IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
17TH DAY OF JANUARY, 2024.

BETWEEN: ***SUIT NO. B/415/2023***

MR. CHARLES AJAYI
(Suing through his
Lawful Attorney
Mr. Osazee Igbinoba)……..…CLAIMANT/APPLICANT

AND

Joy Ogbe (Defending through
Her Lawful Attorney I.Z. Ogbe)…….DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice dated on the 15th of May, 2023, filed on the 17th of May, 2023 brought pursuant to ***Order 40 Rules 1, 2(1) & (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:

1. ***An Order of interlocutory injunction restraining the respondent, her agents or privies from further trespassing on the Claimant/Applicant's piece or parcel of land measuring 100ft. by 200ft. situate, lying and being at Obaretin Community, off Sapele Road, Benin City which is delineated in survey Plan No. SEA/ED/380/2015 and dated 10th Aug., 2015 pending the determination of the substantive suit; and***
2. ***And for such further Order or Orders as this Court may deem fit to make in the circumstances of this case.***

The motion is supported by a 26 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 ***I.O. Idahosa Esq.*** adopted his written address as his arguments in support of the motion. In his written address, the learned counsel posited that the burden of proof in an application for an interlocutory injunction is on the Applicant and he cited the case of ***Buhari v. Obasanjo (2003) 17 NWLR (Pt. 850) pg. 587 at 611 r 5.***

He submitted that this burden of proof has been sufficiently discharged by the Claimant/Applicant in his affidavit evidence to be entitled to the reliefs sought. He enumerated the elements to be proved or considered in an application for an interlocutory

injunction and relied on the cases of ***Buhari v. Obasanjo (Supra); Kotoye v. CBN (1998) 1 NWLR (Pt.98) 419*** and ***Woluchem v. Wokoma (1974) 3 S.C. 153.).***

Furthermore, he said that the Claimant/Applicant in paragraph 3 of his supporting Affidavit, deposed to the fact that he filed his writ of summons and other accompanying processes challenging the acts of trespass of the Defendant/Respondent on the Claimant's/Applicant piece of land without his consent. He submitted that for an interlocutory injunction to be granted there must be a subsisting action before the Court and he again cited the cases of ***Buhari v. Obasanjo (Supra), Kotoye v. CBN (Supra) and Woluchem v. Wokoma (Supra).***

He posited that the Claimant/Applicant in paragraphs 4, 5, 10, and 21 of his supporting affidavit showed that the acts of the Respondent in building on the Applicant's land without his consent amounts to trespass and as such, there is need to restrain her to maintain the status quo pending the determination of the substantive suit.

Learned counsel submitted that it is a settled law that an Applicant for interlocutory injunction must show the existence of his right which needs to be protected in the interim and must also satisfy the Court that there is a serious question to be tried in the substantive suit and he relied on the case of ***Adenuga v. Odumeru (2002) 8 NWLR (Pt. 821) pg.163 at 171 r 5***; and ***Egbe Onogun (1972) 1ANLR (pt. 1) 95.***

Counsel submitted that an application for interlocutory injunction is granted to maintain the status quo pending the determination of the substantive suit and he cited the case of ***Buhari v Obasanjo (supra) at 609 r 3***.

He referred the Court to paragraphs 4,5,10 and 16 of the Applicant's affidavit which showed the alleged trespass on the Claimant's/Applicant's land and submitted that the balance of convenience weighs in favour of the Applicant. He posited that the balance of convenience is considered on the basis of who will suffer more inconvenience if the application is granted or who will suffer more inconvenience if the application is not granted and he cited the cases of ***Buhari v Obasanjo (supra); Kotoye v CBN (Supra);*** and ***Adewolev. Adetimo (1996) (Pt.431).***

He submitted that from the affidavit evidence of the Applicant, the balance of convenience is in the Applicant's favour.

Furthermore, learned counsel submitted that it is trite law that any delay in bringing an application for interlocutory injunction will defeat the essence of the application. See ***Buhari v. Obasanjo (supra)*** and ***Kotoye v CBN (supra).*** He posited that the Applicant stated in paragraph 2 of his supporting affidavit that he filed his writ of summons and statement of Claim together with this application for interlocutory injunction so it is clear that the Applicant brought this application timeously.

