IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON FRIDAY THE

22ND DAY OF MARCH, 2024.

BETWEEN: ***SUIT NO. B/107/2023***

1. ***KINGSLEY IYONMANA ----------CLAIMANTS/APPLICANTS***
2. ***OSAGIE IYONMANA***

AND

1. ***MR. CHARLES ISERHENRHIEN ----------DEFENDANTS***
2. ***COMMISSIONER OF POLICE EDO STATE /RESPONDENTS***
3. ***THE ASSISTANT INSPECTOR GENERAL OF POLICE, ZONE 5, BENIN CITY***
4. ***THE INSPECTOR GENERAL OF POLICE***

RULING

This is a Ruling on a Motion on Notice dated and filed on the 16th of February, 2023 brought pursuant to ***Order 33 and Order 40 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 as follows:

Granting an order of interlocutory injunction restraining the 1st Defendant from using the 2nd to the 4th Defendants, their officers, privies, assigns and servants to harass, intimidate, arrest and charge the Claimants to court on an allegation of contempt/breach of a court order/judgment when the Defendants have not followed the due process of law in enforcing the contempt of court by filing the

necessary required forms 48, 49 and motion for contempt as required by the Sheriff and Civil Process Law of Bendel State in line with the legal jurisprudence of Nigeria, when there is a pending appeal in this case, pending the hearing of the substantive suit.

The motion is supported by an affidavit of 25 paragraphs and the written address of the learned counsel for the Claimants/Applicants.

In his written address, the learned counsel for the Claimants/Applicants, ***G.E.Oaikhena Esq.*** formulated a sole issue for determination as follows:
"Whether the applicant is entitled to the relief sought?"

Arguing the sole issue for determination, the learned counsel submitted that an interlocutory injunction is to maintain the status quo pending the hearing of the substantive suit in order to protect the res while the case is going on.

He submitted that the Defendants have no legal right to arrest intimidate or charge the Claimants or any member of their community for alleged disobedience to a court order or judgment. He submitted that by virtue of the provisions of the ***Sheriff and Civil Process Law of Bendel State, now applicable to Edo State,*** or conversely the ***Sheriff and Civil Process Act***, the disobedience of a court order or judgment amounts to contempt of court, for which the contemnor is served forms 48 and 49, to come and show cause why he should not be punished for his blatant disobedience and affront on the authority of the court, before the motion for his committal is filed if he fails to or refuses to show cause.

Counsel posited that in this case, due process of law was not followed because the Defendants assumed the authority of a judge in their own case to enforce the judgment and to decide the allegation of disobedience of the order/judgment of the court. He said that the Defendants are now using their powers to intimidate and harass the Claimants by arresting them and charging them to court for a matter over which there are pending judgments; including terms of settlement entered into freely by the parties to the suit and a pending appeal over the same issue.

He posited that from the affidavit evidence, there is a triable issue to warrant the order of interlocutory injunction to protect the Claimants from being arrested and charged to court under a fictitious charge for the alleged disobedience of a court judgment/order to which due process of law has not been followed in proving same. He referred to the case of ***COMMISSIONER FOR WORKS, BENUE STATE VS. DEV. COMPANY LTD (1988) NWLR (PT 83) 407 at 410 (Ratio 14).***

He posited that the essence of this application is for the status quo to be maintained otherwise the Defendants action would cause more harm and injuries to the Claimant and he relied on the cases of ***ACB V. AWOGBORO (1991), NWLR (PT 176) 711 at 719 – 720. AKAKPO V. HAKEEM HABEEB (1992) NWLR (PT 24)*** *at 303;* ***ADENUGA & ORS V. ODUMERU (2001) 5 NSCQR 148 RATIO 4 AT 150-15***; ***OHAKIM & ANOR V. AGBASO & ORS (2010) VOL. 189 LRCN PG 73 AT RATIO 9 PG 86; OBEYA MEMORIAL SPECIALIST HOSPITAL LTD V. THE***

***ATTORNEY-GENERAL OF THE FEDERATION & ANOR, (1987) 7S.C. PART 1 PG 52 AT* PG 86-87.**

Counsel posited that this honourable court has the inherent powers to protect the status quo which is the Claimants from been arrested, harassed, intimidated and charged to court for an alleged offence of disobedience to a court order/judgment when the due process of law has not been followed to prove same against the Claimants in a competent court of jurisdiction.

