IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON TUESDAY THE

21ST DAY OF MARCH, 2023.

IN THE MATTER OF THE ESTATE OF HON. VINCENT EBOSELE EBODAGHE OGUN (Deceased) AND MRS ROSALINE ENI OGUN (Deceased)

BETWEEN: ***SUIT NO. B/685/2021***

1. ***MRS ADESUA ESIVUE (nee Ogun)***
2. ***MRS OMOZUSI ONYEAMA (nee Ogun)***
3. ***MR. IDEMUDIA OGUN …….CLAIMANTS/APPLICANTS***
4. ***MR. OSEYILI OGUN***

(For themselves and on behalf of the children of late Hon. Vincent E.E. Ogun and late Mrs. Rosaline Eni Ogun excluding the Defendants)

AND

1. ***MR. BENITO OGUN***
2. ***MR. AFE OGUN ……...…DEFENDANTS/RESPONDENTS***
3. ***MS OBEHIOYE KIMBERLY OGUN***
4. ***ADMINISTRATOR GENERAL AND PUBLIC TRUSTEE EDO STATE***

RULING

This is a Ruling on a Motion on Notice dated 19th of September 2022, filed on the 20th of September, 2022 brought pursuant to ***Order 40 Rules 1& 2; and Order 58 Rule 2 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:

1. ***An Order of injunction restraining the 1st – 3rd Defendants/Respondents either by themselves, their agents, servant and/or privies from selling or purporting to sell any of the properties of the estate of Hon. Vincent Ebosele Edodaghe Ogun pending the determination of the substantive suit.***

2. ***An Order appointing and directing the 4th defendant (Administrator General and public Trustee, Edo State) to take over full management and Control of the estate of Hon. Vincent Ebosele Ebodaghe Ogun (deceased) in trust for all his children and beneficiaries pending the determination of the substantive suit.***

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

The motion is supported by a 22 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 ***Chief G.C.Igbokwe SAN*** 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 the Claimants/Applicants are entitled to the reliefs claimed from their affidavit evidence."

Arguing the sole issue, learned counsel submitted that every court has both the inherent and statutory right and powers to protect the res in any matter before it and he cited the following decisions on the point:

1. ***NITEL Plc V. I.C.I.C (2009) 16 NWLR (Pt.1167) 356***
2. ***Yusuff V. I.I.T.A (2009) 5 NWLR (Pt.1133) 18***
3. ***Adenuga V. Odumeru (2003) 8 NWLR (Pt.821) 163.***

He submitted that the power of the courts to protect the res comes with a corresponding discretion which must be exercised judiciously and judicially for the attainment of justice bearing in mind the peculiarities of each case and he cited the following authorities:

1. ***Dekit Const. Co. Ltd V. Adebayo (2010) 15 NWLR (pt.1217) 590;***
2. ***Adeleke V Lawal (2014) 3 NWLR (pt.1393) 1;***
3. ***Kotoye v CBN (1989) 1 NWLR (pt. 98)419; and***
4. ***Leasing Comp. Ltd v Niger Ind. Ltd (2007) 14 NWLR (pt. 1054) 346***

Furthermore, learned counsel posited that the conditions that the court must consider in an application for interlocutory injunction are as follows:

1. ***Existence of legal right and serious question to be tried;***
2. ***Balance of convenience;***
3. ***That monetary damages cannot be adequate compensation; and***
4. ***There must be real urgency and the applicant is not guilty of delay.***

He submitted that the Applicants have met with all these conditions by the content of their affidavits. He submitted that as children and beneficiaries of the deceased, the Applicants have the legal right to protect their inheritance especially when self-acclaimed administrators/administratix of the estate have bluntly refused to honour any such sharing requests or even to give account of the estate. He maintained that the Applicants have adduced sufficient evidence to establish the fact that they have some legal rights to protect in the estate of their late parents, in relation to the issues to be determined in the substantive suit.

Furthermore, counsel submitted that the Claimants/Applicants have also shown clearly that the balance of convenience is on their side and that the Defendants/Respondents have nothing to lose if the application is granted. He said that the Respondents will still remain part of the beneficiaries and do not have anything to lose.

On the condition of having a serious question or substantial issue to be tried, learned counsel submitted that from the foregoing, there are serious and substantial issues to be determined in the main suit. He referred to the case of ***Onyesoh V. Nze Christopher Nnebedum & Others (1992) 1 NWLR (pt.270) 461 at 462*** where the court re-emphasised thus:

"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".