Again, he referred the Court to paragraphs 17 and 19 of the Applicant's supporting affidavit where he stated that damages would not be adequate compensation if the Respondent is not urgently restrained to forestall further damage or mischiefs which may be occasioned by the Respondent's continuous trespass on the Claimant's/Applicant's land. He submitted that it is settled law that where the type of damages alleged by an Applicant for an order of interlocutory injunction cannot be adequately compensated by an award of damages, an order of interlocutory injunction would be granted pending the determination of the substantive suit and he cited the following cases on the point: ***Ogunsola v. Usman (2002) 14 NWLR (Pt.788) 636 at 643 r 9; Regt. Trustee of P.C.N v. Regt. Trustee of A.S.N (2000) 5 NWLR (Pt. 657) 368 at 371 r5.***

Furthermore, he submitted that it settled law that the giving of an undertaking as to damages is of essence in the consideration of an application for an order of interlocutory injunction. See the cases of ***Hayes V. Hayes (2000) 3 NWLR (Pt. 648) 276 at 282 r 9;*** and ***Kotoye V. CBN (supra).*** He pointed out that in paragraph 23 of his affidavit; the Applicant undertook to pay damages if the order sought turns out to be undeserving if granted.

Counsel said that in paragraphs 4, 5, and 10 of his affidavit, the Applicant has shown that the Respondent trespassed on his land by erecting illegal structures without his consent and submitted that once there is trespass, an injunction must granted to protect the party in possession. See ***Oguejiofor V. Nwakalor (2011) 34 WRN pg. 135 at 141 r 6;*** and ***Anyawu V. Uzowuaka (2009) 49 WRN 1; 13 NWLR (Pt 1159) 445.***

Counsel submitted that it is trite law that the grant of an interlocutory injunction is by the discretion of the Court which must be exercised judicially and judiciously. See the case of ***Ogunsola V. Usman (2002) 14 NWLR (Pt. 788) 636 at 640 r 1.***

Finally, he urged the Court to grant the application.

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

In his written address, the learned counsel formulated a sole issue for determination as follows:

Whether the Applicant is entitled to the relief sought in his Application?

Arguing the sole issue for determination, the learned counsel for the Defendant/Respondent submitted that for an applicant to succeed in an application for interlocutory injunction, he must present sufficient facts to enable the Court to exercise its discretion in his favour based on some set principles.

He posited that the Court has laid down certain yardsticks for the grant of the relief sought by the applicant such as the existence of a legal right; the balance of convenience being in his favour; and the justification for maintaining the status quo and he referred to the case of ***All States Trust Bank Plc v. Nsofor (2004) All FWLR 1719 ratio 12.*** He said that in the instant application, the Applicant has failed to satisfy the aforementioned conditions.

Furthermore, learned counsel submitted that the Court cannot make an order to restrain an act that is already completed. He said that assuming without conceding that the Respondent actually trespassed on the Applicant's land, that the act complained about is already completed as the purported building has been completed and tenants are already in occupation. Again, he maintained that since the land in dispute belongs to the Defendant/Respondent, granting the Applicant's relief will amount to foisting hardship on the occupants of the stores since the order will further restrain anyone whatsoever from gaining access until the matter is finally concluded. He said that this will deny the tenants access to their lawful places of business.

He therefore urged the Court to dismiss the application as the order sought is a distraction. He contended that if the suit is heard on the merits and it so happens that the Claimant/Applicant succeeds, damages would be adequate compensation for him in such situation and he cited the case of ***NWANKWO V. ONONOEZE – MADU (2005) 4 NWLR (PT.916) 470.***

In conclusion, he urged the Court to dismiss this application with punitive 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 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 the land in dispute was transferred to the Claimant by one Mr. Osabuohien Uhuangho of No. 5 Obaretin Community; off Sapele Road, Benin City *vide* a Deed of Transfer dated the 3rd of August, 2015 which was attached to supporting affidavit as Exhibit "B".

