

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,
ON THURSDAY THE
18TH DAY OF APRIL, 2024.

BETWEEN: **SUIT NO. B/1151/2022**

1. MR. IMUDIA OSAMUYI ANTHONY

2. MRS. ITOHAN IMUDIA

(Suing through their Lawful -----CLAIMANTS/APPLICANTS

Attorney, Mr. Imudia Kelvin John)

AND

MS. JULIET EGHOSA IGBE

(Defending through her Lawful Attorney:

Mrs. Doris Dooshima Ighodaro)-----DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice dated and filed on the 9th of October, 2023 brought pursuant to ***Order 40 Rules 1 and 2 of the Edo State High Court (Civil Procedure) Rules, 2018***, and under the inherent jurisdiction of this Honourable Court.

By this application, the Claimants/Applicants are praying this Honourable Court for the following orders:

AN ORDER of Interlocutory Injunction restraining the Defendant, her agents, privies, assigns and representatives from continuous or further trespass or developing or continuing the erection of structures on the parcel of land which is the subject matter of this suit measuring approximately 100feet by 100feet lying and situate at Osazuwa Close, Off Falalu Road, Ugbor Quarters, Ward 36A, Oredo Local Government Area, Benin City, Edo State, Nigeria, covered by Survey Plan No. GEO: 9960: 2022: ENG – EDO, pending the determination of the substantive suit.

AND FOR SUCH ORDER OR FURTHER ORDERS which this Honourable Court may deem fit to make in the circumstances of this case.

The motion is also supported by a 38 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

At the hearing of the application, the learned counsel for the Claimants/Applicants ***F.U. Obijeko Esq.*** adopted his written address as his arguments in support of the motion.

In his written address, the learned counsel for the Applicants formulated a sole issue for determination, to wit:

“Whether or not the Claimants/Applicants have proved all the ingredients for the grant of an interlocutory injunction?”

Arguing the sole issue for determination, the learned counsel submitted that the Claimants/Applicants have proved all the ingredients for the grant of an order of interlocutory injunction in their favour. He listed the ingredients and relied on the case of ***ADELEKE V LAWAL [2014] ALL FWLR (PT.710) PG. 1226.***

Furthermore, learned counsel referred the Court to the case of ***OKEKE-OBA Vs. OKOYE (1994) 8 NWLR (PT. 364) 605 AT 617, PARAS C-D, ACHIKE JCA*** and submitted that the grant or refusal to grant an injunction is a matter of the exercise of the court’s discretion which must be exercised judicially and judiciously. He also referred to the case of ***UNION BEVERAGES LTD Vs. PEPSI COLA INT. LTD & ORS (1994) 3 NWLR (PT. 330) 1 AT 12 PARAS B-C; OSUNDE Vs. CO-OPERATIVE BANK LTD (1995) 7 NWLR (PT. 410) 682 AT 687 PARAS E-F; ADEWALE CONSTS. CO. LTD. V. I.B.W.A. (1991) 7***

NWLR (PT.204) 498 AT 508 PARA B where the more superior Courts expounded more on the principles regulating the grant of an interlocutory injunction.

Learned counsel submitted that the Claimants have established their legal rights to the land in dispute worthy of protection by an injunctive order. He submitted that a cursory glance at the Applicants' Exhibits A, B, C, D and E would reveal that the Applicants have some legal rights in the subject matter of the claim worthy of protection by this Court. He posited that the nature of the claim made by the Applicants is one that is legally enforceable and they are entitled to the reliefs sought in this application. He relied on the cases of **OKEKE-OBA Vs. OKOYE (SUPRA)**; **UNION BEVERAGES LTD Vs. PEPSICOLA INT. LTD & ORS (SUPRA)**; and **OSUNDE Vs. CO-OPERATIVE BANK LTD (SUPRA)**.

He further submitted that having established their enforceable legal right to the land in dispute, the requirements for the grant of the relief sought by the Applicants has been proved and he relied on the case of **OSUNDE Vs. CO-OPERATIVE BANK LTD (1995) 7 NWLR (PT. 410) 682 AT 690-691 PARAS G-A**.

