

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,
ON TUESDAY THE
4TH DAY OF APRIL, 2023.

BETWEEN:

SUIT NO. B/708/2022

MR FRANCIS OSAKPAMWAN AGHAYEDO -----CLAIMANT/APPLICANT

(SUING BY OR THROUGH HIS LAWFUL

ATTORNEY MR STANLEY AGHAYEDO)

AND

MRS EHIMWENMAN OMORUYI-----DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice dated and filed on the 28th of October, 2022 brought pursuant to Order 39 Rule 1 and Order 40 Rules 5 and 6 of the Edo State High Court (Civil Procedure) Rules, 2018, and under the inherent jurisdiction of this Honourable Court.

By this application, the Claimant/Applicant is praying this Honourable Court for the following orders:

An Order of Interlocutory Injunction, restraining the Defendant/Respondent, his servants, agents and/or privies from trespassing or further trespassing or disturbing or interfering with the Claimant/Applicant's use and enjoyment of all that piece or parcel of land measuring 200 feet by 100 feet surveyed with a property Survey Area (B) of 993.790 Square Metres in Survey Plan No. GOS/ED/479A-B/2021 made on 7th of April, 2021 by G. O. Osayande (KSJI) a registered Surveyor situate, lying and being at at Iziegbe Street, Off Akugbe Primary School Road, Oka-Evbogo 3, Ward 33/E, Upper Sokponba Road, Benin City, Edo State, with the jurisdiction of this Honourable Court pending the hearing and determination of the substantive suit.

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

The motion is also supported by a 42 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

At the hearing of the application, the learned counsel for the Claimant/Applicant adopted his written address as his arguments in support of the motion.

In his written address, the learned counsel for the Claimant/Applicant ***I.G. Edewi Esq.*** formulated the following issues for determination:

- 1. Whether the Claimant/Applicant has a legal right which he seeks to protect or to the ownership of the land;***
- 2. Whether the balance of convenience would be in favour of the Claimant/Applicant if the application is granted. Put in the reverse position, whether the Applicant will suffer more inconvenience if the application is not granted;***
- 3. Whether damages will be adequate compensation for the Claimant/Applicant if he succeeds at the end of the litigation;***
- 4. Whether the Claimant/Applicant has established that there is a substantial issue to be tried at the hearing;***
- 5. Maintenance of the status quo ante bellum; and***
- 6. Conduct of the parties.***

Thereafter, the learned counsel argued the issues seriatim.

ISSUE 1

Whether the Claimant/Applicant has a legal right which he seeks to protect or to the ownership of the land.

Arguing issue one, counsel submitted that the Claimant/Applicant has a legal right to the land in dispute that needs to be protected and he referred to **paragraphs 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23, 27 and Exhibits A,B,C,D,E,F,G,H,I,J,K** of the affidavit in support of the motion. He maintained that it is an established fact that the Claimant/Applicant is the owner of the entire land and that the Defendant/Respondent have no possession of any land in the area.

He further submitted that the relief of Interlocutory Injunction is only available to a person who has a legal right to the subject of litigation as the Claimant/Applicant in this case. He cited the following cases:-

- 1. ONYESOH V. NNEBEDUN (1992) 3 SCNJ 129 at 132 Ratio 4, Pages 144 – 145.***

2. ***AKAPO V. HAKEEM-HABEEB (1992) 7 SCNJ 119 at 122 Ratio 1,2***
3. ***KADIYA V KADIYA (2002) 6 WRN 69 at 71 Ratio 2***
4. ***DANTATA V. CR LTD (2006) 17 WRN 55 AT 59 – 62 Ratio 5,6***

ISSUE 2

Whether the balance of convenience would be in favour of the Claimant/Applicant if the application is granted. Put in the reverse position, whether the Applicant will suffer more inconvenience if the application is not granted.

Here, learned counsel submitted that the balance of convenience is in favour of the Claimant/Applicant in that he is the owner of the land and has being in undisputed possession of the land since he acquired the land by Deed of Transfer from Princess Vivian Ogiugo since the 13th of September, 2007.

