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

23RD DAY OF JANUARY, 2024.

BETWEEN: ***SUIT NO. B/1170/2022***

MR FESTUS ADEMOLA ……CLAIMANT/APPLICANT

AND

MR OSADOLOR OGIEFA ……. DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice dated and filed on the 14th of December, 2022 brought pursuant to ***Order 40 Rules 1, 2 & 3 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:

A) An order of interlocutory injunction restraining the Defendant, his servants, agents and or privies or howsoever called from further trespassing or carrying out developmental activities whatsoever or exercising any form of possessory right over the Claimant's property lying and situate at No. 8B, Ogbesasa Street, Off Sapele Road, Benin City pending the hearing and determination of the substantive suit;and

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

The motion is supported by a 24 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 ***Chris Otasowie Esq.*** adopted his written address as his arguments in support of the motion. In his written address, the learned counsel formulated a sole issue for determination as follows: ***Whether a grant of this application is desirable in the circumstances of this case?***

Arguing the sole issue for determination, learned counsel enumerated the principles governing the grant of an interlocutory injunction and relied on the following authorities: ***Agbogu v. Okoye (2008) All FWLR pt. 414 at pg. 1494 particularly at pg. 1497; Akapo v. Hakeem Habeem (1992) 6 NWLR pt. 247 at pg. 266;*** and ***Obeya Memorial Hospital V A.G Federation (1987) 3 NWLR pt. 60 at pg. 325.***

Submitting on the requirement that there is a serious question to be tried and a legal right to be protected, learned counsel submitted that the legal rights of the Claimant/Applicant can be gleaned from paragraphs 4, 5, 6, 7, 8, 9 and 10 of the Claimant/Applicant's affidavit in support of this motion.

He submitted that it is sufficient if he shows that there is a serious question to be tried or that there is a triable issue in the substantive suit. See ***Agbobu v. Okoye (Supra) ratio 6.*** He referred to paragraphs 11 to 21 of the Claimant/Applicant's affidavit in support of this motion and maintained that the Defendant is determined to continuously trespass, enter, disturb, disrupt and truncate the Claimant's possessory right.

On the balance of convenience he referred to paragraphs 5 and 10 of Claimant/Applicant's affidavit in support of the motion and submitted that the balance of convenience is in favour of the Claimant/Applicant because the Applicant has been in undisturbed possession of the said office space since February 2018 when he took possession. He also referred to paragraphs 11 to 21 of the Claimant/Applicant's Affidavit in support of the motion wherein the Claimant deposed to facts describing the level of desperation and evidence of the Defendant/Applicant intention to permanently alter the res in this suit.

Again he submitted that the Claimant/Applicant stands to suffer more inconvenience, the Defendant is allowed to continue with his wanton and illegal act of trespass if not restrained by an order of this Court.

Furthermore, learned counsel submitted that the Claimant/Applicant cannot be adequately compensated in damages if the Defendant is allowed to continue in his alleged activities. He posited that where there is a threat to truncate the possessory right of the Claimant/Applicant to the use of the property in dispute**,** an order of interlocutory injunction will be appropriate to maintain the status quo pending the final determination of the competing rights of the parties and he cited the case of ***Akpughunum v. Akpughunum (2007) All FWLR pt. 376 at pg 746 particularly at pg 784 ratio 3.***

Finally, he submitted that in paragraph 22 of his supporting affidavit, the Claimant/Applicant has undertaken to indemnify the Defendant in damages in the event that this motion for injunction ought not to have been granted. He therefore urged the Court to grant this application.

In opposition to the application, the Respondent filed a Counter-Affidavit of nine paragraphs and a written address of their counsel. At the hearing, the learned counsel for the Defendant/Respondent, ***Isaac Ozua Esq.*** adopted his written address as his arguments in opposition to the application.

In his written address, the learned counsel submitted that the Claimant/Applicant has no title to give him the necessary cause of action to rouse the jurisdiction of this honorable Court on the grounds that:

a. That Suit No.B/477/2017 was instituted by one Mrs. Joy Olusi & 3 others vs. Mr. Samson Igbineweka & Anor;
b. That the said Suit N0.B/477/2017 was before the Hon. Justice Erhabor in the then High Court 6, Benin City over the same subject matter;
c. That while Suit the said suit was before the honorable Court, the Claimants therein and their privies colluded and sold part of the subject matter, to wit the land that is the subject matter of this suit, to the Claimant herein who knew about Suit No.B/477/2017; and
d. That by virtue of the doctrine of lis pendens, no title or interest was passed to the Claimant and the Claimant therefore has no title or interest upon which to base a cause of action to enable the Claimant rouse the jurisdiction of this honorable Court to hear this suit.

He relied is on the case of ***ENYIBROS FOODS PROCESSING COMPANY LTD & ANOR V. NIGERIAN DEPOSIT INSURANCE CORPORATION & ANOR (2007) VOL 153 LRCN 62 RR 9 & 11.***

He submitted that the doctrine of Lis Pendens is really designed to prevent the vendor from transferring any effective title to the purchaser during the pendency of the litigation over the property.

He therefore 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.***

In his supporting affidavit, the Claimant/Applicant deposed to the fact that he acquired the property in dispute from the children and family of Late Madam Isiuwa Evbokhuaeru vide a deed of transfer of land dated the 12th day of February, 2018 which he annexed to his supporting affidavit as Exhibit A.

He alleged that after he purchased the land, he was put in possession by the children of the vendor and thereafter, he surveyed the land in his name and he attached a copy of the survey plan as Exhibit C. He said that he has been in possession of the land since February 2018, and exercised various acts of ownership by occasionally clearing the land.

In his counter affidavit and written address of his counsel, the Defendant/Respondent did not explain his legal right to the land in dispute rather he dwelt more on the subject of Lis Pendens.

From the available evidence, I am of the view that at this stage, the Claimant/Applicant has adduced sufficient evidence to establish the fact that he has some legal rights to protect in relation to the land in dispute.

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 Claimant and the Defendant over the land in dispute.

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 paragraph 19 to 21 of his supporting affidavit, the Applicant stated that the balance of convenience is on his side because he has been in possession of the demised premises likewise his predecessors in title. He maintained that the Defendant/Respondent has nothing whatsoever to lose if he is restrained pending the hearing and determination of the Writ of Summons filed in this suit and that if he is not restrained, he will completely take over his property.

Going through the Respondents' Counter-Affidavit I observed that he did not state what he would suffer if this interlocutory injunction is granted pending the determination of the substantive suit. I am of the view that at this stage 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 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"

In paragraph 16 of the Applicant's affidavit, he stated that if the Defendant/Respondent is not restrained by this court pending the hearing and determination of this suit, he will completely alter the structural topography of the res and the damages done to same will become irreversible and permanent in nature.

In the event, I hold that damages will not be an adequate remedy to assuage the Applicant if he succeeds in this suit after this application is refused.

On the condition of whether the Applicant was prompt in bringing this application, 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 22 of the supporting affidavit, the Claimant/Applicant gave an undertaking to pay damages to the Defendant/Respondent 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 ***the Claimant/Applicant is granted an order of interlocutory injunction restraining the Defendant, his servants, agents and or privies or howsoever called from further trespassing or carrying out developmental activities whatsoever or exercising any form of possessory right over the Claimant's property lying and situate at No. 8B, Ogbesasa Street, Off Sapele Road, Benin City 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
23/01/2024

<u>COUNSEL:</u>

CHRIS OTASOWIE ESQ----------CLAIMANT/APPLICANT

ISAAC O. OZUA ESQ----------DEFENDANT/RESPONDENT