Finally, he submitted that the Applicants have shown by their affidavit evidence that they have a right to protect and that there is a triable issue in the substantive suit to warrant granting this application.

In opposition to the application, the 1st Defendant/Respondent's counsel filed a Counter-Affidavit and a written address of their counsel. At the hearing, the learned counsel for the 1st Claimant/Respondent, ***Anthony Osula Esq.*** identified five issues for determination as follows:

1. ***Whether by the prayers sought by the Claimants/Applicants, it will be proper for this court to determine the substantive issue at an interlocutory stage.***

2. ***Whether there is a pending appeal upon which this court can exercise discretion in favour of the Claimants/Applicants' application.***

3. ***Whether from the facts deposed to by the 1st Defendant/Respondent and the circumstances of this case, this court can grant this application and stop the police from performing their statutory duties.***

4. ***Whether due to the serious facts deposed by the 1st Defendant/Respondent in the counter affidavit, it will not be better for this court to order accelerated hearing of the issue in controversy.***

5. ***Whether in the face of several exhibits attached to the 1st Defendant/Respondent counter affidavit, the Applicants are entitled to the discretion of court when it is obvious they are running from police prosecution.***

Thereafter, the learned counsel argued the issues seriatim.

<u>ISSUE ONE</u>

Whether by the prayers sought by the Claimants/Applicants, it will be proper for this court to determine the substantive issue at an interlocutory stage.

Arguing this issue, learned counsel submitted that the order sought before this court is lopsided and is only meant to benefit the Applicants. He said that the entire gamut of the prayer sought is not meant to maintain the status quo but to allow the

Applicants escape from police prosecution despite the prima facie case that has been established against them. He reproduced the order sought in his written address.

He submitted that Reliefs a, b and d sought by the Claimants/Applicants are all immersed in the said prayer for interlocutory injunction. He therefore submitted that if this court grants the prayer for interlocutory injunction, the court would have been misled into deciding at an interlocutory stage that the 2nd - 4th Defendants cannot arrest and contemplate to charge the Applicants until they have been served with forms 48, 49 and motion for contempt in accordance with the ***Sherriff and Civil Process Laws of Bendel State*** which said matter is principally meant for the substantive suit.

He submitted that it is trite law that in an application for a grant of injunction pending the determination of the substantive claim, the Judge has a duty to ensure that he does not in the determination of the application determine the same issues that would arise for determination in the substantive suit. On this point, he relied on the following cases: ***UNIVERSITY PRESS LTD V. I.K. MARTINS (NIG) LTD (2000) LPELR-3421(SC) at PP. 9-10 PARAS. F***; ***AGWU & ORS V. JULIUS BERGER (NIG) PLC (2019) LPELR-47625(SC) at PP. 17-18 PARAS. D-D.***

He urged the Court to resolve issue one in favour of the 1st Defendant.

ISSUE TWO

Arguing issue two, learned counsel submitted that the Applicants in their affidavit stated that there is a pending appeal and that this Court is enjoined in the face of the pending appeal to restrain the police. However, he submitted that the appeal is not in respect of a contempt proceeding or breach of an order of court.

However, he maintained that there is really no appeal pending. He said that what the Applicants have simply done is to attach an application filed before the Court of Appeal for extension of time within which to appeal and nothing more. He said that a similar application for extension of time for leave to appeal was earlier filed but same was struck out by the Justices of the Court of Appeal.

He submitted that there is no pending appeal before the Court of Appeal; that an application for extension of time to appeal cannot be taken for a pending appeal since no NOTICE OF APPEAL has been filed. On this point, he relied on the cases of ***JOSIAH CORNELIUS LTD & ORS V. EZENWA (1996) LPELR-1632(SC) at Pp. 39-40 paras;*** and ***QUADRI V. STATE OF LAGOS (2013) LPELR-21471(CA) PP. 11-12 PARAS. E.***

He urged the Court to resolve issue two in their favour and dismiss the application.

