

**IN THE HIGH COURT OF JUSTICE**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

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

**ON MONDAY THE**

**16<sup>TH</sup> DAY OF DECEMBER, 2024.**

**BETWEEN:**

**SUIT NO. B/641/2023**

**1. ANDREW OMONZOGIE**

**2. MARIA OMONZOGIE**

**3. GRACE OMONZOGIE**

**4. PETER OMONZOGIE -----(CLAIMANTS/APPLICANTS)**

**5. ESTHER OMONZOGIE**

**AND**

**1. PASTOR IGHODALA MICHEAL OMONZOGIE-(DEFENDANTS/RESPONDENTS)**

**2. MR. VICTOR OMONZOGIE**

**RULING**

This is a Ruling on a Motion on Notice filed on the 25<sup>th</sup> of March, 2024 brought pursuant to *Order 40 Rules 1 and 5 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:

- 1. An Order of Interlocutory Injunction restraining the Defendants/Respondents whether by themselves, agents, servants, privies or assigns whosoever, and howsoever described from selling, leasing tampering with, dealing or appropriating in any manner*

*whatsoever, transferring, mortgaging, assigning and or alienating the equitable and legal interest of the Claimants/Applicants in the estate of late elder Matthias Ehighale Omonzogie particularly the property at No. 25, James Watt Road, Benin City, property at No. 3, Omonzogie Drive, Off Giwa-Amu Street, G.R.A., Benin City, and all the parcels of land admitted by the Defendants/Respondents in paragraph 4 (a-1) in their Joint Statement of Defence in this suit as being under litigation the subject matter in dispute, pending the hearing and final determination of the substantive suit filed by the Claimants/Applicants.*

**OR ALTERNATIVELY:**

**2. AN ORDER for the maintenance of the status quo ante bellum, pending the hearing and final determination of the substantive suit herein.**

**3. AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances.**

The motion is supported by an 11 paragraphs affidavit and a Written Address of the learned counsel for the Claimants/Applicants.

From the facts contained in the Claimants/Applicants' supporting affidavit, the Claimants/Applicants' case is that they are the children of Late Elder Matthias Ehighale Omonzogie who died intestate on the 29th January, 2019 leaving behind the estate now subject-matter of litigation herein

They allege that the estate of their father has neither been shared nor partitioned among the surviving heirs as instructed by their late father and in accordance with the customary law applicable to the deceased.

They maintain that pending the sharing and partitioning of the estate among the Applicants and Respondents, ownership of the estate devolve on the Claimants and the Defendants as equal and joint owners.

According to the Applicants, lately, the Defendants/Respondents have started laying claims wrongly to the ownership of the estate and to dissipate same without recourse to the Claimants and the Apai Omonzogie family.

They said that unless the Defendants/Respondents are restrained by this Honourable Court, there will be nothing for the Claimants/Applicants to return to as the res would have been permanently destroyed.

At the hearing of the application, the learned counsel for the Claimants/Applicants, ***Luqman Muhammad Esq.*** 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 as follows:

***“Whether the Claimants/Applicants are entitled to the grant of the reliefs sought in this application having regards to the peculiar circumstances and facts of this case.”***

Arguing the sole issue for determination, the learned counsel submitted that the Applicants are entitled to a grant of the reliefs sought in this application having regards to the peculiar circumstances and facts of this case.

He posited that an application of this nature is at the discretion of the Court which must be exercised judicially and judiciously, taking certain factors into consideration.

He submitted that, the basis of the claim for injunction is the contention of the Applicants that they have a legal right to protect and that it is necessary to preserve the res pending the determination of the substantive suit. He said that the fact that an injunction is granted pending the determination of the substantive suit does not mean that the court has made a determination of the matters to be decided therein.

He posited that the principles for the grant of an interlocutory injunction were laid down by the Court of Appeal in the case of *Dekit Const. Co. Ltd v. Adebayo (2010)15NWLR (Pt 1217) 590 at 593*.

He listed the principles in his written address and also cited the following decisions on the point: *Obeya Memorial Specialist Hospital v. A. G. Fed. (1987) 3 NWLR (Pt.60)325; A.G. Fed. V. Guardian Newspapers Ltd. (1999) 9 NWLR (Pt. 618) 187; Missini v. Balogun (1968) 1 All NLR 318; and Kotoye v.CBN (1989) 1 NWLR (Pt. 98) 419*.