Again, he referred the Court to the provisions of ***Order 58 Rule 2 of Edo State High Court (Civil Procedure) Rules, 2018*** which stipulates as follows:

"The Court shall, when the circumstances of the case appear to require forthwith on the death of a person, or as soon after, appoint and authorize an officer of the court, or some other fit person, to take possession of his property within its jurisdiction, or put it under seal, and so keep it until it can be dealt with according to law".

He posited that by the above provision of the rules of this Honourable Court, the court has a duty to protect the estate of a deceased person until such can be dealt with according to law as in this case. He urged the court to exercise its discretion in their favour by granting the reliefs claimed pending the determination of the substantive suit.

In opposition to this application, one ***Kunbi Braithwaite Esq.*** who appeared for the 1st to the 3rd Defendants/Respondents filed a Counter-Affidavit of 7

paragraphs which he erroneously captioned: ***Further and Better Affidavit*** and a Written Address which he adopted as his arguments in opposition to this application.

In his Written Address, the learned counsel formulated three issues for determination as follows:

1. ***Whether this honourable court can grant an order of interlocutory injunction in the light and circumstance of the case at this stage of the proceedings?***
2. ***Whether this honorable court can expand the powers of the Administrator-General of Edo State and allow him take management of the estate from the 1st – 3rd Defendants, more so where there is a provision in the Law that forbids the Administrator-General from taking over an estate, over which a court has granted a letter of administration?***
3. ***Whether this honourable court can grant a final and permanent relief at an interlocutory stage?***

Thereafter, the learned counsel argued the three issues seriatim.

ISSUE 1

Whether this honourable court can grant an order of interlocutory injunction in the light and circumstance of the case at this stage of the proceedings?

Arguing this first issue, counsel submitted that this application is incompetent *ab initio* because the Claimants have not placed before the Court any relevant facts to warrant the grant of an Interlocutory Injunction. He submitted that although the court has a duty to preserve the res, the applicant must put before the court relevant facts that will warrant the grant of the injunctive relief and he relied on the case of ***Kotoye V C.BN (1989) 1 NWLR (P7 89) 419***.

He posited that an applicant for injunction must establish a real threat, not an imaginary threat. He said that in the instant case; since the Applicants' father died in 2017, the 1st to 3rd Defendants have not sold any of the properties, and that even when their mum passed on, they were all outside the country busy burying their mother and tidying up other matters. He said that this action was instituted about three months after their mother's demise without any evidence of their attempt to sell any property. He maintained that the alleged threat to sell the property is an imaginary threat. That the Claimants / Applicants have not placed any material facts before the court to show that the Defendants/ Respondents are in the process of selling or dissipating any assets of the estate.

Counsel submitted that the Administrators were effectively and legally appointed and that their appointment was never challenged at any point in time. He posited that the legal rights of the Claimants/Applicants have not been breached

because the letters of administration confer authority on the 1st – 3rd Defendants to administer and deal with the estate property on behalf of all the beneficiaries including the Claimants/ Applicants. He cited the case of ***Olowu V Olowu (1884) 4 NWLR PT 336 page 90 at 95 Pare F*** in support of his submission.

Counsel submitted that assuming but without conceding that the 1st – 3rd Defendants want to sell any property in the estate, they have a right to so do for the benefit of all the beneficiaries including the Claimants/ Applicants, so long as same is not predicated on any fraudulent or ulterior purpose. He said that all they need to do is to render an account of their stewardship to all the beneficiaries of the estate.

Furthermore, counsel submitted that the balance of convenience lies in favour of the 1st – 3rd Defendants/ Respondents who are the lawful administrators of the estate of the deceaseds'. That the Claimants/ Applicants should not be allowed to steal the match from the court while the suit is pending using the façade of mere suspicion of action of the 1st – 3rd Defendants. For this submission, he cited the case of ***Global Natural Resources Plc. (1984) All ER 225 at 237.***

He posited that the Defendants have stated they do not intend to sell the properties of their late father's estate, and that the Claimants claim is false. He said that these facts have not been controverted by the Claimants/ Applicants.