Again, counsel submitted that it is settled law that in an application for interlocutory injunction, the Court is enjoined to consider the rights of the parties to ascertain whose rights outweighs that of the other party and he relied on the cases of **AMERICAN CYANAMID COMPANY Vs. ETHICON LTD. (1975) 1 ALL E.R. at 504 pp 510**; and **ADENUGA Vs. ODUMERU (2003) 110 LRCN pg. 1655 @pages 1657 – 1658**.

Furthermore, counsel referred to the cases of **OSUNDE Vs. CO-OPERATIVE BANK LTD (1995) 7 NWLR (PT. 410) 682 AT 690-691 PARAS G-A**; **UNION BEVERAGES LTD. Vs. PEPSICOLA INT. LTD & ORS (1994) 3 NWLR (PT. 330) 1 AT 12 PARAS D-E**; **AKINOLA Vs. JAMES (1992) 1 NWLR (PT.215) 48 AT 57-58, PARAS H-A** where the Court held that in an application for an interlocutory injunction, the Applicant must establish that there is a serious question to be tried.

He submitted that in the present application, the Applicants have shown by their 38-paragraphs affidavit that there are serious issues to be tried by the Court.

On the issue of balance of convenience, learned counsel submitted that in the instant application, the Applicants have shown that the balance of convenience is in their favour and he referred to paragraphs 25-35 of their supporting affidavit. He relied on the following cases: *ALLIED BANK (NIG.) PLC Vs. BRAVO W/A LTD. (SUPRA)*; *OCHUDO Vs. OSENI I (SUPRA)*; and *OSUNDE Vs. CO-OPERATIVE BANK LTD (1995) 7 NWLR (PT. 410) 682 AT 687 paras D-E*.

Furthermore, counsel referred to the case of *OKEKE-OBA Vs. OKOYE (1994) 8 NWLR (PT. 364) 605 AT 620 PARA H* and submitted that an injunction being an equitable remedy, he who comes to equity must come with clean hands. He also cited the cases of *AKAPO V. HABEEB-HAKEEM (1992) 6 NWLR (PT. 247) 266*; and *ADEWALE CONSTS. CO. LTD. Vs. I.B.W.A. (1991) 7 NWLR (PT.204) 498 AT 506 PARA F*.

He submitted that the Applicants by their affidavit in support of this application have properly identified the land in dispute by the **Survey Plan No. GEO : 9960 : 2022 : ENG – EDO** which they attached as Exhibit E to the affidavit in support of this application and he relied on the case of *EZEBILO Vs. CHINWUBA (SUPRA)*.

Again he referred to the case of *UNION BEVERAGES LTD. Vs PEPSI COLA INT. LTD & ORS (1994) 3 NWLR (PT. 330) 1 AT 17 PARAS A-C* and submitted that when the type of loss alleged by an applicant for interlocutory injunction cannot be adequately compensated by an award of damages, an interlocutory injunction can be granted pending the determination of the substantive suit.

He also referred to the case of *SOTUMINU Vs. OCEAN STEAMSHIP (NIG.) LTD (1992) 5 NWLR (PT. 239)1 AT 27 PARAS F-H*.

He submitted that it is trite law that where damages are irreparable and cannot be adequately compensated in monetary terms, an order of injunction should be made.

Learned counsel referred to the cases of *AKINOLA V. JAMES (1992) 1 NWLR (PT.215) 48 AT 58 PARAS B-C*; and *SARAKI V. KOTOYE (1990) 4 NWLR (PT.143) 144* and submitted that by their 38-paragraphs affidavit in support

of this application, the Applicants have established a strong case to be entitled to the relief sought in this application.

He further submitted that the pleadings and depositions of facts of the Applicants are overwhelmingly strong, potent and credible to enable the Court to grant this application.

Again, he referred to the case of *PEREPIMODE Vs. MIEKORO (1992) 2 NWLR (PT. 224) 483 AT 489 PARAS C-G*, where the Court held that an interlocutory injunction is never granted to award the land in dispute to any of the parties; neither does it finally dispose of the rights of the parties. He also referred to the case of *OKEKE-OBA V. OKOYE (1994) 8 NWLR (PT. 364) 605 AT 617-618 PARAS H-A*.

