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

7TH DAY OF APRIL, 2022.

BETWEEN: ***SUIT NO: B/971/2021***

MR. EDOSOMWAN OGUNOROBO …….CLAIMANT/APPLICANT

AND

1. PERSON UNKNOWN

2. PERSON UNKNOWN ……DEFENDANTS/RESPONDENTS

RULING

This is a Ruling on a Motion on Notice, dated and filed on the 26th of October, 2021, brought pursuant to Order 40 Rule 1 of the High Court (Civil Procedure) Rules of Edo State 2018 and under the inherent jurisdiction of the Court praying for the following orders:

An order of interlocutory injunction restraining the Defendants, their agents, servants and privies from further trespassing unto the Claimant/Applicant's land measuring One Hundred Feet by Three Hundred Feet [100feet by 300 feet] which forms part of his entire parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] that is, 6.453 hectares which is lying and situate at Obagie N'Evbosa Community, off Sapele Road, Ikpoba-Okha Local Government Area, Edo State pending the final determination of this suit.

And for such further Order or Orders this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by a 29 paragraphs affidavit and the Written Address of the learned counsel for the Claimant/Applicant.

Arguing the motion, the learned counsel for the Applicant, ***S.I.Okoror Esq***., adopted his Written Address as his arguments in support of the application and urged the Court to grant the application.

In his Written Address, the learned counsel for the Applicant formulated a single issue for determination, to wit:

"Whether the Claimant/Applicant has provided sufficient fact and interest for the Court to restrain the Defendants/Respondents."

Opening his arguments on the sole issue for determination, learned counsel submitted that the general principles upon which a court can grant or refuse an application for interlocutory injunction was laid down in the following cases: ***OBEYA MEMORIAL HOSPITAL V. A-G., FEDERATION (2000) 24 WRN 138; (1987) 3 NWLR (pt. 60) 352; (2004) All EWLR (pt. 232) 1580, AFRO CONTINENTAL V. AYANTUYI (1995) 12 SCNJ 12; ABDULAHI V. GOVERNOR OF LAGOS STATE (1989) 1 NWLR (pt.97) 356 and AKAPO V. HAKEEM-HABEEB (1992) 6 NWLR (pt. 247) 266; (1992) 7 SCNJ 143.***

He posited that the first condition is ***that there must be a subsisting action which must donate a legal right capable of being protected by the order sought***. On this condition, he submitted that the writ of summons and the statement of claim including the claim itself discloses that there is a subsisting action which donates a legal right capable of being protected by this Honourable Court.

He posited that the second condition is ***that the application must show that there is a serious question or substantial issue to be tried***. On this second condition, counsel submitted that there is a serious and triable issue that the Court has to determine during the trial of this suit because the Claimant/Applicant's father acquired this parcel of land as aforementioned which land was later inherited by the Claimant/Applicant and since then he has been in occupation and undisturbed by anybody until recently when the Defendants/Respondents forcefully entered the land and began to lay claims to it by their activities on the land.

He submitted that there is a rival claim to this parcel of land of the Claimant/Applicant by the Defendants/Respondents. That this shows that the Court has a triable and substantial issue to be determined as to the ownership of the said land. He referred to the case of ***COLITTO (NIG) LTD VS. DAIBU (2010) 6 W.R.N Pg 72148 at 78*** where the court re-stated the locus classicus case of ***OBEYA MEMORIAL HOSPITAL VS. A-G FEDERATION*** where the court enumerated the principles the court would consider in the grant of an interlocutory injunction. He said that the court also held that the serious or substantial question the court would be called upon to determine at the trial is the ownership of the land in dispute like this case in issue.

Furthermore, counsel posited ***that the applicant must show that as a result of conditions 1 and 2 above, the status quo ante should be maintained pending the determination of the substantive suit.*** On this condition, he submitted that the Claimant/Applicant has a legal right to the parcel of land which is capable of being protected by this Honourable Court. That if the status quo is not maintained by an order of injunction, the Defendants/Respondents are capable of carrying further trespass on the land because they have the means and machinery and the protection of armed thugs to carry out unauthorized building construction and erecting a structure thereon. He said that restraining them would preserve the res from further damage and alteration capable of completely changing the res, pending the determination of the substantive suit.

He maintained that granting an injunction to restrain the Defendants/Respondents would protect the existing legal right of the Claimant/Applicant from being further destroyed and/or annihilated.