He submitted that from the facts presented in the affidavit in support of the Claimant/ Applicants, that in the unlikely event that the Claimants suffer any injury from the actions of the administrators, damages will be adequate in the circumstances of the case to compensate them.

Furthermore, he pointed out that in the 5th relief in their Statement of Claim, the Claimants/Applicants are claiming the sum of Twenty Million Naira as special and general damages to show that damages will be sufficient to compensate them.

Counsel submitted that there is no substantial issue to be tried in the main suit because a careful perusal of the reliefs sought in their Statement of Claim will reveal that they are merely declaratory and not contentious. He posited that till date, the Claimants/Applicants have not demanded or requested the 1st – 3rd Defendants/Respondents to render an account of their stewardship as Administrators.

He therefore submitted that the Claimants/Applicants have failed to meet the conditions necessary for the grant of an interlocutory injunction.

ISSUES 2 & 3

Arguing Issues 2 and 3 together, learned counsel submitted that generally, in law, there are three main types of persons. To wit:

I. Human persons;
II. Corporate persons; and

III. Statutory persons.

He posited that these are the only persons vested with legal personality to sue and be sued. That they can also own properties and dispose of them. He submitted that the Administrator General and Public Trustee of Edo state is a statutory person created by ***section 3 of the Administrator-General Law, Cap 4, Vol 1, Laws of Bendel state 1976, applicable in Edo State*.** He reproduced some relevant provisions of the aforesaid Law and submitted that the Administrator-General of Edo cannot act outside the provisions of the law that created the office.

Learned counsel referred to some specific provisions and submitted that the Administrator-General of Edo state can only manage an estate according to the law that created it in the ways listed below:

I. ***That by Section 13 of the Law, upon his application to the Court, he can become the manager of an estate which he considers unrepresented;***
II. ***That by Section 16(a), where the court is not satisfied that there is an established person who is legally entitled to succession of the estate and to avoid waste or danger of deterioration or misappropriation, the court can appoint him until they find a legally entitled person with right of succession to the property;***
III. ***By Section 16(b), where the agent in charge of an estate belonging to a person not residing in Nigeria or to a foreign company, dies without leaving a responsible person in charge, the administrator-general can take over;***
IV. ***By Section 36, where a person not having his domicile in Nigeria dies, then the administrator-general can take over his estate only for the purpose of transferring it to his successors abroad, and that he does this by sending the proceeds to the consular officer of the country he was domiciled; and***
V. ***By Section 45, where a foreigner in the employment of the Edo state government working as an expatriate staff he dies without any widow or any known next of kin, the Permanent Secretary of his ministry shall inform the Administrator-General.***

Learned counsel submitted that apart from the situations enumerated above, there is no other provision under the ***Administrator-General Law, Cap 4, Vol 1, Laws of Bendel state 1976, applicable in Edo State*** where he can take over any property.

He submitted that where as in the present case, there are known and established heirs, and there is no vacuum as to succession, the law does not permit the Administrator-General to take over the estate. He submitted that this application is seeking to expand the scope of the powers of the Administrator-General. He submitted that the court cannot amend the Law to give an extended

power to the Administrator-General to take over such an estate. That it is the duty of the Legislature to amend the law.

Counsel submitted that where there are known and established heirs, and a court has issued a Letter of Administration, the Administrator General must keep off the estate and he referred the Court to Section 20 of the Law.

Furthermore, counsel submitted that it would be premature for the court to grant this relief at this stage of the proceedings. He referred the Court to prayer 2 of this application and submitted that the said prayer is *impari materia* with the relief number 4 of their Statement of Claim. He submitted that by Prayer 2 this application, the Claimants/Applicants are asking this Court to grant a final relief and determine the substantive issue at this interlocutory stage. He submitted that this is forbidden in law and cited the cases of ***S.G.B. LTD vs. BURAIMOH (1991) 1 NWLR PT 168 at P. 428; and AG Fed vs. AG Abia State (2001) 28 SC.***

In conclusion, he urged the Court to discountenance this application and dismiss same with substantive costs.

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 sole issue for determination in this application is whether the Claimants/Applicants have satisfied all 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 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 exchange of affidavits it is an undeniable fact that the Claimants/Applicants are among the children and beneficiaries of the estates of late Hon. Vincent Ebosele Ebodaghe Ogun.

In this suit the Claimants/Applicants are seeking to enforce their rights as beneficiaries of the estate of their late father against the 1st to 3rd Defendants who are the alleged Administrators of their late father's estate.

