

IN THE HIGH COURT OF JUSTICE OF EDO STATE
IN THE UBIAJA JUDICIAL DIVISION
HOLDEN AT UROMI
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
20TH DAY OF DECEMBER, 2018.

BETWEEN:

SUIT NO. HUB/7/2018

MR. FRIDAY OKOH
(Suing through his Attorney
Mrs. Helen Okoh)

í í í í í í í í í ..CLAIMANT/APPLICANT

AND

1. MOTHERCAT NIG. LTDí
2. MR. ANSLEM OGBOYE

í í í DEFENDANTS

RULING

This is a Ruling on a Motion Ex-Parte, dated and filed on the 13th of December, 2018, brought pursuant to Orders 39 (1) and 40 (5) & (8) of the Edo State High Court (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this Court.

The applicant is praying this court for the following relief:

AN ORDER of interim injunction restraining the Defendants/Respondents either by themselves or through their agents, servants, workmen, privies and/or assigns from further entering unto the disputed land or from continuing with any further excavation of the land/sand from the disputed land, destruction of the Claimant's palm trees, plantain suckers/monocots, economic trees/crops, or from digging a burrow pit on the land in dispute or doing any other acts of trespass unto the parcel of land in dispute in this case measuring approximately 4412 hectares lying, being and situate along Uromi ó Ugboha Road, Eguare Quarters, Ugboha, Esan South East Local Government Area of Edo State, a place within the jurisdiction of this Honourable Court and which said parcel of land is well-known to both parties in this case and it is more properly delineated in Survey Plan No. OGT/ED 18/062 drawn for the Claimant by Surv.Ogunobo T. I., Registered Surveyor of No. 76 Otaru Road, Auchu, Etsako West Local Government Area of Edo State pending the hearing and determination of the motion on notice in this suit.

AND for such further order(s) or other (as this Honourable Court may deem fit to make in the circumstances of this case.

The motion is supported by an affidavit of 51 paragraphs annexing four exhibits, deposed to by the Claimant/Applicant's Attorney, an affidavit of urgency of 13 paragraphs also deposed to by the same Attorney and a Written Address of the Applicant's Counsel.

In his Written Address, the learned counsel for the Applicant, R.E.Orukpe Esq. identified a sole Issue for Determination as follows:

“Whether having regards to the deposition contained in the supporting affidavit and upon evaluation of the facts and circumstances of this case the Claimant/Applicant is entitled to

the grant of an order of interim injunction against the Defendants/Respondents in this case.”

Opening his arguments, learned counsel submitted that some of the factors to be considered in determining whether to grant or refuse an application for injunction include the following:

- (a) Whether there is a subsisting action
- (b) Whether the Applicant has a legal right for which protection the interlocutory injunction is sought and that there are reasonable chances of success.
- (c) Whether there is a serious question to be tried necessitating that the status quo should be maintained pending the determination of the substantive action and that the application has a real possibility not a probability of success at the trial.
- (d) Whether the balance of convenience is in favour of the Applicant, that is, whether more justice will result in granting the injunction than in refusing it.
- (e) Whether damages would be adequate compensation for the Applicant if the interlocutory injunction is refused and he win the substantive suit at the end of the day.
- (f) Whether the Applicant's conduct is not reprehensible for example, by not being guilty of undue delay in bringing the application.
- (g) No order of interlocutory injunction should be made without a satisfactory undertaking as to damage in the event of a wrongful exercise of the Court's discretion in granting the injunction save in exceptional cases.

He maintained that in the case of: ***ADESINA vs. AROMOLO (2004) 6 NWLR PT. 870 at page 601*** it was held that the above factors must co-exist before an order of interlocutory injunction can be granted.

He submitted that with respect to interim injunction, the factors which the court considers in determining whether to grant or refuse an application for interim injunction include:

- (a) That there is a real urgency but not a self-induced urgency
- (b) When it is necessary to preserve the res which is in imminent danger of being destroyed.
- (c) There must be a real impossibility of bringing the application for such injunction on notice and serving the other party before the intended harm is carried out.