He submitted that if this application is refused, the Applicant will suffer further trespass to the land. He referred to some paragraphs of his affidavit in support and relied on the following cases:-

1. ***FALOMO V BANIGBE (1998) 60 LRCN 4166 AT 4178 RATIO 8***
2. ***AKAPO V. HAKEEM-HABEEB (1992) 7 SCNJ 119 at 124 Ratio 14***
3. ***AYORINDE V. A.G OYO STATE (1996) 35 LRCN 257 at 263 Ratio 2***

He therefore urged the Court to resolve this issue in favour of the Claimant/Applicant.

ISSUE 3

Whether damages will be adequate compensation for the Claimant/Applicant if he succeeds at the end of the litigation

Counsel submitted that damages cannot be adequate compensation for the injury of the Claimant/Applicant's right to the land. That refusing the application will enable the Defendant/Respondent alter the purpose the Claimant/Applicant has for the land and he referred to **paragraphs, 19,20,21,22,24,23,26,27,28,33,34, 35, 39, 40** of the Affidavit in Support on Motion on Notice.

He further submitted that the Claimant/Applicant will be able to pay any damage as compensation to the Defendant/Respondent if the suit was wrongly instituted at the end of litigation and he referred to paragraphs 36,37,39,40,41,42,43 of the Affidavit in Support and the case of – ***ONYESOH V NNEBEDUM (1992) 3 SCNJ 129 at 135 Ratio 4,11,15.***

ISSUE 4

Whether the Claimant/Applicant has established that there is a substantial issue to be tried at the hearing.

Counsel submitted that a cursory look at the Writ of Summons, the Statement of Claim and the Affidavit in Support of Motion on Notice for Interlocutory Injunction the Claimant/Applicant has established that there are triable issues to be determined by this Honourable Court.

He posited that the Claimant/Applicant stated that he has a parcel of land measuring **200ft by 100ft** situate, lying and being at Iziegbe Street, Off Akugbe Primary School Road, Off Upper Sokponba Road, Oka 3, Benin City, Ikpoba-Okha Local Government Area, Edo State into which the Defendant/Respondent trespassed without the permission of the Claimant/Applicant.

He also referred to **paragraph 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 35, 38, 40 and Exhibit A,B,C,D,E,F,G,H,I,J,K** of the Affidavit in Support of Application to shows that there are triable and substantial issue to be determined at the trial.

ISSUE 5

Whether the maintenance of the Status Quo Ante Bellum or situation lies on when the suit was filed and the conduct of the parties.

Arguing this issue, counsel submitted that the *status quo* before the suit was filed should be maintained since the Claimant/Applicant has established that the Defendant/Respondent has no legal right to the land in dispute, that there is a substantial issue to be tried in the case and that the Defendant/Respondent has acted in bad faith by forcefully trespassing on the land in dispute. He referred to **paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42**, of the Affidavit in Support of Motion.

Again he stated that the Claimant/Applicant has not resorted to self-help by attacking the Defendant/Respondent or destroying the illegal structure on the land but decided to come to court to seek for justice. He relied on the following cases:-

1. ***AYORINDE V. A.G. OYO STATE (1996) VOL. 35 LRCN 257 AT 266 RATIO 8***
2. ***KADAYAV, KADAYA (2002) VOL.6 WRN 69 AT 71 RATIO 2***
3. ***EYO V. OTU (2010) VOL. 1 WRN 107 AT 118 RATIO***

He pointed out that the Defendant/Respondent has resorted to self-help with the aid of thugs to erect an illegal structure on the Claimant's landed property and they are working night and day. He posited that the Supreme Court has warned against the resort to self-help in the following cases:-

1. ***Obeya V A.G, Federation (2000) VOL. 24 WRN 138***
2. ***Military Gov., Lagos State V. Ojukwu (2001) VOL. 39 WRN 155.***

On the conduct of the parties, counsel submitted that the Applicant has demonstrated the willingness to prosecute the matter. He said that they have filed a Writ of Summons, Statement of claim, Motion for Interlocutory Injunction, Witness Statement on Oaths, Affidavits and other court processes.

He finally urged the Court to exercise its discretion in favour of the Claimant/Applicant.

In his written address, the learned counsel for the Defendant/Respondent *Osador Okunkolor Esq.* formulated a sole issue for determination as follows:

“Whether upon a calm and careful consideration of the claimant/applicant’s motion on notice, the affidavit and written address in support of same, as well as the defendant/respondent’s counter affidavit and written address, the claimant/applicant has made out a case sufficient to move this honourable court to exercise its equitable jurisdiction in favour of granting the order sought.”

