

The Application is supported by an affidavit of 29 paragraphs and a Written Address of Counsel.

Arguing the motion, the learned Claimant/Applicant, E.J.Ezeweke Esq., appearing for himself, adopted his Written Address as his arguments in support of the application.

In his Written Address, learned counsel submitted that the sole issue for determination in this application is: *whether the applicant is entitled to the reliefs sought.*

He submitted that in an application of this nature, the applicant must establish the following conditions:

- i. Existence of a legal right (the infringement of which he seeks to protect).
- ii. The strength of the applicant's case.
- iii. Preservation of the res or status quo.
- iv. Balance of convenience.
- v. Subsisting action and relief.
- vi. Undertaking as to damages.

EXISTENCE OF A LEGAL RIGHT:

He submitted that before an applicant for interlocutory injunction can succeed, the Applicant must show the Court that he has a legal right the violation of which he seeks to prevent. He referred the Court to paragraphs 20 ó 27 of the Affidavit in Support of Motion together with Exhibits B, C and E where the claimant sufficiently explained how the defendant is extorting him and is continuing in the extortion process.

He submitted that it is trite law and the Courts have held in a plethora of cases that the essence of the grant of an interlocutory injunction is to protect the existing legal right or recognizable right of a person from unlawful invasion by another.

THE STRENGTH OF THE APPLICANT'S CASE:

Counsel submitted that the only requirement which the applicant must show here is to satisfy the Court that his case is not frivolous or vexatious and that there is a serious question to be tried.

He referred the Court to paragraphs 20 ó 27 of the Affidavit in Support of Motion and submitted that the applicant has shown that there is a serious question to be tried.

PRESERVATION OF THE RES OR STATUS QUO:

He submitted that all the applicant seeks to achieve is to prevent the defendant from extorting him and/or prevent the defendant from continuing in the extortion process.

BALANCE OF CONVENIENCE:

He posited that the question to ask here is: Who will suffer more inconveniences if the application is not granted by the Court?

He again referred the Court to paragraphs 20 ó 27 of the affidavit in support of motion and submitted that the applicant would suffer greatly if the application is not granted.

On the other hand, he maintained that the defendant would suffer no hardship whatsoever.

SUBSISTING ACTION AND RELIEF:

Counsel contended that the applicant has already filed his action in Court where he is seeking an order of interlocutory injunction restraining the defendant and/or his agents by whatever name called from extorting him or disconnecting his house from the electricity supply network. He referred the Court to the Writ of Summons, Statement of Claim and other court processes already filed in this proceeding.

He relied on the case of: *Ita V Nyong (1994) 1 NWLR (Pt 318) 56* where the Court held that an Order of interim injunction which can be properly made must be one which has connection with the relief sought in the substantive suit.

UNDERTAKING AS TO DAMAGE:

He informed the Court that the Claimant/Applicant was making an undertaking to indemnify the Respondents by way of damages should it be shown that the Order ought not to have been made in the first instance.

He finally urged the Court to grant the reliefs sought by the applicant as the granting of the reliefs will not in any way prejudice or result in injustice to the Respondents.

The Defendants/Respondents were served with the Motion papers but they failed to appear in Court neither did they file any response to the application. In effect, the application was unopposed.

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 Respondents are deemed to have admitted all the facts contained in the Applicant's affidavit in support of this application. However, the mere fact that the application is not opposed does not guarantee the success of same. The Applicant still has the burden to convince the Court to exercise its discretion in his favour.

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: *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. The applicant must give an undertaking to pay damages in the event of a wrongful exercise of the Court's discretion in granting the injunction.

See the following decisions on the point: *Kotoye v C.B.N. (1989) 1 NWLR (Pt.98) 419; Buhari v Obasanjo (2003) 17 NWLR (Pt.850) 587; and Adeleke v Lawal (2014) 3 NWLR (Pt.1393) 1at 5.*

The issue for determination in this application is whether the applicant has satisfied the above enumerated conditions to warrant the exercise of the discretion of this Court in his favour.

The most important pre-condition is for the applicant to establish that he has a legal right which is threatened and ought to be protected. See: *Ojukwu vs Governor of Lagos State (1986) 3 NWLR (Pt.26) 39*; *Akapo vs Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266-289*.

The Applicant has identified a legal right which he seeks to protect by virtue of his paragraphs 20 ó 27 of the Affidavit in Support of Motion together with Exhibits B, C and E where the claimant sufficiently explained how the defendant is extorting him and is continuing in the extortion process.

I am of the view that at this stage, the Applicant has adduced sufficient evidence to establish the fact that he has a legal right to protect in relation to the issues to be determined in the substantive suit.

On the second condition of having a serious question or substantial issue to be tried, I think this is a necessary corollary from the foregoing that there are serious and substantial issues to be determined in the main suit. From the aforesaid paragraphs 20 ó 27 of the Affidavit in Support of Motion, the applicant has shown that there is a serious question to be tried.

Again in the case of: *Onyesoh vs Nze Christopher Nnebedun& others (1992) 1 NWLR (Pt.270) 461 at 462*, the Court 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.”

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.

From the available evidence the Applicant has shown that he will continue to suffer extortion from the Respondents if this application is not granted.

On the other hand, the Respondents by their failure to respond have not shown what they stand to lose if this Court makes an order restraining them from continuing the alleged acts of extortion.

From the available evidence, the balance of convenience tilts in favour of the Applicant.

Next is on the requirement of inadequacy of damages. In the case of: *American Cyanamid Co. vs. Ethicon Ltd. (1975) (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”

From a careful examination of all the processes filed by the Applicant, it is clear that there is no claim whatsoever in this suit for damages. This is an indication that damages may not be an adequate remedy for the Claimant.

On the condition of whether the Applicant was prompt in bringing the application, there is no allegation or complaint of delay against the Applicant.

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, in his Written Address in support of this application, the Applicant gave an undertaking to pay damages in the unlikely event that the order ought not to have been granted.

On the whole, I am satisfied that the Applicant has 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/Respondents (BEDC) or their agents by whatever name called from billing the Claimant/Applicant arbitrarily by estimated meter reading or disconnecting his house from the Electricity Supply/Distribution Network pending the hearing and determination of the substantive suit herein.*

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

P.A.AKHIHIERO
JUDGE
20/12/18

COUNSEL:

E.J.EZEWELE ESQ. í í í í í í í í í í í í ..CLAIMANT/APPLICANT

UNREPRESENTED. í í í í í í í ..í í DEFENDANTS/RESPONDENTS