For the above proposition of the law, counsel relied on the case of: ***CBN V S.A.P (NIG.) LTD. (2005) 3 NWLR (Part 911) Part 752.***

Thereafter, learned counsel articulated his arguments on the sole issue for determination.

He submitted that the purpose of an order of interim injunction is for the preservation of the *res* from destruction where the Court considers on *prima facie* view that an otherwise irreparable damage may be done to the Claimant/Applicant before an application for an interlocutory injunction can be heard and determined. He said that it is usually granted to avoid irretrievable mischief or damage when due to the pressure of business of court or through no fault of the Applicant, it is impossible to hear and determine the application on notice for interlocutory injunction.

He posited that an order of interim injunction is made to maintain the *status quo* between the parties until the Applicant's application for interlocutory injunctions can be heard.

He said that for the Applicant for an order for interim injunction to obtain the grant, he must *inter alia* show:-

- (a) *that there is a situation of real urgency to preserve and protect the rights of the parties before it is destroyed by either of the parties; and*
- (b) *that the Applicant is not guilty of undue delay in bringing the application.*

He submitted that the basis of granting an ex-parte order of injunction is the existence of special circumstance i.e real urgency which requires that the order must be made otherwise an irretrievable harm or injury would be occasioned to the prejudice of the Applicant.

He said that an interim injunction is a preservatory measure taken at an early stage in the proceedings to maintain the *status quo* before the motion for interlocutory injunction is heard and determined. See the following cases: ***BOGBAN & 2 ORS VS. DIWHRE AND 2 ORS (2005) 16 NWLR PT. 951 at page 274; UNIBIZ NIG. LTD., VS. COMMERCIAL BANK CREDIT LYONNAIS LTD. (2003) 6 NWLR PT. 816 at page 402; and OLOWU VS. BUILDING STOCK LTD. (2004) 4 NWLR PT. 864 at page 445.***

He submitted that in the present application, the Claimant/Applicant has satisfied the requirements of the law for the grant of an order of interim injunction in his favour.

He said that the Applicant has deposed to the facts in paragraphs 1 - 51 of his affidavit in support of the motion, the reason for this application and that he is not guilty of undue delay in bringing this application.

He went further to highlight some of the factors the Applicant has complied with.

REAL URGENCY

He said that the Applicant deposed to an affidavit of urgency of 13 paragraphs showing real urgency warranting the grant of this application, particularly paragraphs 4 ó 9 of thereof.

UNDERTAKING TO PAY DAMAGES:

He submitted that the Claimant/Applicant in paragraphs 46 and 48 of the affidavit in support of the motion made an undertaking to pay damages to the Defendants/Respondents in the event of his motion being adjudged as unmeritorious by this Honourable Court.

INADEQUACY OF DAMAGES:

He said that the Claimant/Applicant also deposed to facts in paragraphs 38, 40, and 47 of the Affidavit in support of the motion that award of damages will not assuage the injury he would suffer if the Defendants/Respondents are not restrained at this stage and at the end of the day the case is decided in his favour.

He further submitted that the Claimant/Applicant by his affidavit evidence has satisfied other requirements as they relate to balance of convenience, existence of triable issues and the existence of a subsisting action among others. He therefore urged the Court to grant the application.

I have carefully examined all the processes filed in this application together with the arguments of counsel on the matter.

An application for interim injunction seeks a discretionary remedy. It is settled law that all judicial discretions must be exercised judicially and judiciously.

An application for interim or ex-parte injunction may be properly made in a case of extreme urgency. It should only be used when the case is one of real urgency requiring immediate relief. See: ***Kotoyevs.C.B.N.and others (1989) 1 NWLR (Pt.98) 419 at 442; and Unibiz (Nig.) Ltd. vs.C.B.C.L Ltd. (2003) 6 NWLR (Pt.816) 402.***

The order is meant to forestall irreparable injury to the applicant's legal or equitable right. See the cases of: *Madubuiké vs. Madubuiké (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 interim 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) 1 at 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 they have legal rights which are threatened and ought to be urgently 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. In paragraph 6 of the supporting affidavit, he deposed to the fact that sometime between the 7th and 8th day of December, 2018, the 2nd Defendant who is a native of Ugboha and the agent of the 1st Defendant led the bulldozer and other workmen of the 1st Defendant unto the Claimant's land now in dispute to hue down the Claimant's palm trees, plantain suckers/monocots, cassava e.t.c thereon preparatory to digging a burrow pit thereon, without the consent and authority of the Claimant.