Counsel submitted that the most primary consideration in granting an order of interlocutory injunction is the preservation of the res or status quo or protection of the subject matter of the suit from depletion to forestall helplessness to the party who eventually succeeds at the conclusion of trial and judgment. He maintained that the Applicants' desire that the res or status quo be maintained or preserved pending the determination of the suit.

He submitted further that the Applicants having shown that they desire that the res or status quo be protected or maintained for the benefit of both parties pending the determination of the substantive suit, they are entitled to the grant of the reliefs sought and he relied on the following cases: *PEREPIMODE Vs. MIEKORO (SUPRA)*; *OKEKE-OBA V. OKOYE (SUPRA)*; *ALLIED BANK (NIG.) PLC Vs. BRAVO W/A LTD. (SUPRA)*.

In opposition to this application, the Defendant/Respondent filed a Counter-Affidavit and a written address of his counsel. In his written address, the learned counsel for the Defendant/Respondent *M O. Omozeghian Esq.*, submitted that the power of a court to grant an interlocutory injunction is a discretionary power which must be exercised judiciously and judicially and he relied on the case of *DYKE TRADE V OMNIA LTD (2000) 80 LRCN 28561 at page 2867 paragraphs H-I*.

He posited that the Court will be acting judiciously and judicially if it orders that the status quo ante bellum be maintained pending the determination of the substantive suit.

He submitted that in the exercise of this discretionary power, the court is guided by the following principles of law:

- (a) That there is a subsisting action;
- (b) That there is a legal right to be protected;
- (c) That there is a substantial question to be tried.;
- (d) That the status quo be maintained pending the determination of the substantive suit;
- (e) That there should be a balance of convenience; and
- (f) That the Applicant cannot be adequately compensated in damages.

He cited the cases of *BUHARI V OBASANJO (2004) 114 LRCN Page 2723 Ratio 6 at paragraphs 2571-2572*; and *ABOGU VOKOYE (2008) All FWLR (Part 414) 1494 at 1523 paragraphs C-G*.

Learned counsel identified two issues for determination in this application as follows:

- (i) What is the status quo ante bellum or who was in actual possession of the land in dispute before the crisis commenced; and*
- (ii) On whose favour the balance of convenience tilts.*

ISSUE 1:

Arguing the first issue, learned counsel submitted that the right to be protected by the grant of an injunction is the right existing with regards to the state of things prevailing before the acts complained of by the Applicant and he relied on the cases of *ADAMU V SUEMO (2008) ALL FWLR (Part 415) 1784 at 1798 Paragraphs E-H*, *UDO V I.T.C.M.E.C (2010) ALL FWLR (Part 507) 88 at 102 Paragraphs A –B*; and *BUHARI V OBASANJO (2004) 114 LRCN 2723*.

He maintained that an Interlocutory injunction which is granted in the litigation process is aimed at maintaining the status quo pending the determination of the issues submitted for adjudication by the court. He said that it is an equitable jurisdiction which the court is called upon to exercise in the light of the facts presented before it by the Applicant. That in order to enable the court exercise its equitable jurisdiction, the applicant must present convincing facts which can vindicate the well laid down principles for granting the injunction as decided in the case of *KOTOYE V CBN (1989) 1 NWLR (Part 98) 419* and other cases.

He submitted that in the instant case, the Applicants failed to disclose the status quo ante in their application. He maintained that the right to be protected by the grant of an injunction is the right existing with regard to the state of affairs prevailing before the acts complained of by the Applicant. According to him, the status quo ante bellum in the instant case is that the Defendant has been in peaceful possession of the land in dispute. He referred the Court to paragraphs 23, 24, 25, 26, 27 and 28 of the Counter Affidavit and Exhibit ECE (Survey Plan Dated 29th day of November 2005) and Exhibit ECF.