ISSUE THREE

Arguing this issue, learned counsel submitted that it is trite law that in determining an application for interlocutory injunction, the Court should consider the following factors:

a) The Legal right of the Applicants

b) Whether there exist triable issues
c) The balance of convenience
d) Irreparable damage/injury
e) The conduct of the parties
f) Alternative remedy.

On this position, he referred the Court to the following cases: ***OBEYA MEMORIAL HOSPITAL VS ATTORNEY – GENERAL OF THE FEDERATION & ANOR (1987) 7 SC (PT. 1) 52, OKAFOR VS ONWE (2003) F.W.L.R. (PT. 137) 1155CA***.

Thereafter, the learned counsel articulated his arguments on each of the relevant factors.

THE LEGAL RIGHT OF THE APPLICANTS

Counsel submitted that the Applicants have failed to show by their affidavit evidence that they are entitled to their right. He said that the Applicants have not shown that they are immune from police arrest or prosecution and this application is merely a means to escape and prevent the 2nd - 4th Defendant from performing their lawful duties. He said that the Applicants have not shown that they are entitled to the land in dispute which gave rise to the police arrest.

He maintained that they have not established a legal right worthy of protection and relied on the case of ***SARAKI VS KOTOYE (1990) 4 N.W.L.R (PT 143) PAGE 144, AT PAGE 187 PARA. B – C RATIO 11***.

SUBSTANTIAL ISSUES TO BE TRIED

Counsel submitted that the Applicants have not placed before the court any triable issues. That once a complaint of commission of crime is properly laid before the police, it is the constitutional and statutory duty of the police to investigate it. He said that the Police are also saddled with the prevention, detection of crime and preservation of life and property as their primary duties. That it is the right of the 1st Defendant to make a complaint to the police who have a duty to investigate the complaint.

He maintained that the issues available to be determined are such that if the court makes an attempt to determine same, it will be tantamount to deciding the main issues in controversy. He urged the Court not to determine the reliefs sought by the Applicants in the substantive suit at this interlocutory stage and cited the case of ***LADUNMI VS KUKOYI (1972) 1 ALL N.L.R (PT. 1) 133.***

BALANCE OF CONVENIENCE

On the balance of convenience, learned counsel cited the cases of ***KOTOYE VS CBN (1989) 1 NSCC 238*** and ***EDOSOMWAI VS. EREBOR (2001) 13 NWLR (PT.730) PAGE 265 AT PAGE 270*** and submitted that if this application is granted, it will give the Applicants leverage to enter into the 1st Respondent and his community's land which will in turn lead to a breakdown of peace in the community.

He maintained that the Court should not allow the Applicants who have not shown sufficient legal interest by way of a pending appeal to prevent the 1st Respondent from the use and enjoyment of the land in dispute since the essence of this application is only a decoy to unlawfully make nonsense of the judgment of the trial court in respect of ownership of the property which was awarded and possession given to 1st Defendant and his community.

CONDUCT OF THE PARTIES.

Learned counsel posited that it was after the 1st Defendant petitioned the Claimants by virtue of Exhibit A010, that the Claimants in a bid to equally escape justice, wrote a frivolous petition to the 3rd Defendant and it was when the Claimants realized that the petition did not favour them that they hurriedly instituted this suit.

He said that the conducts of the Applicants are such that this Court ought not to exercise its discretion in their favour.

STATUS QUO ANTE BELLUM

Counsel submitted that the condition existing before a petition was written against the Applicants is that the 1st Defendant and his community were awarded the possession of 295 hectares of land after which the Claimants forcibly entered the land to commit acts of malicious damage, threatening the 1st Defendant in the process and conducting themselves in a manner likely to cause a breach of the peace.