In paragraph 10, he stated that the said land in dispute devolved on the Claimant and he became the owner in possession after the death of his father, Mr. IboiOkohIdaghe.

I am of the view that 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.

Furthermore, there is a sense of urgency surrounding this application. The motion itself is supported with an affidavit of urgency. In paragraph 3 of the Affidavit of Urgency, he stated that the Defendants/Respondents would have completely devastated and radically altered the character of the land in dispute unless they are restrained by this Honourable Court at this point in time

The urgent nature of the application justifies the resort to the ex-parte procedure.

On the second condition of having a serious question or substantial issue to be tried, I am guided by the dictum of the Court in the case of: *Onyesoh vs Nze Christopher Nnebedun & Others (1992) 1 NWLR (Pt.270) 461 at 462*, where it was re-emphasised that:

“It is not the law that the applicant must show a prospect of obtaining a permanent injunction at the end of the trial. It is sufficient for the applicant to show that there is a serious question between the parties to be tried at the hearing.”

From the contents of the affidavit in support of the motion, I am satisfied 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.

The Applicant has adduced facts to show that he has invested much funds in planting economic trees on the land in dispute which are in danger of being destroyed by the defendants. More so, at paragraph 45 of the supporting affidavit he stated that the balance of convenience is on his side. At this stage we are yet to hear the defendant's version.

I hold that the balance of convenience is in favour of the Applicant at this stage.

Next is on the requirement of inadequacy of damages. In the case of: *American Cyanamid Co.vs Ethicon Ltd. (1975) 1 ALL E.R. at 504 pp 510*, the Court stated that:

“If damages ...would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage”

In paragraph 47 of the supporting affidavit, the Applicant stated that he will suffer irreparable damages and monetary compensation will not be enough or adequate to assuage the damages or injury or loss that the Claimant/Applicant would suffer if this Application is not granted at this stage and if the Defendants/Respondents are allowed to continue with their acts of trespass or unlawful and unauthorized burrow pit or any other proposed project on the land in dispute in this case.

On the available facts, I do not think damages can compensate the Claimant in the event of injury arising from the Defendants' action.

On the conduct of the Applicant, I do not think he is guilty of any delay in bringing this application. From paragraph 6 of the supporting affidavit, the Applicant became aware of the Defendants' action sometime between the 7th and 8th of December, 2018 and on the 13th of December, 2018; he instituted this action to restrain him. He was quite diligent.

Finally, on the requirement of an undertaking to pay damages in the event of a wrongful exercise of the Court's discretion in granting the injunction, at paragraphs 46 and 48 of the affidavit in support of this application, the Applicant gave an undertaking to pay damages.

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 make the following order:

AN ORDER of interim injunction restraining the Defendants/Respondents either by themselves or through their agents, servants, workmen, privies and/or assigns from further entering unto the disputed land or from continuing with any further excavation of the land/sand from the disputed land, destruction of the Claimant’s palm trees, plantain suckers/monocots, economic trees/crops, or from digging a burrow pit on the land in dispute or doing any other acts of trespass unto the parcel of land in dispute in this case measuring approximately 4412 hectares lying, being and situate along Uromi – Ugboha Road, Eguare Quarters, Ugboha, Esan South East Local Government Area of Edo State, a place within the jurisdiction of this Honourable Court and which said parcel of land is well-known to both parties in this case and it is more properly delineated in Survey Plan No. OGT/ED 18/062 drawn for the Claimant by Surv.Ogunobo T. I., Registered Surveyor of No. 76 Otaru Road, Auchi, Etsako West Local Government Area of Edo State pending the hearing and determination of the motion on notice in this suit.

P.A.AKHIHIERO

JUDGE
20/12/18

COUNSEL:

R.E.OrukpeEsqí í í í í í .í í í í í í í í í í í ..CLAIMANT/APPLICANT