Thereafter, he articulated his arguments on the various principles involved.

On the issue of **serious question to be tried**, learned counsel submitted that, all that the Applicant needs to show is that there is a serious issue to be tried and not that the issue is capable of success and he relied on the case of *Oyeyemi v.Irewole Local Government, Ikire (1993) 1 NWLR (Pt 270) 462 at 461*. He also relied on the decision of the Supreme Court in the case of *Onyisoh v. Nze Christopher Nnebedum & Others (1992) 3 NWLR (Pt 229) 315 at 318*.

He submitted that there are serious issues to be tried in this case as demonstrated by the Claimants/Applicants’ Statement of Claim and the averments in the Claimants/Applicants’ affidavit in support of this application.

He said that in the main suit, the Claimants/Applicants are strongly challenging the vires of the Defendants/Respondents to sell, assign or transfer the equitable and legal interest of the

Applicants in and over any or all the properties left behind by their late father as shown in the Statement of Claim.

He urged the Court to hold that there is a serious question to be tried by this Honourable Court, which can only be resolved at the hearing of the substantive suit.

On the issue of **Balance of Convenience**, counsel submitted that the balance of convenience is in favour of the Claimants/Applicants.

He referred the Court to the case of *Kotoye v. CBN (1989) 1 NWLR (Pt 98) 419* and posited that balance of convenience means that, more justice will result in granting the application than in refusing it.

He submitted that the Claimants/Applicants have shown that they are the beneficial joint owners of the Estate of their late father until there is a proper partitioning and sharing of the Estate among the surviving children. Therefore, he posited that it will be in the interest of justice to grant this application to prevent the Defendants/Respondents from dissipating the subject matter of this suit.

On the issue of **inadequacy of damage**, counsel submitted that damages will not be adequate to compensate the Claimants/Applicants if the Defendant/Respondent is not prevented from further dissipation of the Estate.

He submitted that an application for injunction would be granted where the applicant shows that no extent of monetary damages can compensate him for any loss he would suffer if an injunction is not granted and he wins the substantive suit after the res has been destroyed. He relied on the following decisions on the point: *Commissioner for Works, Benue State v. Devcon Ltd.(1988)3 NWLR (Pt.83)410*; *Orji v. Zaria Industries Ltd. (1992) 23 NSCC (Pt.1) at 9-10*; and *Kotoye v. C.B.N (supra)*.

On the **conduct of the Applicant**, learned counsel posited that since the Claimants/Applicants' respect the principle of *lis pendens*, they have not interfered with the res in any manner before, during or after instituting this suit.

Again, he submitted that the Claimants/Applicants timeously brought this application to prevent the Defendants/Respondents from carrying out their plans of permanently depriving the Claimants of their fair share of the Estate of their late father. He said that unless this Honourable Court intervenes promptly, the res would have been completely destroyed by the Defendants.

Finally, he informed the Court that the Claimants/Applicants gave an **undertaking as to damages** in paragraph 7 of the affidavit in support of this application, to pay compensation to the Defendants/Respondents in the event that this order ought not to have been granted.

He therefore urged the Court to grant this application.

In opposition to this application, the Defendants/Respondents filed a Counter Affidavit of 25 paragraphs and a Written Address of their counsel.

From the facts contained in the Counter-Affidavit of the Defendants/Respondents, their case is that the first Defendant is the eldest son and the head of the late Mr. M.E. Omonzogie family while the Claimants are his younger uterine siblings.

They maintain that this Application is a gross abuse of court process and a deliberate ploy to deceive and mislead this Court. They alleged that the Claimants/Applicants failed, neglected and deliberately refused to disclose to this Honourable Court, the existence of the ARBITRAL AWARD from the EBELLE TRADITIONAL COUNCIL, Ebelle, Igueben Local Government Area, Edo State dated 24th September 2019 that adjudicated upon the same issues and subject matter between the same parties as the claim before this court and published an Arbitral Award.

According to the Defendants/Respondents, a few months after the death and burial of their late father, the Claimants/Applicants summoned the Defendants/Respondents before the Ebelle Traditional Council, seeking customary arbitration of the dispute on the distribution of the estate of their late father.