In their counter affidavits and written address of their counsel, the Defendants/Respondents are seriously contending that the Applicants have no legal rights to protect because the 1st and 3rd Defendants/Respondents are presently the persons appointed by the Court to administer the estate vide the Letters of Administration which they exhibited as Exhibit A in their Counter-Affidavit.

In the course of his arguments, the learned counsel for the 1st to 3rd Defendants/Respondents made some very forceful submissions to the effect that that where as in the present case, there are known and established heirs, once a court has issued Letters of Administration of the estate, the Administrator General must keep off the estate.

With respect to this salient submission, I am of the view that the question of whether the Administrator can administer the estate under the law is part of the issues to be determined in the substantive suit. It would be quite premature for me to make any finding on the powers of the Administrator General at this stage. The Law is settled that in dealing with any interlocutory application the Court should not delve into the substantive issues. A Court must avoid the determination of a substantive issue at an interlocutory stage. It is never proper for a court to make pronouncements in the course of interlocutory proceedings on issues capable of prejudging the substantive issues before the Court. See the following decisions on the point: ***Consortium MC v NEPA (1992) NWLR (Pt.246) 132, Barigha v PDP & 2 Ors (2012) 12 SC (Pt.v) 1, Mortune v Gimba (1983) 4 NCLR 237 at 242.***

However, from the available evidence, I think the Applicants have identified their legal rights which they seek to protect as the beneficiaries of their deceased father's estate, 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-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."

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 and counter-affidavit it is evident that there are substantial issues to be tried in the substantive suit in relation to the rights of the Claimants/Applicants over the administration of their father's estate.

On the balance of convenience, the Applicants must show that the balance of convenience is on their 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 this application, the Claimants/Applicants have alleged that since the demise of their parents, the 1st – 3rd Defendants have never shared any profits or incomes from the estate or render any account of the incomes from same. They also alleged that the 1st – 3rd Defendants have hired land agents and are making frantic efforts to sell the properties of the estates without their consent and embezzle the proceeds.

Incidentally, the Respondents deposed to copious facts denying the allegations of threat to sell the properties and embezzlement of funds. I must observe that the allegations of the Claimants/Applicants about threats to sell properties appear quite bogus without any documentary proof. They failed to give particulars of the alleged plans to sell the properties. For example the identities of the faceless and anonymous agents who are allegedly marketing the properties were not disclosed. More importantly, there is no evidence of the sale of any property since the demise of their parents. Moreover, no documentary evidence of any request for the Administrators to render accounts before filing this suit.

I agree with the learned counsel for the 1st to 3rd Defendants/Respondents that the balance of convenience is in favour of the 1st and 3rd Defendants/ Respondents who are presently the lawful administrators of the estate. To grant this application based on these unfounded allegations of threat to sell property will be most unfair to the administrators.

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 English court stated the position thus:

"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"

Although the Claimants/Applicants have alleged that monetary damages will not be able to assuage them since this is an inheritance matter, the Respondents have rightly pointed out that since in Relief No. 5 of their Statement of Claim, the Claimants/Applicants are claiming the sum of Twenty Million Naira as special and general damages, it is clear that damages will be sufficient to compensate them.

Consequently on the authority of the case of ***American Cyanamid Co. vs Ethicon Ltd. (1975) supra***, the Applicants are not entitled to any interlocutory injunction at this stage.

On the condition of whether the Applicants were prompt in bringing this application, I do not think there was any delay on their part in filing this application.

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 17 of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendants/Respondents if their case is found to be fictitious.

However, on the whole, the Claimants/Applicants have failed to satisfy all the six enumerated conditions to warrant the exercise of the discretion of this Court in their favour and the sole issue for determination is resolved against them.

Consequently, this application ***is dismissed with the sum of N50, 000.00 (Fifty Thousand Naira) as costs in favour of the 1st to 3rd Defendants/Respondents.***

P.A.AKHIHIERO
JUDGE
21/03/2023

<u>COUNSEL:</u>
CHIEF G.C.IGBOKWE SAN----------CLAIMANTS/APPLICANTS
KUNBI BRAITHWAITE ESQ-------1ST – 3RD DEFENDANTS/RESPONDENTS
UNREPRESENTED----------4TH DEFENDANT/RESPONDENT.