant/Respondent. That the leased land is not in any way the source of livelihood of the Claimants/Applicants. He referred the Court to Paragraphs 20, 21 and 30 of the Counter affidavit.

He urged the Court to take into account the abilities of the respective parties to pay compensation in the event that the matter went one way or the other. That the 1st Defendant/Respondent is a corporate body of substance and has the ability and is willing and ready to compensate the Claimants/Applicants if at the final judgment it turns out that the 1st Defendant/Respondent does not succeed in this action. He said that in paragraph 33 of the counter-affidavit, the 1st Defendant/Respondent undertakes to damages. He said that although the Claimants/Applicants have stated that they would enter into an undertaking as to damages, he cannot vouch that they are in a position to pay damages in terms of the billions of naira that the 1st Defendant/Respondent has already expended on the account of the leased land.

Furthermore, learned counsel posited that this application prejudices the 1st Defendant/Respondent. That most fundamental in this regard is that the Applicants are praying the Court to restrain an act that has already been done. He said that the 1st Defendant/Respondent and their agents, servants and workmen have been on the land since May 2019. That crops have been removed from the 5000 hectares of land and compensation for the crops has being paid by the 1st Defendant/Respondent. He said that the customary tenants on the land have been relocated and settled elsewhere after having been compensated by the 1st Defendant/Respondent. He said that construction works including erection of buildings commenced since May 2019 and some are already completed. He referred the Court to Paragraphs 24, 25, 28, 29 and 30 of the counter affidavit to affirm these facts. He emphasised that an Injunction is not granted to restrain an already completed act. See: ***NBM Bank Ltd. v. Oasis Group Ltd (2005) 3 NWLR (Pt. 312) 320; Ajewole v Adetimo & Others (1996) NWLR (Pt. 431) 391 S.C; CBN v Industrial Bank Ltd. (Merchant Bankers) (1997) 9 NWLR (Pt. 522) 712; John Holt Nig. Ltd. & Another v Holts African Workers Union of Nigeria & Cameroons (1963) ALL NLR 385; (1963) 2 SCNLR 383.***

He submitted that since the act sought to be restrained is already completed, and the Claimants/Applicants' damage, if any, is not irreparable, he urged the Court to hold that the balance of convenience is in favour of the 1st Defendant/Respondent. For this view he relied on the case of ***Cletus Agu Chiekeilo v Augustine Nwali (1998) 8 NWLR (Pt. 560) 144***.

Counsel submitted that the remedy of interlocutory injunction is an equitable one and Equity aids the vigilant and not the indolent. ***vigilantibus non dormientibus juris sebveniunt***, the law aids those who are vigilant, not those who sleep upon their rights.

In conclusion he urged the Court to refuse the application.

Also in opposition to this application, the learned counsel for the 2nd to 14th Defendants/Respondents, ***R.E.Orukpe Esq.*** filed a Counter-Affidavit of 52 paragraphs together with a Written Address of Counsel.

In his written address, the learned counsel adopted the same sole issue for determination as formulated by the learned counsel for the 1st Defendant/Respondent. The arguments canvassed in his Written Address are substantially similar to the arguments articulated by the aforesaid counsel

Furthermore, the learned counsel emphasised the point that it is the law that an order of injunction is never granted to restrain farmers from entering their farms or tending their crops simply because there is a litigation over the area of farmland. For the above proposition of the law, he relied on the case of ***REUBEN EZEBILO & ANOR VS. MADAM NWUNAKU CHINWUBA & ANOR (1997) 7 NWLR PT. 511 at page 108 ratio 27 at page 118***.

He submitted that in the instant case, it is not in dispute that the land in dispute is a farmland and it is not also in dispute that the 1st Defendant/Respondent is already farming on the said land consequent upon the lease granted to her by the 2nd – 14th Defendants/Respondents and that she has commenced farming and agricultural activities on the land. It is also not in dispute that the 1st Defendant/Respondent would need to tend and nurture her farm crops on the land in dispute to maturity in order to protect the huge sum of money and material she has invested in the project.