They alleged that the Ebelle Traditional Council carried out arbitration with the consent of all the parties, delivered a verdict in favour of the first Defendant and published an award dated the 24th September 2019.

The Defendants/Respondents attached the extract of the Arbitral Award as Exhibit “B” to their Counter-Affidavit.

In his written address, the learned counsel for the Defendants/Respondents, *D.O. Unuareokpa Esq.* formulated two issues for determination as follows:

- 1) ***WHETHER THIS APPLICATION FOR INTERLOCUTORY INJUNCTION IS NOT AN ABUSE OF COURT PROCESS, IN VIEW OF THE FACTS AND EXHIBIT BEFORE THE COURT; and***
- 2) ***WHETHER THE CLAIMANTS/APPLICANTS ARE BOUND BY THE DECISION IN THE ARBITRAL AWARD FROM THE EBELLE TRADITIONAL COUNCIL TO***

***WHICH THEY VOLUNTARILY SUBMITTED THEIR DISPUTE FOR CUSTOMARY ARBITRATION***

Thereafter, the learned counsel for the Defendants/Respondents articulated their arguments on the two issues seriatim.

**ISSUE ONE**

Arguing this first issue, learned counsel submitted this application is a gross abuse of the Court's process designed solely by the Claimants/Applicants to deceive and mislead this Court into granting their application for interlocutory injunction.

He submitted that the Claimants/Applicants have deliberately concealed and suppressed material facts from the Court in order to mislead the court.

In particular, he maintained that the Claimants/Applicants deliberately refused to disclose the existence of the ARBITRAL AWARD from the EBELLE TRADITIONAL COUNCIL which had adjudicated upon and settled the same issues which forms the subject matter of this suit. He referred the Court to the contents of the Arbitral Award from the Ebelle Traditional Council.

Learned counsel submitted that the institution of this action and the filing of this application by the Claimants amount to an abuse of judicial process because it is clear that the aim of approaching this court is to use the process to irritate, annoy, harass and intimidate the Defendants. He relied on the case of *AFRICAN RE-CORP. VS JDP CONSTR (NIG) LTD (2013) 13NWLR (PT) 838) PG 609 AT 635 PARAS Z F-G.*

Furthermore, learned counsel submitted that it is an abuse of Court process when a party such as the Claimants in the instant case takes a most irregular and an unusual action in the judicial process merely to waste the time of the Court or use the Court process in bad faith. He referred the Court to the case of *OJO VS A.G. OYO STATE (2008) 15 NWLR (PT 1110) PG.309AT PG. 323-3 PARA S. E-H; 328 PARA, B.*

Counsel posited that it can be gleaned from the facts of this case that the Claimants who were also the claimants at the customary arbitration of the EBELLE TRADITIONAL COUNCIL in September 2019 have turned round in 2023 to file this suit, to re-litigate the same issues determined under the customary arbitration.

Counsel submitted that where a Court finds that a process or action is an abuse of its process, the Court should dismiss the action in its entirety and he relied on the cases of *JIMOH Vs STARCO NIG. LTD (1998) 7 NWLR (PT. 558) at Pg 523; African Re. Corp. v. JDP Const. (Nig.) Ltd (Supra); and UBA PLC V. DANA MOT ORS LTD.(2018) LPELR-44101 (CA).*

He urged the Court to resolve Issue One in favour of the Defendants/Respondents.

## **ISSUE TWO**

Learned Counsel submitted that the Claimants/Applicants are bound by the decision in the Arbitral Award issued by the Ebelle Traditional Council having voluntarily submitted their dispute to the Council for customary arbitration and participated fully till an award was published.

He said that the Claimants/Applicants accepted the verdict of the arbitrators and cannot now resile from it to file this suit simply because they lost.

He submitted that it is settled law that where customary arbitration is pleaded and proved it is binding on the parties and it also operates as *estoppel per rem judicatum* and he relied on the following decisions: *AWOSILE V. SOTUNBO [1992] NWLR [PT.243] 1 AT 29 E*; *UFOMBA V. AHUCHAOGU (2003) 8 NWLR [PT. 821] 1 AT PAGE 37*; and *ADEBANJO & ANOR V. ADESANYA & ORS (2018) LPELR-46661 (CA)*.

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.