The Claimant alleged that upon completion of the purchase of the said land, he immediately took possession and erected perimeter fences around it to secure it from any unauthorized access and vandalism.

Subsequently, the Claimant also applied to the State Government for the grant of a Certificate of Occupancy, which was granted. The Certificate of occupancy is attached and marked as exhibit "C".

In his counter affidavit and written address of her counsel, the Defendant/Respondent's Lawful Attorney stated that the Defendant purchased the land from the Community represented by the Odionwere after ascertaining that the land was free from any encumbrance.

He alleged that at the time she acquired the land, it was a virgin land after which she commissioned some labourers to deforest the land and clear it before she started building. He maintained that there was no objection or confrontation from anybody while he was

building and that he has been in effective possession of the land without any disturbance from any quarters until this suit was filed.

He alleged that he has erected a fully completed chain of stores and living apartment on the property with tenants currently occupying the stores.

With respect to the contention of the Defendant/Respondent on how she purchased the land from the Community before erecting some structure on it, I am of the view that it is premature to make any finding on that point at this stage. The law is settled that in dealing with an 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 any 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 his legal rights which he seeks to protect based on his alleged root of title from the time he allegedly purchased the land in dispute from one Mr. Osabuohien Uhuangho *vide* the Deed of Transfer attached to supporting affidavit as Exhibit "B" and the Certificate of occupancy which he attached as exhibit "C".

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 Defendant/Respondent's counsel's contention that an interlocutory injunction cannot be granted to restrain a completed act, I observed that in paragraph 10 of his supporting affidavit, the Applicant alleged that the Defendant/Respondent was erecting the structures ***on a portion of the land*** without his authority. Furthermore, in this application, the Applicant is seeking for "***An Order of interlocutory injunction restraining the respondent, his agents or privies from further trespassing on the Claimant/Applicant's piece or parcel of land…"*** (Underling, mine). From the foregoing, it is evident that the alleged acts of trespass which are to be restrained are not on the completed acts but to prevent further acts of trespass into the remaining portion of the disputed land.

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 16 to 22 of his supporting affidavit, the Applicant maintained that the balance of convenience is on his side. He alleged that damages cannot be adequate compensation for the injury he would suffer if he succeeds at the end of the day because his piece of land would have been completely deposed off or structures erected thereon by the Defendant /Respondent.

He alleged that if the Defendant/Respondent is not urgently restrained in the interim, more irretrievable and irreversible mischief or damage would have been done before the completion of the hearing of the substantive suit. He emphasised that the Defendant/Respondent needs to be restrained to maintain the status quo until the determination of the substantive suit to prevent him from suffering irreparable damage.

Going through the Respondents' Counter-Affidavit I observed that she dwelt mainly on the fact that tenants in the property will be denied access to their lawful business if the application is granted. She did not state what she would suffer if this interlocutory injunction is granted pending the determination of the substantive suit. Incidentally, the alleged tenants are not parties to this suit so we cannot be considering the convenience of persons who are not parties to this 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"

From the affidavit evidence adduced by the Claimant/Applicant, the Applicant has emphasised that unless the application is granted, he would suffer irreparable injury. I agree with the Applicant that damages may not be adequate compensation for the Applicant if the res is destroyed and he eventually wins the case.

On the condition of whether the Applicant was prompt in bringing the application, I observed that the application was filed along with the main suit soon after the Applicant was informed of the alleged trespass 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 23 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 Respondent, her agents or privies from further trespassing on the Claimant/Applicant's piece or parcel of land measuring 100ft.***

by 200ft. situate, lying and being at Obaretin Community, off Sapele Road, Benin City which is delineated in survey Plan No. SEA/ED/380/2015 and dated 10th Aug., 2015 pending the 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
17/01/2024

<u>COUNSEL:</u>
I.O. IDAHOSA ESQ----------CLAIMANT/APPLICANT
MATTHEW ADEBOLA ESQ----------DEFENDANT/RESPONDENT