Again, counsel submitted ***that the applicant must show that the balance of convenience is in favour of the grant of his application***. On this 4th condition, he submitted that the balance of convenience is in the favour of the Claimant/Applicant. That if the Defendants/Respondents are not restrained from further trespass on the res, the Claimant/Applicant would be inconvenienced more, the said land in dispute been his inheritance. He said that more justice would be done if the Defendants/Respondents are restrained from their acts. That the Claimant/Applicant has been in undisturbed possession of the parcel of land ever since he gained title over same. He said that taking into consideration the totality of the facts of this suit, the Claimant/Applicant would suffer more hardship if the order is refused.

Counsel posited ***that the applicant must show that his conduct is not reprehensible and that there was no delay on his part in bringing the application.*** On this condition, he said that the Claimant/Applicant stated on oath that there was no delay on his part in instituting this action after he noticed the trespass on his land.

He posited that the next condition is ***that damages cannot adequately compensate him for the injury he would suffer if the application is not granted and the case is subsequently decided in his favour.*** He submitted that it is clear from the totality of the facts that the Defendants/Respondents who have no regard for law and order can continue in their acts of trespass. That this would alter irreparably the plans and purposes for which the Claimant/Applicant has for the parcel of land. He submitted that damages cannot adequately compensate him for the losses and emotional distress he would suffer if the Defendants/Respondents are not restrained and the case is subsequently decided in the Claimant/Applicant's favour.

Counsel submitted that the last condition is ***that in deserving cases, the applicant has undertaken to pay damages in the event of wrongful exercise of the court's discretion to grant the injunction.*** He referred to paragraph 24 of the affidavit in support of this motion where the Claimant/Applicant made the undertaking as to damages.

In conclusion, learned counsel urged the Court to grant the application of the Claimant/Applicant.

The Respondents were served with the motion papers by means of substituted service. However, 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 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, I think the Applicant has identified a legal right which he seeks to protect. In the supporting affidavit, the Applicant stated that the Claimant/Applicant's father acquired the parcel of land in dispute and the land was later inherited by the Claimant/Applicant who has been in undisturbed possession of same until recently when the Defendants/Respondents forcefully entered the land and began to lay claims to it by their activities on the land.

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 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."

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 in support of this application, it is evident that there are substantial issues to be tried in this suit in relation to the right of the Applicant and that of the alleged trespassers.

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 Applicant is apprehensive that he will suffer more if this application is not granted and the Respondents are allowed to continue to alter the *res*, the subject matter of this suit. Meanwhile, the Respondents have not shown what they stand to lose if this Court makes an order restraining them from continuing the alleged acts of trespass.

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) 1 ALL E.R. at 504 pp. 5l0*****,** 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 23 of the supporting affidavit the applicant deposed to the fact that an award of damages will not sufficiently make up as compensation for the activities of the Defendants/Respondents on the land if they are not restrained now and judgment is eventually entered in his favour.

In the light of the circumstances of this case, I do not think damages can adequately compensate the Applicant if the Respondents are allowed to continue their activities on the land.

On the condition of whether the Applicant was prompt in bringing the application in paragraph 24 of his supporting affidavit, the Applicant stated that 24 he did not delay in instituting this action. That after the Defendant entered his land,

he took steps to try to identify the Defendants and when he could not identify them, he promptly instructed his lawyer to institute this action which he did without delay.

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 25 of the supporting affidavit, the Claimant/Applicant gave an undertaking to pay damages if it turns out that his Application is frivolous and that he is not entitled to the order of injunction.

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, their agents, servants and privies from further trespassing unto the Claimant/Applicant's land measuring One Hundred Feet by Three Hundred Feet [100feet by 300 feet] which forms part of his entire parcel of land measuring Eight Hundred Feet by One Thousand Feet [800feet by 1000 feet] that is, 6.453 hectares which is lying and situate at Obagie N'Evbosa Community, off Sapele Road, Ikpoba-Okha Local Government Area, Edo State pending the final determination of this suit.***

I make no order as to costs.

P.A.AKHIHIERO

JUDGE

07/04/2022

<u>COUNSEL:</u>

S.I.OKOROR ESQ……..…..CLAIMANT/APPLICANT

UNREPRESENTED……..……DEFENDANT/RESPONDENT