He said that the police have completed their investigations and are ready to charge the Applicants to court in the face of an overwhelming case of forgery of Court of Appeal documents. He maintained that the action taken by the police has been completed and the Applicants cannot restrain them from arresting, investigating and charging the Applicants to court. For this view, he relied on the cases of ***BENJAMIN & ANOR V. OBECHU & ANOR (2021) LPELR-56395(CA) at PP. 21 PARAS. D; Hassan vs. EFCC (2013) LPELR 22595; and Dokubo Asari vs. FRN (2007) 12 NWLR (Pt. 1048) 320.***

ISSUE FOUR

In the alternative, learned counsel submitted that this court should grant an accelerated hearing in place of an interlocutory injunction. He submitted that it is trite that whenever it is possible to accelerate the hearing of a case, rather than go through several pages of affidavits and taking very lengthy arguments on interlocutory injunction, the trial Court, should strive to accelerate the hearing of the substantive suit on the merits and arrive at a conclusion one way or the other.

Again, he maintained that where the reliefs sought in an application for interlocutory injunction are substantially the same as those sought in the substantive suit, the Court should refuse the interlocutory injunction and accelerate the hearing of the substantive suit and he cited the following cases: ***EYO v. RICKETTS (2005) All FWLR (Pt. 241) 387; GLOBE FISHING INDUSTRIES LTD & ORS V. COKER***

(1990) LPELR-1325(SC) P. 46, paras. A-C; and ***BASSEY & ORS V. EKENG & ORS (2016) LPELR-42053(CA) P. 8, paras. D-E***.

ISSUE FIVE

Learned counsel submitted that in the face of several exhibits attached to the 1st Defendant/Respondent's counter affidavit, it will be inequitable for the Court to exercise its discretion in favour of the Applicants and he relied on the following cases: ***DANA IMPEX LTD & ANOR V. ADEROTOYE (2005) LPELR-5534(CA) P.33, para D-E***; ***IROBUNDA V. IROEZI & ANOR (2018) LPELR-44576(CA) P. 31, paras. A-C***; and ***FAGBEMI V. OMONIGBEHIN & ORS (2012) LPELR-15359(CA) P. 47, paras. A-B***.

Finally, he urged the Court to refuse the application.

In his own written address, the learned counsel for the 2nd to the 4th Defendants/Respondents, ***N.A. Ukpebor Esq.*** formulated five issues for determination as follows:

1) ***Whether 2nd to 4th Respondents can investigate any allegation of crime/offence as in this case involving the Applicants by virtue of power conferred on them by the 1999 Constitution?***
2) ***Whether the invitation and investigation in the case reported to the police is a violation of the Applicant's fundamental human rights?***
3) ***Whether in the circumstance of this case, Applicants have any right to be protected under FREP Rules 2009?***
4) ***Whether the offence under investigation against the Applicants is known to law?***
5) ***Whether the 3rd Respondent is a non- juristic person that cannot sue or be sued?***

Thereafter, the learned counsel argued the five issues seriatim.

ISSUE ONE

On issue one, learned counsel submitted that by ***section 28 of ACJA of Edo State, 2016*** the police have power to prevent offences and injury to public property. He said that ***sections 54 and 55*** empower the police to arrest suspects to prevent offences. He submitted that the 2nd to 4th Respondents are under obligation to investigate allegation of crime given the powers conferred on them by ***section 4 of the Police Act***. That by virtue of ***section 315 CFRN 1999*** the ***Police Act*** forms part of the constitution as an existing law and he relied on the case of ***CHIEF GANI FAWEHIMI V. IGP & 2 ORS (2003) 1 NCC PG.414 AT 416 RATIOS 1, 2 AND 4***.

ISSUE TWO

On issue two, learned counsel submitted that the invitation of the Applicants by the 2nd to the 4th Respondents is not in any way unlawful or a violation of his fundamental human right and he relied on the case of ***FAJEMIROKUN V.C.B. (C.L)***

NIG, LTD (2002) 10NWLR PG 95 AT 99 RATIO 4 and Section 35(1) (c) of 1999 Constitution of Nigeria.

He maintained that this application is merely to shield themselves from investigation and prosecution and he relied on the court of Appeal case of ***AIG Anambra State v. UBA (2005) 33 WRN Pg 191 at 196 Ratio 5***.

ISSUE THREE:

On issue three, learned counsel submitted that in the circumstances of this case, the Applicants have no rights to be protected under the ***FREP Rules 2009***.