Opening his argument on the sole issue, learned counsel submitted that it is an established principle of law that in land matters, the identity of the piece of land in dispute must be clearly put in place, and known to both parties. Furthermore, that the piece or parcel of land should be clearly ascertained for an order of injunction to be tied to it. He relied on the cases of *OLADEJO vs. ADEYEMI (2000) NWLR (PT 674) 25; and ASSAM vs. OKPOSIN (2000) 10 NWLR (PT 76) 659.*

He referred to paragraphs 5, 7, 16, 17, 18, 19, 20, 21, 22, 24, 25, 28, 29, 31 of the counter affidavit and exhibits attached to same, especially exhibit D.

Furthermore, he submitted that this is an appropriate case in which the order should be refused, because the identity of the claimant/applicant’s land is in issue because from the above depositions, the respondent’s parcel of land is different from the applicant’s and he urged the Court to so hold and refuse the application.

Again, counsel referred to the applicant’s prayer on the face of his motion paper and submitted that by the very nature of the prayer, the Court would have delved into the substantive issues to be tried, if the prayer is granted. That it is trite law that courts should not delve into substantive issues at the interlocutory stage of any matter and he relied on the case of *UMA V. EFFIOM (2014) All FWLR (PT. 731) PAGE 1628 @ 1635.*

He enumerated the conditions for the grant of interlocutory injunctions to be as follows:

- a) There must be a subsisting action.***
- b) The subsisting action must clearly donate a legal right to which the order must protect.***

- c) *The applicant must show that there is a serious question, or issue to be tried.*
 - d) *The applicant must show that because of (c) above, the status quo should be maintained, pending the determination of the substantive suit.*
 - e) *The applicant must also show that the balance of convenience is in favour of granting the application.*
 - f) *The applicant must show that there is no delay in bringing the application.*
 - g) *The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect.*
 - h) *The applicant must make an undertaking to pay damages in the event of a wrong exercise of the court's discretion in the granting the injunction.*
- He relied on the case of *OBEYA MEMORIAL HOSPITAL V A.G.F (1987) 3 NWLR NWLR (PT 60) 325.*

Learned counsel submitted that upon a careful consideration of this application, the following facts are evident:

- a) *The respective parcels of land of the parties are not one and the same;*
- b) *The building the respondent is erecting on her parcel of land has been completed based on exhibit "J" which is attached to the applicant's affidavit;*
- c) *The applicant's exhibit "I" and the respondent's exhibit "A" both lend credence to the respondent's assertion that the parcels of land of both parties are completely different;*
- d) *In the highly unlikely event that this honourable court finds out that the parcels of land of the contending parties are indeed one and the same, damages will be adequate compensation for the applicant;*
- e) *There is no serious issue to be tried at the substantive stage;*
- f) *There are no special factors to be considered capable of moving this honourable court to exercise its discretionary powers in favor of granting this application, considering the depositions in the claimant/applicant's affidavit in support of his motion on notice, as well as the exhibits attached thereto;*
- g) *The balance of convenience is in favor of the respondent as she is firmly in possession of her parcel of land which building has been completed, which is not the same as the applicant's own in any case;*
- h) *The applicant has not given a satisfactory undertaking to pay damages, because paragraph 36 of his affidavit simply contains affidavit evidence of his preparedness to give an undertaking to pay damages, and not that he has given an undertaking to pay damages.*

Counsel submitted that the order of interlocutory injunction which the applicant is seeking is one in which damages is a proper remedy and in such a case; injunction is not a proper remedy. He referred to the case of **ORJI V ZAIRA IND LTD & ANR (1992) 1 NWLR (PT. 216) 124 @ 139.**

Furthermore, he referred to relief C in the claimant's amended statement of claim which is for general damages.

Counsel referred to paragraphs 14, 17, 24, 26 & 27 of the respondent's counter affidavit, and the applicant's exhibit J, which is a photograph showing the completed state of the house the respondent built on her piece of land.

