

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
13TH DAY OF OCTOBER, 2022.

BETWEEN:

SUIT NO: B/935/2022

MRS. CLARA OSADOLOR _____ **CLAIMANT/APPLICANT**

AND

1. OSAGBOHIEN UHUWANGHO
2. MUFUTAU SULEMAN ABIODUN } **DEFENDANTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice, dated 28th September, 2022 and filed on the 29th of September, 2022, brought pursuant to Order 40 Rules 2(1) & (3) of the High Court (Civil Procedure) Rules of Edo State 2018 and under the inherent jurisdiction of this Court, praying for the following orders:

- 1. An order of interlocutory injunction restraining the Defendants/respondents, their privies, officers, agents, employees or howsoever called from further entering, Trespassing, illegally Developing and/or selling all or any part of all that piece or parcel of land measuring 100 feet by 300 feet (2570.397 Square meters) with beacon numbers SC/ED K8605S, SC/ED K8606S, SC/ED K8607S, SC/ED K8608S lying and situate at along Benin Sapele Expressway, Obaretin Community very close to the Anglican Church in Obaretin Community, Ikpoba-Okha Local Government Area, Benin City, Edo State. delineated by survey Plan No: ATM/ED2012/127 pending the determination of the substantive suit filed contemporaneously with this application.***

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

The application is supported by a 32 paragraphs affidavit deposed to by the Claimant/Applicant herself and a written address of the Claimant's/Applicant's counsel.

In his written address, the learned counsel for the Claimant/Applicant, *A.U.Asemota Esq.* formulated a sole issue for determination as follows:

“Whether the Claimant has placed sufficient materials before the court upon which the court could exercise its discretion in granting the order sought in the motion paper.”

Arguing the sole issue for determination, the learned counsel enumerated the principles governing the grant of an interlocutory order of injunction and relied on the following cases: ***AGBOGU V. OKOYE (2008) ALL FWLR PART 414 AT PAGE 1494 PARTICULARLY AT PAGE 1497; AKAPO V HAKEEM HABEEM (1992) 6 NWLR PART 247 AT PAGE 266; and OBEYA MEMORIAL HOSPITAL VS A.G FEDERATION (1987) 3 NWLR PART 60 AT PAGE 325.***

Thereafter, the learned counsel argued each of the principles seriatim.

SERIOUS QUESTION TO BE TRIED AND A LEGAL RIGHT TO BE PROTECTED.

Counsel submitted that the Legal Rights of the Claimant/Applicant can be gleaned easily from the paragraphs of the affidavit in support of this application. That the Applicant has deposed to the fact that she is the legitimate owner of the land in dispute by virtue of the application for Farm land/ Building plot of land made by her to the Enogie and elders of Obaretin Community and approval issued to her by the Enogie and elders of Obaretin Community upon her purchase of the land, together with the letter of Confirmation of Purchase issued to her by the Enogie and Elders of Obaretin Community. He submitted that there is a triable issue and relied on the case of ***Registered Trustee of Ugborodo v. Ojogor (2014) 46 WRN 148.***

He posited that the 1st and 2nd Defendants/Respondents have continued to trespass on the Claimant/Applicant's land, parading as the owner of the land and the Defendant/Respondents have destroyed the foundation laid by the Claimant/Applicant, erected stores on the land and is about to sell the land.

BALANCE OF CONVENIENCE.

He submitted that the balance of convenience is in favour of the Claimant /Applicant. That the Claimant has the appropriate documents of title over the land.

THE APPLICANT IS NOT GUILTY OF ANY DELAY

He posited that the Applicant on discovering the Respondents' activities on the land, she did not waste time to report to the Enogie and Elders of the Obaretin Community as the governing authority of the community. She also reported the issue to the Protection of Property Committee and the Nigerian Police Force. However, the Respondents persisted in the trespass on the Applicant's land.

INADEQUATE COMPENSATION BY THE AWARD OF DAMAGES

He submitted that the Claimant/Applicant cannot be adequately compensated in damages if the 1st and 2nd Defendants are not restrained from continuing in their alleged acts of trespass.

