

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON THURSDAY THE
29TH DAY OF JULY, 2021.

BETWEEN:

SUIT NO: B/637/2021

- | | | |
|----------------------------|---|----------------------|
| 1. PASTOR OSAGIE IZE-IYAMU | } | CLAIMANTS/APPLICANTS |
| 2. I.O. FARMS LIMITED | | |

AND

- | | | |
|---|---|------------|
| 1. GOVERNOR OF EDO STATE | } | DEFENDANTS |
| 2. ATTORNEY GENERAL OF EDO STATE | | |
| 3. EDO STATE GEOGRAPHIC INFORMATION SERVICE | | |

RULING

This is a Ruling on a Motion Ex-Parte wherein the Claimants/Applicants are praying this Honourable Court for the following reliefs:

- 1) *AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from forcible entry unto the Claimants/Applicants' land at Amagba Village Area, Benin City more particularly demarcated in the Survey Plans attached to the affidavit in support of this motion and marked Exhibits A1, A2, A3 and A4 respectively pending the hearing and determination of the Claimants/Applicants' motion on notice for interlocutory injunction filed herewith;*
- 2) *AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from taking possession of the*

Claimants/Applicants' landed property at Amagba Village Area, Benin City Oredo Local Government Area more particularly demarcated in the aforesaid survey plans attached to the supporting affidavit or demolishing the buildings or improvements on the aforesaid landed property pending the hearing and determination of the motion on notice for interlocutory injunction filed herewith;

- 3) *AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from disturbing or interfering with the Claimants/Applicants' business on their landed property at Amagba Village Area, Benin City, Oredo Local Government Area more particularly demarcated in the aforesaid survey plans attached to the affidavit in supporting of this motion pending the hearing and determination of the motion on notice for interlocutory injunction filed herewith.*

AND for such further order or orders as the Honourable Court may deem fit to make in the circumstances.

The Claimants/Applicants in support of the application filed a 19 paragraphs affidavit and 6 paragraphs affidavit of urgency. He relied on all the paragraphs of the affidavits. The learned counsel for the Claimant/Applicant, **K.O.Obamogie Esq.** also filed a Written Address of counsel which he adopted at the hearing as his arguments in support of the application.

In his Written Address, the learned counsel formulated a sole issue for determination as follows:

“Whether it is not in the overriding interest of justice to grant this application.”

Opening his arguments, the learned counsel submitted that from the totality of the depositions in paragraphs 1 – 19 of the Applicants' affidavit in support of the instant application, the Applicants have established firmly that there are serious issues raised for determination in the substantive suit. That from the Claimants/Applicants' said depositions, the crucial question that arises for determination is whether Claimants/Applicants title to their property can be revoked in the manner in which it has been done by the Defendants.

Counsel contended that from the affidavit evidence before the Honourable Court, there is urgent need to issue interim preservative orders to protect the Claimants/Applicants' landed property. He submitted that the Supreme Court of Nigeria has exhaustively examined the nature of interim injunction in its

landmark judgment in *Kotoye v. CBN (1989) 1 NWLR (Part 98) 419 at 442*. He quoted extensively from the said judgment.

Learned counsel submitted that there lies extreme urgency warranting the grant of the instant application. That the Claimants/Applicants have demonstrated vide the affidavit in support of the instant application as well as the affidavit of urgency the reasons for the said urgency. He referred the Court to paragraph 12 of the supporting affidavit and paragraphs 4 and 5 of the affidavit of urgency and submitted that the affidavit of urgency filed along with the instant application has brought to the fore the urgent need to make the preservative orders in these proceedings in line with the pronouncement of the Supreme Court highlighted above.

He contended that the Claimants/Applicants' right to their landed property at Amagba Village Area is seriously threatened by the Defendants. That this Honourable Court ought to follow the reasoning of the apex court and make a preservative order in order to protect the right of the Applicants pending the hearing and determination of the motion on notice.

He therefore urged the Court to resolve the solitary issue for determination in favour of the Claimants/Applicants.

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: *Kotoye vs. 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: *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 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. 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 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 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.***

Going through the supporting affidavit, I am of the view that the Applicants have identified some legal rights which they seek to protect. In paragraphs 4, 5 and 6, the Applicants have exhibited their documents of title to show that they have legal rights to the properties over which the Defendants have allegedly revoked their rights of occupancy. They are seeking to protect these alleged legal rights.

I am of the view that the Applicants have adduced sufficient evidence to establish the fact that they have legal rights to protect in relation to the properties in issue in the substantive suit.

Furthermore, there is a sense of urgency surrounding this application. In ***paragraphs 4 and 5 of the Affidavit of Urgency***, the Applicant stated thus:

“4. That the Defendants in their publication in the Vanguard Newspaper of 7th July, 2012 indicated that they would immediately take possession of our landed property purportedly compulsorily acquired by the Defendants without notice to us, the Claimants.

5. That I verily believe that unless this application is heard and determined expeditiously, the Defendants will enter our landed property at Amagba Village Area, Benin City and begin to demolish our substantial improvement on the land thereby occasioning grave miscarriage of justice in this case.”

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.”

Applying the foregoing principle, I am of the view that there are substantial issues to be tried in the substantive suit.

On the balance of convenience, the applicant must show that the balance of convenience is on his side. In the classical case of *Kotoye v C.B.N. (1989) 1 NWLR (Pt.98) 419*, the Supreme Court explained that the applicant must establish that more justice will result in granting the application than in refusing it.

In the present application, the Applicant has adduced facts to show that justice will result in granting the injunction rather than refusing it. According to him, if the application is refused they stand the chance of losing their properties and investments at Amagba Village Area. For now, there is nothing to show that the Defendants have anything to lose if the Court grants an interim order of injunction. From the available evidence, I hold that the balance of convenience is 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 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 the paragraph 12 of the supporting affidavit, the Claimants maintained that they would suffer irreparable damage if the Defendants are allowed to forcibly enter their land, take possession and demolish their substantial improvements thereon. On the available facts, I do not think damages can compensate the Claimants/Applicants in the event of injury arising from the Defendants’ action.

On the conduct of the Applicants, I do not think they are guilty of any delay in bringing this application. They filed the motion for interim injunction contemporaneously with the originating processes in this suit.

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 paragraph 18 of the affidavit in support of this application, the Applicants gave an undertaking to pay damages.

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 I hereby make the following orders:

- 1) AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from forcible entry unto the Claimants/Applicants' land at Amagba Village Area, Benin City more particularly demarcated in the Survey Plans attached to the affidavit in support of this motion and marked Exhibits A1, A2, A3 and A4 respectively pending the hearing and determination of the Claimants/Applicants' motion on notice for interlocutory injunction filed herewith;***
- 2) AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from taking possession of the Claimants/Applicants' landed property at Amagba Village Area, Benin City Oredo Local Government Area more particularly demarcated in the aforesaid survey plans attached to the supporting affidavit or demolishing the buildings or improvements on the aforesaid landed property pending the hearing and determination of the motion on notice for interlocutory injunction filed herewith; and***
- 3) AN ORDER of interim injunction restraining the Defendants, their servants, agents and/or privies from disturbing or interfering with the Claimants/Applicants' business on their landed property at Amagba Village Area, Benin City, Oredo Local Government Area more particularly demarcated in the aforesaid survey plans attached to the affidavit in supporting of this motion pending the hearing and determination of the motion on notice for interlocutory injunction filed herewith.***

P.A.AKHIHIERO
JUDGE
29/07/21

COUNSEL:

K.O.OBAMOGIE

ESQ.....CLAIMANTS/APPLICANTS