He therefore submitted that an order of interlocutory injunction at this stage will not only be prejudicial to the 1st Defendant/Respondent but will also not meet the justice of this case judging by the facts and circumstances of this case.

In conclusion, he submitted that the Applicants have not made out a case to enable this Court to grant an order of interlocutory injunction against the Defendants/Respondents and he urged the Court to refuse the application.

Upon receipt of the 1st Defendant's/Respondent's address, the Claimants'/Applicants' counsel filed a marathon Further and Better Affidavit and a Written Address of Counsel in further support of this application. Going through these verbose processes, I observed that the learned counsel adduced further facts and reopened his arguments in support of the motion. In essence, in his further affidavit and Reply on points of law, the learned counsel attempted to embellish the arguments earlier canvassed in his original supporting affidavit and written address.

It is settled law that where a reply on points of law translates to re-arguing a party's written address or brief of argument, it will be discountenanced by the Court. See: ***OKPALA VS IBEME (1989) 2 NWLR (PT 102) 208; FRN VS IWEKA (2011) LPELR (9350) CA; OPENE VS NJC (2011) LPELR (4795) CA***. In essence, a reply on point of law is not meant to improve on the quality of a written address. Consequently, I will discountenance the contents of the said Further and Better Affidavit and Reply on Point of Law.

At the hearing of this application, the learned counsels for the parties made some further oral submissions in support of their positions.

In his further oral submission, the learned counsel for the Claimants'/Applicants, ***S.I. Dunbili Esq.*** submitted as follows:

***i.*** That there is no need to file a further and better affidavit to the counter-affidavit filed by 2nd to 14th Defendants because the counter affidavit is not sufficient to counter the prayers sought by the motion;

***ii.*** That the entire counter affidavit goes to show that there are serious issues to be tried;

***iii.*** That the counter affidavit is self-contradictory because paragraph 13 conflicts with paragraph 16. He cited the latin maxim ***"Allegans contratria non est audiendus"*** to the effect that he who makes statements mutually inconsistent is not to be heard;

***iv.*** That Paragraphs 14 to 17 and 31 to 41 of the Counter Affidavit of the 2nd to 14th Defendants are not within the knowledge of the deponent because he is not a Staff of the 1st Defendant Company;

***v.*** That Paragraphs 5, 7 and 18 of the 2nd to 14th Defendant's Counter Affidavit supports their case to the extent that it concedes that the 2nd Defendant is a Trustee of communal lands;

***vi.*** That Paragraphs 34 to 41 of the said counter affidavit amounts to invalid acts and the Latin Maxim is ***"Ab Abusu Ad Usum Non Valet Consequentia"*** (a conclusion as to the use of a thing from its abuse is invalid);

***vii.*** That Paragraphs 34 to 41 offends Section 115 of the Evidence Act because it does not disclose the source of the information.

In his oral submission, ***Prof. A.D. Badaiki*** submitted that there are no serious issues to be tried and that the application is frivolous, vexations and should be refused.

On his part, ***R.E. Orukpe Esq***. submitted that the balance of convenience weighs heavily in favour of the Defendants particularly the 1st Defendant. That at this stage with respect to paragraphs 34, 35, 36, 37, 38, 39, 40 and 41 the Court cannot make any pronouncements on invalid acts. He maintained that the facts are facts within the knowledge of the deponent.

On the alleged contradictions in their counter affidavit, he submitted that there are no contradictions between paragraphs 13 and 16 of the counter affidavit. He explained that in paragraph 16, they stated that Uroh Clan and Uloshi Clan are used interchangeably.

On the failure to exhibit the lease, he submitted that both sides are agreed that the 2nd Defendant leased the land to the 1st Defendant and facts admitted need no proof.