Sequel to the foregoing, he submitted that an order of injunction cannot lie in respect of a completed act and he urged the Court to refuse the application and order an accelerated hearing of the suit. For this view, he relied on the case of **BUHARI V. OBASANJO ORS No.1 (2003) 11 SCNJ Page.**

Finally, he urged the Court to dismiss this application with substantial costs. Upon receipt of the Counter-Affidavit and the written address of the Respondent's counsel, the Applicant's counsel filed a Reply on Points of Law.

In his reply on points of law, learned counsel submitted that the identity of the land is well known to the parties. That it is only the land of the Defendant's predecessor in title that is not certain. He therefore urged the Court to discountenance the Respondent's counsel's submission in this regard.

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 contents of Paragraphs 5 to 13 of the affidavit in support of this application, the Applicant deposed to facts tracing his root of title to the land in dispute. He narrated how he acquired the entire land measuring **200 feet by 100 feet** from Late **Princess Vivian Ogiugo** by a deed of Agreement dated 13th day of September, 2007. A photocopy of the Deed of transfer was attached to his supporting affidavit as **Exhibit C**.

He also traced the root of title of his predecessor in title to one Late **Mr. Michael Omosefe**. According to him, the Claimant took immediate possession of the parcel of land immediately after purchase and commissioned a Registered Surveyor who surveyed the land and a photocopy of the property Survey Plan was attached as **EXHIBIT F**.

However in her Counter-Affidavit, the Defendant/Respondent denied the Claimant's claims and deposed to copious facts in a bid to establish her root of title to the same land.

With respect to the claims of ownership by the two parties, I am of the view that it is premature for me to make any finding of fact 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 pronouncement 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*.

From the available evidence, I think the Applicant has identified the existence of his legal right which he seeks to protect in relation to the disputed parcel of land and 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 over the disputed property.

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 if this application is not granted, the Respondent will continue her alleged acts of trespass on the land. He stated that the Respondent is erecting some structures on the land day and night in a bid to take possession of same and is urging the Court to restrain the alleged activities.

However, the Respondent’s position is that the act sought to be restrained is a completed act because the building has already erected on the land. She maintains that she is putting some finishing touches on the building to enable her move in.

Upon a consideration of the affidavit evidence of both parties, I observed that the Respondent has not completed the building hence she has not moved in to start residing there. I do not think it would be proper to allow the Respondent to complete the building while this suit is pending. Nobody can say what the final verdict of the Court will be. I think the balance of convenience is on the side 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. 510*, 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”

From the affidavit evidence adduced by the Claimants/Applicants, the Applicant has asserted that he cannot be adequately compensated by the award of damages if the Defendant is allowed to continue to erect structures on the land in dispute.

The Respondent attempted to counter this issue of inadequacy of damages by pointing out that the Claimant has a claim for damages. I have looked at the claim and I observed that the Claimant is claiming a meager sum of Five Hundred Thousand Naira which I think cannot assuage him if the Defendant is allowed to erect structures on the land and the Claimant eventually wins the case. The damages will be clearly inadequate at that stage.

On the condition of whether the Applicant was prompt in bringing the application, I observed that this application was filed along with the originating processes in this suit so I do not think there was any delay on the part of the Applicant 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 36 of the supporting affidavit, the Claimant/Applicant gave an undertaking to pay damages to the Defendant if at the end, this application is one which ought not to have been granted.

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 grant an order *of interlocutory Injunction restraining the Defendant/Respondent, her servants, agents and/or privies from trespassing or further trespassing or disturbing or interfering with the Claimant/Applicant's use and enjoyment of all that piece or parcel of land measuring 200 feet by 100 feet surveyed with a property Survey Area (B) of 993.790 Square Metres in Survey Plan No. GOS/ED/479A-B/2021 made on 7th of April, 2021 by G. O. Osayande (KSJI) a registered Surveyor situate, lying and being at at Iziegbe Street, Off Akugbe Primary School Road, Oka-Evbogo 3, Ward 33/E, Upper Sokponba Road, Benin City, Edo State, with the jurisdiction of this Honourable Court pending the hearing and determination of the substantive suit.*

I award the sum of N50, 000.00 (fifty thousand naira) as costs in favour of the Claimant/Applicant.

P.A.AKHIHIERO
JUDGE
04/04/2023

COUNSEL:

I.G EDEWI ESQ-----CLAIMANT/APPLICANT

OSADOLOR OKUNPOLOR ESQ-----DEFENDANT/RESPONDENT