

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,

ON WEDNESDAY THE

26TH DAY OF JANUARY, 2022.

BETWEEN:

SUIT NO. B/555/2021

1. ***EMONI METAL PRODUCTS LIMITED***
2. ***MRS. NELLYANN OLATERU OLAGBEGI***
3. ***MR. ANDREW IDUGBOE***
4. ***MR. BENSON IDUGBOE***
5. ***MR. SUNNY EFOSA IDUGBOE***

***CLAIMANTS/
APPLICANTS***

AND

1. ***MR. JERRY EWEMADE***
 2. ***MR. FRED OMOREGIE***
 3. ***MR. AMADIN VICTOR***
 4. ***MR. SAMUEL IGBINOBA***
 5. ***MR. OSAYEMWENRE ASUEN***
 6. ***MR. SUNNY EWEMADE***
- (For themselves and on behalf of Ewemade family and Evbuoriararia community, Ikpoba –Okha Local Government Area, Edo State)***

***DEFENDANTS/
RESPONDENTS***

RULING

This is a Ruling on a Motion on Notice dated 21st of June 2021, filed on the 22nd of June, 2021, brought pursuant to Order 39 Rules 1(1) & (2) and Order 39 Rule 4(1) 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 1st to 6th Defendants/Respondents, by themselves, their servants, agents, privies or allies howsoever described from further acts of trespass/dealings into the 1st Claimant/Applicant's parcel of land covering an Area of 1.293 Hectares situate at Evbuoriarua village, Kilometer 8, Benin/Sapele Road, Benin City more particularly cited in the survey plan no. LSU 8340, pending the determination of this suit.

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

The motion is also supported by a 24 paragraphs affidavit and a Written Address of the learned counsel for the Applicants.

At the hearing of the application, the learned counsel for the Claimants/Applicants *K.N.Osemwenkha 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 given the facts and circumstances of this case, this Honourable Court should grant this application.”

Arguing the sole issue, learned counsel submitted that the Claimants/Applicants have fulfilled all the requirements for the grant of an interlocutory injunction in this case. He submitted that it is trite law that the Court will grant an interlocutory injunction only to support a legal right to restrain a threatened wrong to a right. He said that to be entitled to a grant of interlocutory injunction, the applicant must show that he has a legal right to protect. He said that in the instant case, the Claimants/Applicants' legal rights are drawn from Paragraphs 4,5,6,7,8,10 and 11 of the affidavit in support of this application.

Learned counsel submitted that the relevant paragraphs of the Affidavit in support of this application has shown that the Claimants/Applicants have the legal rights as contained in exhibits A,B and C. He said that Exhibit A is a document with which the piece of land in dispute was transferred to the 1st Claimant's predecessor in title. Also, that Exhibit B is the Deed of Transfer with which the 1st Claimant's predecessor in title transferred the piece of land in dispute to the 1st Claimant. That as contained in the affidavit in support of this application, the 1st Claimant upon acquiring the piece of land in 1981 exercised all acts of ownership and possession without any hindrance until the Defendants trespassed on a portion of the Claimants land.

Again, he posited that Exhibit C which is an agreement of terms of settlement between the Claimants and the Defendants clearly show the legal rights which ought to be protected by this Honourable court. That by the said Exhibit C, it was agreed that the Claimants shall have absolute and exclusive possession and ownership of the parcel of land which is the subject matter in

dispute. He submitted that Exhibit C speaks for itself and he referred the Court to the following authorities: **AKIBU V ODUNTAN (1991) 2 NWLR 1; GREEN V GREEN (1987) 2 NSCC; and LAFFERI NIG LTD V NAL MERCHANT BANK (2002), NWLR (748) 333 AT 354 PARA E-G.**

Learned counsel submitted that another requirement for the grant of an interlocutory injunction is the presence of a substantive issue to be tried and he relied on the case of **OBEYA MEMORIAL HOSPITAL VS V.A.G.F (1987) 3NWLR R. 325** where the Supreme Court approved the test set in **KUKEJI V KOGBE (1961) ALL NLR 113 AT 114**, that: *“In an application for interim relief by way of injunction, it is not necessary that a Plaintiff or applicant should make out a case as he would on the merits, it being sufficient that he should establish that there is substantial issue to be tried at the hearing”*

He submitted that in the instant case, paragraphs 8,9,10,11,12 and 13 clearly shows that the Defendants have notwithstanding the concession given by the Claimants and the fact that the Defendants had no title, they forcefully and illegally trespassed on the land and started fencing and allocating plots in breach of the Agreement (EXHIBIT C) devoid of any legal justification. He said that the Defendants/Respondents are still bent on further trespassing on the subject matter in dispute unless restrained by this Honourable Court. He submitted that there is a substantial issue to be tried in this case.