ISSUE FOUR:

Counsel submitted that the offences for which the Applicants were invited for interrogation are all known to our Nigerian Criminal Law and he referred to ***Sections 367, 64, 63(a) and 167(c) of Edo State Criminal Law, 2022***. He also referred to ***Section 35(1) (7) of CFRN*** and submitted that the police can arrest a person he reasonably believes to have committed an offence and he referred to the English case of ***WITSHIRE V BARRET (1965) ALL E/R PAGE 271.***

ISSUE FIVE:

Counsel submitted that the 3rd Respondents, the Assistant Inspector General of Police, Zone 5 Benin is a non-juristic entity that cannot sue or be sued and he cited the case of ***Agbonmagbe Bank Ltd vs. General Manager, G.B; Olivant Ltd (1961)1 All NLR 116***. He submitted that by the provisions of ***section 215 of the 1999 Constitution***, only the Inspector General of Police and Commissioner of Police of a State can be sued by his title.

Finally, he urged the Court to dismiss the application.

Upon receipt of the Counter-Affidavits and written addresses of the Defendants/Respondents, the Claimants filed Further Affidavits and Replies on points of law.

In the Applicants' Reply on Points of Law in response to the Counter Affidavit of the 1st Defendant, the Applicants' counsel submitted that the judgment of the lower court in HCOK/4/2016 is on appeal at the Appeal Court, Benin Division and as such, the lower court judgment is not complete until the appeal is determined by the Appeal Court. He maintained that when a matter is on appeal, all parties have a duty to refrain from doing anything that will render the judgment of the Appeal Court nugatory. He said that the exhibit E before the court is a subsisting Notice of Appeal filed to enable the court of appeal to be seized with jurisdiction to determine the true position and the mind of the trial court as per suit No: HCOK/4/2016.

Furthermore, learned counsel submitted that the case against the Claimants at the Magistrate's Court is a civil contempt of court and he relied on exhibit G, which is the charge sheet and the proof of evidence. He posited that only the High court (as

in this case) or the court whose order was flouted can try for contempt of its order made. He said that the Police cannot struggle for jurisdiction with the High Court.

He submitted that it is not the duty of the Police to arrest for a civil contempt of Court without the approval of the Judge. On the procedure for punishment for a civil contempt, he relied on the case of ***ALHAJI AHMED MOHAMMED GREMA V. ALHAJI AHMADU JANYUN & 2 ORS, FWLR, PART 54 PAGE 258, RATION 1, 2 AND 3***.

He maintained that the procedure adopted by the Police is wrong in law and ultra-vires their powers having no power to arrest and investigate contempt proceedings in civil actions. He maintained that the arrest, detention and prosecution of the Claimants over an alleged civil contempt of court over a case on appeal is illegal and unlawful and the court has a duty to restrain the illegality.

Furthermore, in the Applicants' Reply on Points of Law in response to the Counter Affidavit of the 2nd to 4th Defendants, the Applicants' counsel submitted that the judgment of the lower court in HCOK/4/2016 is on appeal at the Appeal Court, Benin Division and as such, all parties ought to stay all proceedings pending the determination of the appeal.

He pointed out that the first issue raised by the 2nd to the 4th Defendants/Respondents is that by section 28 of the ACJA of Edo State they have a duty to protect and prevent offences and injury to public property. He contended that the said section 28 does not have such provisions. Furthermore, he posited that nothing in the other sections relied upon by the 2nd to the 4th Defendant/Respondent empowers them to try for contempt; or any other offence before a lower court where that same offence is pending before a court of competent jurisdiction; or for an offence without carrying out proper investigation into the allegations made by both parties; for an offence when a suit has been filed against them.

Thereafter, the learned counsel made some similar submissions as contained in his Reply to the Counter-Affidavit of the 1st Defendant.

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 Applicants have satisfied the above enumerated conditions to warrant the exercise of the discretion of this Court in their favour.

From the facts disclosed in the Applicants' affidavit in support of this motion, sometime ago, the Claimants' community was sued along Ekoshodin village by the Eguavoen community in suit No: B653/95: David Iserhienrien & anot vs. Edo Alekuogie & ors. The Eguavoen community allegedly won the case and Ekoshodin appealed to the Appeal Court, Benin City.