I have carefully examined all the processes filed in this application together with the arguments of all the 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 Claimants/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 point to be considered here is whether the Claimants have established *prima facie*, the existence of any legal right which they seek to protect. From the available facts, the Applicants' case is that the Claimants allege that they are the owners of the legal, equitable and customary right in the 5, 000 Hectares of land lying and situate at Ulloshi Clan of Esan South East LGA of Edo State and entitled to the Possession and Right of Occupancy in respect of the said land which they allege the 2nd to 14th Defendants are trying to alienate to the 1st Defendant without their permission, authority or consent.

From the facts contained in the affidavit in support of this motion it is evident that the Applicants have some interest to protect in respect of the land in dispute. The Defendants/Respondents are however disputing this position. I am of the view that at this stage, *prima facie*, the Applicants have shown the existence of a legal right which they seek 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 applicants must show that the balance of convenience is on their 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.

It must be emphasised that the determination by a Court of where the balance of convenience rest in a case is a question of fact and not law. The Court is therefore obliged to study and rely on the facts presented to it by the affidavit evidence of the parties. ***See AYORINDE v. A.G. OYO STATE (1996) 3 NWLR (Pt.434) 20. In EGBE VS. ONOGUN (1972) 2 S.C. 90.***

In the instant application, on the balance of convenience, at paragraphs 40 to 42 of the Applicant's affidavit in support of the motion, they stated as follows:

***"40. That there is a certainty of unquantifiable damages to the Claimants loss of their Communal Land and agricultural crops if this Application is not granted against the Defendants who will only suffer the risk thereto if it is granted – such as to weigh the balance of convenience in the Claimants' favour – and considering that more justice will clearly result in granting this Application than in refusing it.***

***41. The above disadvantages the Claimants shall suffer will greatly inconvenience their possession of the 5, 000 Hectares of Land lying and situate at Ulloshi Clan of Esan South East LGA of Edo State if they are not granted the interim relief of the Court, as this weighs against the mere delay of the Defendants' mere claim.***

***42. That the Claimants humbly and urgently desire the interim intervention and help of the Honourable Court as the aforesaid 5, 000 Hectares of Land lying and situate at Ulloshi Clan of Esan South East LGA of Edo State and the crops thereon may be irreversibly destroyed and damaged or sold off before the determination of the substantive Suit; thus any delay in granting the Order of Injunction sought would entail irreparable damage and serious mischief to them."***

However, the Defendants are seriously contending that the balance of convenience is in their favour because they would suffer more if the application is granted. In paragraphs 25 to 37 of the Counter-Affidavit of the 1st Defendant/Respondent, the deponent stated as follows:

***"25. That none of the 1st-14th Claimants is a customary tenant of and in Uroh clan or community or Uloshi clan or community or in possession or occupation of the latter's land or any portion of the 5000 hectares of land leased to the 1st Defendant/Applicant.***

***26. That none of the 1st – 14th Claimants/Applicants have any crops, farms, interests, possession or occupation or property in the land leased to the 1st Defendant/Respondent by the 2nd – 14th Defendants/Respondents, and the 1st Claimants/Applicants' means of livelihood do not depend on the leased land.***

***27. That the 1st – 14th Claimants/Applicants have not suffered and will not suffer any damage, reparable or irreparable, by the lease agreement between the 1st Defendant/Respondent and 2nd – 14th Defendants/Respondents or any of the activities of the 1st Defendant/Respondent under the lease agreement.***

***28. That the land leased to the 1st Defendant/Respondent by the 2nd -14th Defendants/Respondents on behalf of Uroh community has always been for agricultural and farming purposes and the purpose for which the 1st Defendant/Respondent leased the land is agricultural.***

***29. That the 1st Defendant/Respondent had since May 2019 commenced and carried out its obligations under the aforesaid lease, including taking possession of the 5000 hectares, clearing the land, erection of relevant agricultural machinery including rice mill and other farm and agricultural structures, farming, agriculture and cultivation activities and construction of roads.***

***30. That the 1st Defendant/Respondent had, pursuant to the lease agreement, under the first phase, constructed a 6.8 kilometer road project including six culverts one of which is a mini bridge at the cost of N1, 207,952,944.00 (One Billion, Two Hundred and Seven Million Nine Hundred and Fifty Two Thousand and Nine Hundred and Forty Naira only) as reflected in the design done by the Edo State Ministry of Infrastructure.***