Counsel submitted that another requirement that must be fulfilled by the Applicant for the grant of an interlocutory injunction is that the balance of convenience is in his favour and he relied on the case of **KOTOYE V CBN (1987) 3 NWLR 328 AT 354**. He also submitted that in the case of **ORJI V ZARIA IND. LTD. (1992) 1NWLR 124 AT 139**, the court exposted that the governing principle in considering the question of balance of convenience is whether in case the applicant succeeds in his Claim, he could not be adequately compensated by the award of damages against the respondent.

He submitted that the balance of convenience is in favour of the Claimant/Applicant. That from the affidavit in support, the Claimants/Applicants have shown that injustice will be occasioned if the application is refused. He referred to paragraphs 12-17 of the Affidavit in Support of this application which show clearly that the Defendants as land grabbers in Evbuoriarua Community have forcefully and illegally trespassed on the Claimants' land and are in the process of taking over the parcel of land in dispute by fencing same with the aim of allocating the land in dispute to third parties notwithstanding that they have no legal title to the piece of land. He posited that if the Defendants are not restrained by this Honourable court, the Claimants/Applicants will be deprived of their legal right and will suffer irreparable damage.

Furthermore, counsel posited that in the event that this claim succeeds, the Claimants/Applicants would not be adequately compensated by award of damages against the Defendants/Respondents for these actions. He therefore submitted that the balance of convenience is in favour of the

Claimants/Applicants in this suit. He submitted that if the actions of the Defendants/Respondents are allowed to linger on, the Claimants/Applicants will suffer irreparable damage and he referred to the case of ***AKINLOSE V AIT LTD (1961) WNLR 116.***

Learned counsel submitted that it is trite law that no order of interlocutory injunction should be made except the applicant gives a satisfactory undertaking as to damages. He said that in the instant case, in paragraph 21 of the affidavit in support, the Applicants undertook to pay damages in the event that this application ought not to be granted and the Defendants suffer therefrom.

He submitted that the essence of an interlocutory injunction is to preserve the status quo and he referred to the case of ***MILITARY GOVERNOR OF LAGOS STATE & ORS V CHIEF EMEKA ODUMEGWU OJUKWU AND ANOR (1986) 25C 277 AT 317*** where the Supreme Court defined the status quo as the status that existed before the controversy or dispute commenced. He said that in the instant case, the Claimants/Applicants stated in paragraphs 4, 5,6,7,8,9,10 and 11 that the land in dispute devolved on the 1st Claimant/Applicant in 1981 and the 1st Claimant has exercised all acts of possession and ownership without any hindrance until the Defendants trespassed on a portion of the land. He submitted that the status quo in this case, is that period of time when the Defendants had not trespassed on the Claimants' piece of land and started fencing same with a view to allocating the Claimants' land to third parties, a period preceding the dispute in this suit.

He also submitted that the essence of this injunction if granted, is to prevent the Defendants/Respondents from further trespassing and altering the structure and composition of the said piece of land until the court finally decides on the substantive issues before it, therefore preserving the res in this suit. He therefore urged the Court to grant this application so as to preserve the status quo.

He therefore submitted that the Claimants/Applicants have met all the requirements for the grant of this application and he urged the Court to so hold and grant this application in the interest of justice and equity.

In opposition to the application, the Defendants/Respondents filed a Counter-Affidavit of 25 paragraphs and their counsel filed a Written Address.

In his written address, the learned counsel for the Respondents, ***D.L. Aimofumeh Esq.*** submitted that parties in a suit can seek the discretionary powers of a court at any time. However, he posited that such powers must be exercised judiciously and judicially.

He submitted that in the present application the Claimants/Applicants have not shown any exceptional or compelling circumstance that would warrant a grant of an interlocutory injunction to them. He said that their application is akin to requesting the Court to pronounce on the substantive live issue in this suit at this stage of the proceedings. He pointed out that the Claimants/Applicants in paragraphs 6, 7, 8 and 9 of their supporting affidavit, deposed to facts that could simply be seen and described as contradictory and lacking in truth with regards

to the actual root of title of the Claimants/Applicants to the parcel of land in dispute over which they seek an order of interlocutory injunction.