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 contents of the Claimants/Applicants supporting affidavit, the Claimants/Applicants have maintained their right to the property in dispute is predicated on the fact that the estate of their late father has neither been shared nor partitioned among the surviving heirs in accordance with the customary law applicable to the deceased. According to them, pending the sharing and partitioning of the estate among the Applicants and Respondents, both parties are joint owners of the property.

Thus, by their affidavit evidence, the Applicants have shown that they have a legal right to the property which they seek to protect with this interlocutory injunctive order.

However, in vehement opposition to this application, the Defendants/Respondents are seriously contending that the by virtue of the ARBITRAL AWARD of the EBELLE TRADITIONAL COUNCIL, Ebelle, the 1<sup>st</sup> Defendant/Respondent is the present owner of the property. They have urged the Court to hold that the arbitral award is binding on the parties.

It is apparent that the issue of the ownership of the disputed property is part of the issues to be determined in the substantive suit. So it is my view that it is premature to make any finding on that point 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 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; and Mortune v Gimba (1983) 4 NCLR 237 at 242.*

I am of the view that at this interlocutory stage, I cannot make any finding on the purported arbitral award or the issue of abuse of court process raised by the Defendants/Respondents. Those salient issues will be determined in the substantive suit.

From the available evidence, I think the Applicants have identified their legal rights which they seek to protect in relation to the disputed property. I am of the view that at this stage, the Claimants/Applicants have adduced sufficient evidence to establish the fact that they have some legal rights to protect 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 and the Defendants/Respondents over the disputed property, particularly regarding the ownership of the property.

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 their supporting affidavit, the Applicants have alleged that while this suit is pending, the Defendants/Respondent have been making moves to further dissipate the estate of their late father by introducing unsuspecting buyers to inspect some of the property in dispute. They allege that they placed a written caveat on the property which was allegedly deleted by the Respondents. They maintain that the balance of convenience is on their side.

The Defendants/Respondents did not state what they stand to lose if this application is granted. They dwelt more on the effect of the arbitral award which they allege was in favour of the 1<sup>st</sup> Defendant/Respondent.

From the foregoing, I hold that the balance of convenience is more in favour of the Claimants/Applicants.

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”***

In their affidavit in support of this application, the Applicants asserted that they cannot be adequately compensated for the loss or hardship the destruction of the subject matter of this suit would cause, if this application is not granted and they eventually win the case. They maintain that irreparable injury and untold hardship would be done to the Claimants/Applicants if this application is refused and the Defendants are allowed to sell the assets before the determination of the substantive suit.

From the available facts, I am of the view that if the Claimants/Applicants eventually win this case, damages would not be adequate compensation for them to assuage their losses.

On the condition of whether the Applicants were prompt in bringing the application, I do not think there was any inordinate delay on the part of the Applicants 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 7(p) of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendants/Respondents if at the end, this application is one which ought not to have been granted.

From the foregoing it is apparent that the Claimants/Applicants have met with all the requirements to enable this court exercise its discretion to grant this application. The sole issue for determination is therefore resolved in favour of the Claimants/Applicants.

Consequently, the Claimants/Applicants are granted ***an order of Interlocutory Injunction restraining the Defendants/Respondents whether by themselves, agents, servants, privies or assigns whosoever, and howsoever described from selling, leasing tampering with, dealing or appropriating in any manner whatsoever, transferring, mortgaging, assigning and or alienating the equitable and legal interest of the Claimants/Applicants in the estate of late elder Matthias Ehighale Omonzogie particularly the property at No. 25, James Watt Road, Benin City, property at No. 3, Omonzogie Drive, Off Giwa-Amu Street, G.R.A., Benin City, and all the parcels of land admitted by the Defendants/Respondents in paragraph 4 (a-1) in their Joint Statement of Defence in this suit as being under litigation the subject matter in***

*dispute, pending the hearing and final determination of the substantive suit filed by the Claimants/Applicants.*

*I award the sum of N50, 000.00 (Fifty Thousand Naira) as costs in favour of the Claimants/Applicants.*

**P.A.AKHIHIERO**  
**JUDGE**  
**16/12/2024**

**COUNSEL:**

- 1. LUQMAN MUHAMMAD ESQ.-----CLAIMANTS/APPLICANTS**
- 2. D.O. UNUAREOKPA ESQ.-----DEFENDANTS/RESPONDENTS**