He said that in paragraph 4 of Exhibit ECB (Decision of Customary Arbitration), the Claimants' Attorney admitted that he saw a caveat on the land, the cassava planted thereon and the fence and Iron Gate. He said that the Claimants' Attorney also admitted that the Claimants purchased the land with the perimeter fence but did not state who constructed the fence.

He submitted that the grant of an interlocutory injunction is an equitable remedy, that a party who saw a caveat on the land with an iron gate and a perimeter fence, and without due diligence to investigate, decided to enter the land cannot turn round to move the Court to exercise its equitable power in his favour. He said that he who seeks an equitable injunction must come with clean hands. He said that the Claimants' Exhibit E (Survey Plan) was made in 2022 while that of the Defendant was made in 2005. He contended that the Defendant's Exhibit ECE coupled with the perimeter fence, Iron Gate, the cassava on the land and the caveat thereon clearly shows that the Defendant is in actual possession of the land.

Again, he posited that the Claimants' admission in paragraph 34 of the affidavit in support of the motion corroborates the Defendant's assertion that the

gate was locked and the Defendant stated that she locked same. He said that this further buttresses the fact that it is the Defendant who is in possession and that Claimants merely invaded the land in order to dislodge the Defendant from the land.

Counsel submitted that granting this application is tantamount to taking possession from the Defendant who has been in peaceful possession and exercising various acts of ownership since 2005 to give same to a usurper. He further submitted that an interlocutory injunction of this nature is to protect a person in possession for the time being (pending the determination of the Suit) and not to take possession from the person in peaceful possession like the Defendant in the instant case.

Furthermore, counsel posited that this is the second attempt made by the Claimants' alleged original predecessor, Mr. Paul Imade to sell the land in dispute to an unsuspecting person and he referred to paragraph 8 of their Counter-Affidavit and Exhibit ECB. He submitted that there is a decision of the Customary Arbitration to which the parties submitted themselves and referred to paragraphs 17 and 18 of their Counter-Affidavit and Exhibit ECB. He said that the Claimants want to resile from the binding decision of the Customary Arbitration. He submitted that granting this application will be tantamount to overruling Exhibit ECB without hearing oral evidence on same and helping the Applicants to resile from the decision. That a Court of law and equity cannot be used as an engine of fraud as the Claimants are trying to do in this case. He said that the Claimants are not the victims but the aggressors, trespassers, grabbers and usurpers.

He submitted that paragraph 17 of the affidavit in support of the motion corroborates paragraphs 33 and 34 of the Counter Affidavit which shows that the Police did not complete the investigation because Mr. Rapheal Edoghogho Usuomon, the Claimants' alleged immediate predecessor in title refused to show up at the Police Station to make statement to the Police. He said that when the Police told the Claimants that the issue between the parties is title to land and not land grabbing (forcible entry) and threat to life, the Claimants tactically stopped going to the Police Station which led to the making of Exhibit ECG by the Defendant's Counsel.

He maintained that the Defendant was in possession and still in possession of the land and this constitutes the status quo ante bellum in the instant case which is in favour of the Defendant.

ISSUE 2:

Arguing issue two, learned counsel submitted that the balance of convenience is not in favour of the Applicants. He said that the Defendant surveyed and fenced the land in 2005, installed a gate, planted cassava thereon and has been in exclusive possession since 2005 so she will suffer more than the Claimants if this application is granted.

He submitted that the Applicants have the onerous duty to satisfy the court that in the special circumstances of their case, they are entitled on the facts presented, to the reliefs sought and he relied on the following decisions: *AYORINDE V. A.G. OYO STATE (1996) 3 NWLR (Part 434) 20*; *EGESIMBA V ONUZURIKE (2009) 9 SCNJ 77*; and *INAKOJU V. ADELEKE (200) ALL FWLR (PART 33) 109*.

He submitted that the Claimants/Applicants having failed to show the acts of possession they need to protect and having presented the facts miserly by not disclosing material facts in their affidavit which facts would have assisted this Honourable Court to assess or know where the pendulum tilts, their motion ought to and should be dismissed.