***31. That under the second phase of road construction obligation on the 1st Defendant/Respondent pursuant to the lease agreement, 1st Defendant/Respondent is to construct 8.7 kilometers from Eko to Uloshi at the cost of N1, 376,062,950.00 (One Billion Three Hundred and Seventy-Six Million and Sixty-Two Thousand Nine Hundred and Fifty Naira only) also in line with the standard presented by the Edo State Ministry of Infrastructure.***

***32. That pursuant to the lease agreement, the 1st Defendant/Respondent is enjoined to sink 5 (five) Bore Holes with an overhead tank of five thousand liters for the Uloshi Yamon-Oke/Edo Diba in Uroh.***

***33. That pursuant to the said lease agreement, the 1st Defendant/Respondent has hired several indigenes of Uloshi Yamon-Oke/Edo Diba in Uroh and discharged other obligations to the community.***

***34. That the 1st Defendant/Respondent has paid adequate, full and final compensation for crops of whatever name called found on the demised and expanse of land leased to the 1st Defendant by the Uroh community, and accordingly crops on the land had been cleared off***

***the land. Document connected with payment of compensation is attached and marked Exhibit "C".***

***35. That the customary tenants who were once on a small portion of the land leased to the 1st Defendant/Respondent have been re-located to and settled peacefully on another parcel of land in Uroh community.***

***36. That the land leased to the 1st Defendant/Respondent the subject matter of this dispute is an area being used for farming and agricultural purposes and the 1st Defendant/Respondent applied and was leased the land for farming and agricultural purposes, and the 1st Defendant/Respondent is using and will continue to use the land for agricultural and farming purposes.***

***37. That the activities of the 1st Defendant/Respondent on the leased Uroh community land has not and will not amount to damage or lasting damage to the land and so no waste will be committed on it by the 1st Defendant/Respondent."***

The burden of proof that the balance of convenience is on the Claimants/Applicants, lies on the Applicants. See ***DONMAR PRODUCTIONS LTD Vs. BART & ORS (1967) 2 ALL ER 338 at 339.***

In the case of ***FLORENCE OWOLABI ENTERPRISES LTD v. WEMA BANK PLC (2011) LPELR-4168(CA), ABBA AJI J.C.A*** exposited on the guiding principles thus:

***"In determining the balance of convenience in the consideration of an application for Interlocutory Injunction, the trial Court is expected to pose one or two questions: who will suffer more inconvenience if the application is granted? Who will suffer more inconvenience if the application is not granted? The trial Court has a duty to provide an answer to the questions, and in doing so it must allow itself to be guided by the facts before it. The balance of convenience between the parties is a basic determinant factor in an application for Interlocutory injunction. In the determination of this factor, the law requires some measurements of the scale of justice to where the pendulum tilts. While the law does not require mathematical exactness, it is the intention of the law that the pendulum should really tilt on the Applicant. And the pendulum can only tilt in favour of the Applicant of the Court comes to the conclusion that better justice or more justice in the matter will be done if the application is advantages of granting the injunction will which are really the odds."***

I have placed the evidence of the Applicants and that of the Respondents on the two sides of the imaginary scale of justice. Upon a juxtaposition of the evidence, I am convinced that the scale tilts heavily in favour of the Defendants/Respondents, particularly the 1st Defendant/Respondent who has invested colossal resources on the land in dispute.

It is alleged that the 1st Defendant/Respondent has taken possession of the 5000 hectares of land, installed relevant agricultural machinery including a rice mill and other agricultural structures. That the company has commenced farming and constructed a 6.8 kilometer road project including six culverts and a mini bridge at the whooping cost of N1,

207,952,944.00 (One Billion, Two Hundred and Seven Million Nine Hundred and Fifty Two Thousand and Nine Hundred and Forty Naira only).