During the pendency of the appeal, both the Ekoshodin and Eguavoen community allegedly entered into a settlement of the case which was filed to compromise their case. The Ekosodin community allegedly failed to respect the identity of the Claimant's community in Iyonmana as stated in the terns of settlement. This prompted the Claimants' community to file a suit against Ekosodin community and Eguavoen community at the High Court Okada in suit No: HCOK/4/2016.

The case was heard and the court gave judgment in the case on the 11TH December, 2018 where the court made a typographical error in the judgment and the trial judge retired immediately after the judgment**.** The Claimants' community allegedly filed an appeal to correct the mistake in the judgment. But while the case is on appeal, the Defendant's community has allegedly come to enforce the Courts judgment of.

In this present application, the Claimants/Applicants are seeking ***"an order of interlocutory injunction restraining the 1st Defendant from using the 2nd to the 4th Defendants, their officers, privies, assigns and servants to harass, intimidate, arrest and charge the Claimants to court on an allegation of contempt/breach of a court order/judgment when the Defendants have not followed the due process of law in enforcing the contempt of court by filing the necessary requires forms 48, 49 and motion for contempt as required by the Sheriff and civil process Law of Bendel***

State in line with the legal jurisprudence of Nigeria, when there is a pending appeal in this case, pending the hearing of the substantive suit."

In his opposition to this application, the learned counsel for the 1st Defendant has forcefully submitted that in reliefs (a), (b) and (d) of the substantive suit, the Claimants are seeking substantially the same reliefs as contained in this application for interlocutory injunction. For the avoidance of doubt, the said reliefs (a), (b) and (d) of the substantive suit are reproduced as follows:

"(a) A declaration that the arrest and detention by the claimants on the ground that they disrespected the court order without a warrant signed by the judge after the claimants have been served with forms 48, 49 and motion for contempt heard and granted and a warrant signed by the judge is illegal, unlawful and amounts to false imprisonment;

(b) A declaration that the police has no power to arrest and charge in a contempt of court in a civil case under the Sheriff and civil process laws of Bendel State of Nigeria applicable in Edo State;

(d) An order of perpetual injunction restraining the Defendants, their agents, servants and privies from further arrest, detain or contemplate to charge them to the court for an alleged civil contempt of the court without warrant of arrest duly signed by a judge of the high court after hearing.''

Clearly upon a juxtaposition of the above reliefs with the relief of the Claimants/Applicants in this present application, it is apparent that the Applicants are trying to use one stone to kill two birds. It is evident that if this application is granted, the Claimants/Applicant would have succeeded in making the Court to make a premature finding that the police cannot arrest and charge the Claimants to court for the alleged contempt of court. That would completely render the substantive suit nugatory.

Furthermore, in the cause of canvassing arguments in respect of this application, the learned counsel for both parties raised issues about the validity of some court processes and the issue of whether there is an appeal pending at the Court of Appeal. It is evident that such issues are meant to be considered in the determination of the main suit and not at this interlocutory stage. I cannot make any finding on the aforesaid issues at this stage.

It is settled law that 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.***

Thus, where the issue for determination in a substantive matter overlaps into the interlocutory application the option open to the trial Court is to refuse the application for interlocutory injunction and order for hearing of the substantive suit. See the case of ***AGWU VS. JULIUS BERGER NIGERIA PLC. (2019) 11 NWLR (PT. 1682) 165 at 185 - 186 PARAS D – A***.

From the foregoing, ***I hold that the Claimants/Applicants have not fulfilled the requirements to enable this Court exercise its discretion to grant this application. The application is accordingly dismissed with N50, 000.00 (Fifty Thousand Naira) costs in favour of the Defendants/Respondents.***

P.A.AKHIHIERO

JUDGE

22/03/2024

<u>COUNSEL:</u>

G.E. OAIKHENA ESQ----------CLAIMANTS/APPLICANTS

ANTHONY OSULA ESQ----------1ST DEFENDANT/APPLICANT

N.A. UKPEBOR ESQ----------2ND – 4TH DEFENDANTS/APPLICANTS