I have carefully examined all the processes filed in this application together with the arguments of 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 the following decisions on the point: *Madubuikie vs. Madubuikie (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. 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 also, 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*.

Therefore, 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*.

From the Claimants/Applicants supporting affidavit, they have deposed to some facts tracing their alleged root of title to the land from the time they purchased the said parcel of land vide a Deed of Transfer dated 6th May, 2022 from one Mr. Raphael Edoghogho Usuomon. The Deed of Transfer was attached to their supporting affidavit and marked as Exhibit B. Furthermore, they traced the title of their predecessor-in-title to a Deed of Transfer dated 17/01/2018 by which their predecessor in title purchased the land from one Mr. Paul Imade who they allege is original allottee of the land in dispute. The Deed of Transfer dated 17/01/2018 was attached to their supporting affidavit as Exhibit C.

The Land Allocation/Approval Document of the said Mr. Paul Imade dated and approved on 18/02/1973 and 18/05/1973 respectively was attached to their affidavit as Exhibit D.

However in the counter affidavit of the Defendant/Respondent, the Respondent denied the contents of the Applicants affidavit and maintained that the Defendant is the bona fide owner of the land.

With respect to the ownership of the disputed property, I am of the view that it is premature to make any finding at this stage. The Law is settled that in dealing with any interlocutory application the Court should not delve into the substantive issues. A Court must avoid the determination of a substantive issue at an interlocutory stage. It is never proper for a court to make pronouncements in the course of interlocutory proceedings on issues capable of prejudging the substantive issues before the Court. See the following decisions on the point: *Consortium MC v NEPA (1992) NWLR (Pt.246) 132*, *Barigha v PDP & 2 Ors (2012) 12 SC (Pt.v) 1*, *Mortune v Gimba (1983) 4 NCLR 237 at 242*.

From the available evidence, I think the Applicants have identified their legal rights which they seek to protect in respect of the disputed property 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-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 facts disclosed in the affidavit and counter-affidavit it is evident that there are substantial issues to be tried in the substantive suit in relation to the rights of the Claimants/Applicants over the disputed property, whether the property belongs to the Claimants or the Defendant.

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 Applicants are apprehensive that if this application is not granted and the Respondent is allowed to continue her alleged acts of trespass on the land, she would commence the building of a complete structure on the vacant disputed land apart from the small security post which she has already erected on the land in dispute. They allege that this will distort the building plan which they have for the land.

Going through the Respondent's Counter-Affidavit I observed that the Respondent dwelt mainly on the fact that she is presently in possession of the land in dispute. She did not state what she would suffer if this interlocutory injunction is granted pending the determination of the substantive suit.

I am of the view that at this stage from the available evidence, 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 English court stated the position 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.”

From the affidavit evidence adduced by the Claimants/Applicants, they have stated that if the Defendant is allowed to erect a permanent structure on the land or sell same to unsuspecting third parties; the violation of their legal rights to the land in dispute cannot be adequately compensated in damages.

On the condition of whether the Applicants were prompt in bringing this application, I do not think there was any delay on the part of the Applicants in filing this application.

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 in paragraph 30 of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendant if at the end, this application is one which ought not to have been granted.

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 Claimants/Applicants are granted *an order of Interlocutory Injunction restraining the Defendant, her agents, privies, assigns and representatives from continuous or further trespass or developing or continuing the erection of structures on the parcel of land which is the subject matter of this suit measuring approximately 100feet by 100feet lying and situate at Osazuwa Close, off Falalu Road, Ugbor Quarters, Ward 36A, Oredo Local Government Area, Benin City, Edo State, Nigeria, covered by Survey Plan No. GEO: 9960: 2022: ENG – EDO, pending the determination of the substantive suit.*

I award the sum of N50, 000.00 (Fifty Thousand Naira) as costs in favour of the Claimants/Applicants.

P.A.AKHIHIERO
JUDGE
18/04/2024

COUNSEL:

F.U.OBIJEKO ESQ-----CLAIMANTS/APPLICANTS
M.O.OMOZEGHIAN ESQ-----DEFENDANT/RESPONDENT