He referred to paragraphs 6 and 7 of the supporting affidavit where they made reference to a *certificate of Transfer and ownership dated 13th May, 1971*, with which the Claimants/Applicants alleged that His Royal Majesty, Akenzua II, Oba of Benin transferred to them a parcel of land measuring 400 feet by 1000 feet situate at Evbuoriaria village, Benin City. He said that at paragraph 7 thereof, they stated that Stephen Idugboe & Sons also acquired an additional piece of land measuring 200feet by 400feet situate at Evbuoriaria Village *through Queen Ohan Akenzua, the original customary law allottee by virtue of an application to the Oba of Benin through Evbuoriaria Village plot allotment committee dated 3rd May, 1972 and approved by the Oba of Benin, Akenzua II, on the 12th of December, 1972, respectively.*

He said that the Claimants/Applicants never made available the said documents dated *13th May, 1971 and 3rd May, 1972* to prove their likely ownership of the parcel of land to which the said documents relate, so they cannot seek an Order of court to tie an injunction to the said parcel of land at this stage of the proceedings.

He said that the Claimants/Applicants copiously pleaded the said documents in paragraph 4 of their statement of claim, but deliberately left same out in their application for an order of interlocutory injunction before this Honourable court for the simple reason that same would expose the unmeritorious nature of their application.

Secondly, he submitted that at paragraphs 8 and 9 of their supporting affidavit, the Claimants/Applicants alluded to the fact that they became owners of the entire parcel of land in dispute in Evbuoriaria Village by virtue of a Conveyance by the Oba of Benin to Stephen Idugboe and Sons Ltd (**EXHIBIT A**), while at paragraph 9, the Claimants/Applicants stated that by a **Deed of Transfer dated 29th May, 1981, Stephen Idugboe and Sons Ltd transferred a portion of the aforementioned land measuring 1.293 hectares situate at Evbuoriaria Village, Benin City, to the 1st Claimant (EXHIBIT B).**

He posited that it is the said portion measuring 1.293 hectares situate at Evbuoriaria Village, Benin City, which the Claimants/Applicants by their "EXHIBIT B" claim belongs to the 1st Claimant, that they seek the injunctive Order of this court.

However, he pointed out that a careful perusal of the said EXHIBIT B and the survey plan attached thereto reveals that the said parcel of land acquired by the 1st Claimant from the said Stephen Idugboe and Sons Ltd, if indeed any land was ever acquired, is situate at Ekae Village, Benin City, and not in Evbuoriaria Village, Benin City. He said that the Claimants/Applicants cannot therefore seek an Order of interlocutory injunction over a parcel of land whose exact and actual location is in doubt.

He submitted that in a land matter, the identity of the piece of land must be clearly put in place and known to both parties. He said that it should be clearly ascertained for an order of injunction to be tied to it. See the cases of *OLADEJO V. ADEYEMI (2000) 3 NWLR (Pt. 674) 25* and *ASSAN V. OKPO (2000) 10 NWLR (Pt. 76) 659*.

Furthermore, he posited that the main issue in this suit is not whether or not the Claimants acquired land from the Defendants, but the extent and exact area of land so acquired. He said that the Survey plan of the Claimants/Applicants made on the 31st day of May, 1977 shows that the entire parcel of land acquired by the Claimants/Applicants from the Defendants/Respondents in Evbuoriarria village is all that parcel of land measuring an Area of **5.445 Hectares**, and which said land does not extend beyond the old Benin-Sapele Road, Benin City.

However, he said that the Claimants/Applicants now occupy a total Area of **8.062 Hectares**, with that entire portion across the old Benin-Sapele Road that shares a common boundary with the new Benin-Sapele Road inclusive, and for which the Claimants/Applicants now seek an Order of interlocutory injunction for a part of the land thereof from this court. He maintained that as earlier stated, the Claimants/Applicants even by their own documents as it relates to the 1st Claimant have shown that they do not deserve the injunctive Order of this Honourable court with respect to the said portion of the large parcel of land in issue in this suit.

He referred the court to the survey plan dated 31/5/77 of the Claimants/Applicants, and the Deed of Transfer between Stephen Idugboe and Sons Ltd and the 1st Claimant, and submitted that the courts cannot make an Order of injunction in such a situation of uncertainty.

Counsel submitted that the filing of a survey plan is not a necessity to establish the identity of the land in dispute but there must be certainty of the identity of the land before an injunctive order can be made. He said that an application for an interlocutory injunction in circumstances of uncertainty is premature being a matter for the substantive hearing on the merits of the case since the resolution of such a serious conflict cannot be effected without calling oral evidence.

He said that the 1st Claimant/Applicant cannot at this stage of the proceedings be relying on a Deed of Transfer relating to a land in Ekae Village, Benin City to seek for an order of injunction on a land in Evbuoriarria Village, Benin City. He urged the Court to dismiss the application of the Claimants/Applicants with substantial cost awarded in favour of the Defendants/Respondents.