He submitted that the purpose of interlocutory injunction is to preserve the Res pending the hearing and determination of the substantive suit otherwise at the end of the case the Res would have been completely destroyed.

UNDERTAKING AS TO DAMAGES.

He pointed out that the Claimant/Applicant has given an undertaking to pay damages in paragraph 30 of the affidavit in support of this motion to indemnify the Defendants in the event that this application for interlocutory order of Injunction ought not to have been granted.

He finally urged the Court to grant the application.

The Defendants/Respondents were served with the motion papers but they failed to appear in Court, neither did they file any response to the application. In effect, the application was unopposed. It is settled law that where facts contained in an affidavit are not countered, they are deemed to have been admitted. See the cases of: *NWOSU V IMO STATE ENVIRONMENTAL PROTECTION AGENCY 1990 2 NWLR Pt. 135, 688; and EGBUNA V EGBUNA 1989 2 NWLR Pt. 106 773, 777.*

Thus, the Respondents are deemed to have admitted all the facts contained in the Applicant's affidavit in support of this application.

However, the mere fact that the application is not opposed does not guarantee the success of same. The Applicant still has the burden to convince the Court to exercise its discretion in her favour.

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 her favour.

The most important pre-condition is for the applicant to establish that she 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 available evidence, I think the Applicant has identified a legal right which she seeks to protect. In the supporting affidavit, the Applicant stated that she is the legitimate owner of the land in dispute by virtue of the application for Farm land/ Building plot of land made by her to the Enogie and elders of Obaretin Community and approval issued to her by the Enogie and elders of Obaretin Community upon her purchase of the land, together with the letter of Confirmation of Purchase issued to her by the Enogie and Elders of Obaretin Community. She attached her approval as Exhibit “A” to the supporting affidavit.

I am of the view that at this stage, the Applicant has adduced sufficient evidence to establish the fact that she has a legal right to protect in relation to the parcel of 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-emphasised 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”***.

In her supporting affidavit, the Applicant stated that upon discovering the Respondents’ activities on the land, she made reports to the Enogie and Elders of the Obaretin Community, to the Private Property Agency and to the Nigerian Police Force before she instituted this suit.

From the foregoing facts, I am of the view that there are substantial issues to be tried in the substantive suit.

On the balance of convenience, the applicant must show that the balance of convenience is on her 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 she will suffer more if this application is not granted and the Respondents are allowed to continue to alter the *res*, the subject matter of this suit. Meanwhile, the Respondents have not shown what they stand to lose if this Court makes an order restraining them from continuing the alleged acts of trespass.

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. 510*, the court stated that:

“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 the light of the circumstances of this case, I do not think damages can adequately compensate the Applicant if the Respondents are allowed to continue their activities on the land.

On the condition of whether the Applicant was prompt in bringing the application, the Applicant stated how upon discovering the Respondents’ activities on the land she promptly made reports to the Enogie and Elders of the Obaretin Community; the Private Property Protection Agency and the Nigerian Police Force before filing this suit. Thus, there was no delay whatsoever on the part of the Applicant.

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 30 of the supporting affidavit, the Claimant/Applicant gave an undertaking to pay damages in the event that it turned out that this application ought not to have been granted.

On the whole, I am satisfied that the Claimant/Applicant has fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and ***I hereby make an order of interlocutory injunction restraining the Defendants/Respondents, their privies, officers, agents, employees or howsoever called from further entering,***

trespassing, illegally developing and/or selling all or any part of all that piece or parcel of land measuring 100 feet by 300 feet (2570.397 Square meters) with beacon numbers SC/ED K8605S, SC/ED K8606S, SC/ED K8607S, SC/ED K8608S lying and situate at along Benin Sapele Expressway, Obaretin Community very close to the Anglican Church in Obaretin Community, Ikpoba-Okha Local Government Area, Benin City, Edo State, delineated by survey Plan No: ATM/ED2012/127 pending the determination of the substantive suit filed contemporaneously with this application.

I make no order as to costs.

P.A.AKHIHIERO

JUDGE

13/10/2023

COUNSEL:

A.U. ASEMOTA ESQ.....CLAIMANT/APPLICANT

UNREPRESENTED.....DEFENDANTS/RESPONDENTS