It is evident that the 1st Defendant has embarked on full scale mechanized farming in the Claimants' agrarian community. All these massive infrastructure and investments will be put on hold if this injunction is granted.

On the part of the Claimants/Applicants, it is alleged that they are small scale subsistent farmers who engage in rotational farming/shifting cultivation between several members of the Community and tenants as well as keeping out other non-members of the Ulloshi Clan in exercise of their alleged exclusive possession to the said land. They also allege that they have been enjoying the land by virtue of customary tenancies they granted to some Ibo farmers from the East of the Niger and are in receipt of rents and tributes for their farming camps on the said land.

It is apparent that the commercial activities of the 1st Defendant on the land may be more beneficial to the community than the rural farming activities hitherto embarked upon by the Claimants and their alleged tenants. The Latin maxim is ***"Salus Populi Est Suprema Lex"*** (the welfare of the public is the supreme law). So since the land is still being used for farming purposes, the activities of the 1st Defendant/Respondent on the land will not be detrimental to the community in any way. Rather their activities will increase the economic value of the land and create job opportunities for the members of the community. To grant an injunction to stop such an industrial revolution in this agrarian community will amount to economic sabotage.

The instrumentality of the machinery of justice should not be put to such a retrogressive use. As the learned counsels for the Respondents rightly submitted it is settled law that an order of injunction is not usually granted to restrain farmers from carrying on their farming activities because there is a litigation over the farmland. See the case of ***REUBEN EZEBILO & ANOR VS. MADAM NWUNAKU CHINWUBA & ANOR (1997) 7 NWLR PT. 511 at page 108 ratio 27 at page 118.***

I therefore hold that the balance of convenience is not in favour of the Applicants. They will not lose much if the application is refused. Rather the Respondents will suffer more if this injunction is granted.

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 thus:

***"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, I agree entirely with the Respondents that the losses which the 1st Defendant/Respondent will suffer cannot be compensated by damages if the interlocutory injunction is granted and the substantive action is decided in favour of the 1st Defendant/Respondent. This is because of the massive investments of agricultural machinery

and infrastructure worth over one billion of naira. Clearly, if the injunction is granted and the Claimants lose the suit, the rural community are not likely to be in a position to pay any colossal sum of money as damages.

On the condition of whether the Applicant was prompt in bringing the application, I have no doubt that they were quite prompt in bringing the application. As a matter of fact, as soon as they filed the suit they file an ex parte application to try to secure an interim injunction. So the Applicants were 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 Applicants made the undertaking to pay damages in paragraph 39 of their supporting affidavit. However, in view of the huge investments at stake on the part of the 1st Defendant/Respondent, I do not think the Claimants have the financial capacity to actually pay any colossal sum that may become due in the event of injury suffered by the 1st Defendant/Respondent.

It is settled law that it is not sufficient for the Applicant to aver that it gave an undertaking as to damages, the Applicant must be able to state in its affidavit the means at its disposal or what would guarantee it to be able to meet such an undertaking. See the following cases: ***Ayantuyi vs. Governor of Ondo State (2005) 14 WRN Page 67 at 100 - 101: Leasing Co (Nig) Ltd vs. Tiger Industries Ltd (2007) 14 NWLR Part 1054 Page 346 at 381: Ita vs. Nyang (1994) 1 NWLR Part 318 Page 56 at 67.***

On the whole, I am of the view that the Applicants have not fulfilled all the conditions to enable this court exercise its discretion to grant this application.

Consequently, ***the application is refused and I award the sum of N50, 000.00 (fifty thousand naira) as costs in favour of all the Respondents.***

P.A.AKHIHIERO
JUDGE
29/07/2020

COUNSELS:

1. S.I.DUMBILI ESQ……..……..CLAIMANTS/APPLICANTS
2. PROF.D.A.BADAIKI……..……..1ST DEFENDANT/RESPONDENT
3. R.E.ORUKPE ESQ……..…….2ND – 14TH DEFENDANTS/RESPONDENTS