Finally, he submitted that the Claimants/Applicants have not in any way shown any legal rights or a serious issue or substantial question to be tried, and for which there may be an irreparable damage to warrant the grant of an interlocutory injunction at this stage in this case. He relied on the case of

BUHARI V. OBASANJO (2003) 17 NWLR (Pt. 850) 587, and urged the court to dismiss this application.

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: **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 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 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.**

From the available evidence, the Applicants have made some attempts to identify a legal right which they seek to protect. In paragraph 9 of the supporting affidavit, the Applicants traced their root of title to the land in dispute when they stated thus:

“9.That by a Deed of Transfer dates 29th May, 1981 Stephen Idugboe & Sons, transferred to the 1st Claimant a portion of the aforementioned land measuring 1.293 Hectares situate at Evbuoriararia Village, Kilometer 8, along Benin/Sapele

Road, Benin, Benin City particularly delineated on survey plan no. LSU 8340 and duly registered as No. 28 at page 28 in volume 604 of the land Registry in the office at Benin City. The said Deed of Transfer is herein attached as Exhibit B.”

However, in his written address in opposition to this application, the learned counsel for the Defendants/Respondents pointed out that the Deed of Transfer and the survey plan attached as Exhibit B thereto actually reveals that the said parcel of land acquired by the 1st Claimant from the said Stephen Idugboe and Sons Ltd is situate at Ekae Village, Benin City, and not in Evbuoriarria Village, Benin City. He therefore seriously contended that the Claimants/Applicants cannot seek an order of interlocutory injunction over a parcel of land whose exact location is in doubt.

It is settled law that a judge cannot delve into the substance of the main case, while determining an interlocutory application. However, that does not mean that the Court cannot consider the documents exhibited by the Applicant for the grant of the interlocutory order. See the cases of ***MALLAM MOHAMMED AUWALU KWAZO v. RAILWAY PROPERTY COMPANY LIMITED & ANOR (2014) LPELR-23737(CA)***; and ***C. G. C. NIGERIA LIMITED v. ALHAJI HASSAN BABA (2003) LPELR-7212(CA)***.

I must point out at this stage that in this application, the Claimants/Applicants are seeking an order of interlocutory injunction restraining the Defendants/Respondents from further acts of trespass/dealings into the 1st Claimant/Applicant’s parcel of land covering an Area of 1.293 Hectares ***situate at Evbuoriarria village, Kilometer 8, Benin/Sapele Road, Benin City.***

Upon a careful perusal of the Deed of Transfer and the survey plan attached as Exhibit B to the supporting affidavit, it is evident that parcel of land in dispute is situate at ***Ekae Village, Benin City***, and not in ***Evbuoriarria Village, Benin City***. There is therefore an apparent anomaly in the description and the identity of the land in dispute in the documents exhibited by the Claimants/Applicants in support of this application.

In this interlocutory application which is based solely on affidavit evidence, the Applicants have not clarified this uncertainty surrounding the identity of the land in dispute. I agree entirely with the learned counsel for the Respondents that it will be premature to resolve this uncertainty at this interlocutory stage. Such a conflict can only be resolved at the substantive hearing on oral evidence.

I also agree with the learned counsel that the Court cannot make an order of injunction in such a situation of uncertainty. It is settled law that an order of injunction, be it interim, interlocutory or perpetual can only be made in respect of a parcel of land with a definite or ascertainable boundary. See the case of ***GODWIN ICHU & ANOR v. CHIEF NNAEMEKA IBEZUE & ORS (1998) LPELR-6418(CA)***.

In the face of the looming uncertainty about the exact location and the identity of the land in dispute, it would be difficult to hold at that the Claimants/Applicants have established the requirement of the existence of a legal right. As I earlier observed in this ruling, the most important pre-condition for the grant of an order of interlocutory injunction 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.*

Since the Applicants have failed to cross this first hurdle, it would be futile for me to consider whether they have met with the remaining requirements to enable me to exercise my discretion in their favour.

Consequently, I am of the view that this application lacks merit and it is accordingly dismissed with N50, 000.00 (fifty thousand naira) costs in favour of the Defendants/Respondents.

P.A.AKHIHIERO
JUDGE
26/01/2022

COUNSEL:

K.N. OSEMWENKHA ESQ.....CLAIMANTS/APPLICANTS
D.L. AIMOFUMEH ESQ.....DEFENDANTS/RESPONDENTS