

IN THE HIGH COURT OF JUSTICE

IN THE BENIN JUDICIAL DIVISION

HOLDEN AT BENIN CITY

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

ON MONDAY THE

30TH DAY OF MAY, 2022.

BETWEEN:

SUIT NO. B/245/2021

1. **MR. DADDY OSAYANTIN EDOKPOLOR**
2. **MRS. ISOKEN ERUNMWUSE**
*(for themselves and on behalf of
The members of the family of
LATE PA DANSON IKHINMWIN EDOKPOLOR
Except the 2nd – 5th Defendants)*

} **CLAIMANTS/APPLICANTS**

AND

1. **MR. TERRY ENADEGHE**
2. **MR. IYI EDOKPOLOR**
3. **MR. EVBAZIEGBERE EDOKPOLOR**
4. **MR. OSCAR EDOKPOLOR**
5. **MR. ABIODUN EDOKPOLOR**
*(for themselves and those supporting the
2nd – 5th Defendants in respect of
The subject matter)*

} **DEFENDANTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice dated and filed on the 29th of March, 2021 brought pursuant to Order 40 Rules 1, (5)2, 6(1) and 7 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 the following orders:

AN ORDER OF INTERLOCUTORY INJUNCTION restraining the defendants/respondents whether by themselves, their agents, servants, assigns, cohorts, representatives and anyone

connected with the respondents in anyway whatsoever and howsoever from demolishing, restructuring and/or defacing the house situate at and known as No 96, Owina Street (By Eguadase Junction) Benin City. Edo State and/or doing anything to the said house pursuant to the purported sale of same to the 1st respondent pending the determination of the substantive suit.

AND FOR SUCH further order or orders this Honourable Court may deem fit to make in the circumstances of this case.

The motion is also supported by a 31 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

At the hearing of the application, the learned counsel for the Claimants/Applicants *E.F. Osifo Esq.* adopted his written address as his arguments in support of the motion.

In his written address, the learned counsel for the Applicants submitted that the vital factors that the courts are enjoined to take into consideration when determining an application as of the nature are:

- 1) *Whether the applicants have a legal right in the subject matter of the suit;*
- 2) *Whether there is threat to the applicant's legal right;*
- 3) *Whether there are substantial issues to be determined in the substantive suit;*
- 4) *Whether the balance of convenience is in favour of granting the application;*
- 5) *Whether monetary award of damages can adequately compensate the applicant if the application is refused and he eventually wins in the substantive case;*
- 6) *Whether the applicants have behaved in any reprehensible way after the cause of action arose and; and*
- 7) *Whether the applicants have undertaken to pay damages to the respondent if the application is granted.*

In support of his submission, he cited the following cases: *Kotoye v CBN (1989) 1 NWLR (Pt98) 419 at 422; Akapo v Hakeem – Habeeb (1992) 6 NWLR (Pt247) 266 at 270-273; and Edosomwan v Erebor (2001) 13 NWLR (Pt 730) 265 at 267-277.*

Learned counsel submitted that a consideration of the facts of this case as captured in the affidavit in support of the motion in relation to the above factors would reveal compelling factors to grant this application.

In the first place, he submitted that paragraphs 8-16 of the affidavit in support of the motion and Exhibit A attached thereto show that the applicants have protectable legal right in the subject matter of this suit which is No 96, Owina Street, (opposite Eguadase Junction), Benin City. He said that it was part of the estate of the applicants' late father, Pa Danson Ikhinmwin who died in 1987, was buried and his estate was shared to his children. He said that the subject matter of this suit was shared to nine of his children. He said that Exhibit A which is the document of sharing, confirms the applicants to be Co-owners of the property so the applicants have a right of inheritance to be protected in this suit.

Counsel posited that paragraphs 17, 21 and 25 of the affidavit in support show that the legal right of the applicants is being violated or about to be irredeemably violated by the respondents. He said that the 2nd to 5th respondents have purportedly sold the property jointly owned to the 1st respondent and they are making arrangements to demolish the house.

He posited that the balance of convenience lies in favour of the applicants. He said that the question is who will suffer more if this application is refused and the applicants eventually win in

the substantive suit? He maintained that if the house is demolished and the applicants win at the end of the day, they will suffer more as they would have lost their legacy from their father forever.

He posited that on the other hand, the respondents have nothing to lose if this application is granted and their intended new activity on the property is delayed. He said that the Court of Appeal has held in the case of *Edosomwan V Erebor (Supra) at 291-292* that it is better to delay new activities on the land and retain the existing activities in considering an application for interlocutory injunction. He urged the Court to hold that the balance of convenience lies in favour of granting this application.

He further submitted that there are serious issues to be determined in the substantive suit, that there is a genuine dispute arising from the cause of action. He submitted that the court has held in the case of *Ezebilo v Chinwuba (1997) 7 NWLR (Pt 511) 108 at 123-124 paras F-B* that the endorsement of the claim on the writ of summons reveals the seriousness of the issues to be determined. He posited that in the determination of the suit, serious questions of law equity and facts would arise for determination.

He submitted that damages cannot adequately compensate the applicants if the house in question is demolished and they win in the substantive suit. He said that if the application is refused, the property would have been reduced to ground zero at the time the case is concluded and that would mean a permanent irredeemable loss that money cannot assuage. He submitted that where the type of loss complained of cannot be adequately assuaged by award of monetary damages, injunction is an appropriate remedy. See: *Union Beverages Ltd V Pepsocola Int. Ltd (1994) 3 NWLR (Pt 330) 1 at 6 Ratio 13*.

Furthermore, he posited that the applicants have undertaken in paragraph 29 of the affidavit in support of motion of their willingness to pay damages to the respondents if the application is granted but later discovered to have been induced by misrepresentation of facts.

Finally, he posited that the applicants have not manifested any reprehensible conduct since the dispute arose so he urged the Court to grant the application.

In opposition to this application, the Defendants/Respondents filed a Counter-Affidavit of 26 paragraphs and a written address of counsel.

In his written address, the learned counsel for the Defendants/Respondents *C.C. Osarenkhoe Esq.* formulated a sole issue for determination as follows:
“Whether a party in the right can be restrained.”

Arguing the sole issue for determination, learned counsel submitted that before an order of interlocutory injunction is granted, the conduct of the applicants must be considered by the Court. He posited that the claimant filed this suit because the 2nd to 5th Defendants refused to sell this property to him when the 1st Claimant wanted to buy same. See paragraphs 17, 18 of the Counter affidavit.

He also referred the Court to paragraphs 10, 11 and 12 of the affidavit in support of the motion where the applicant admitted that the portions of the land in dispute do not belong to him. Again he posited that the 2nd Claimant/Applicant was given N1, 000,000.00 (One Million Naira) after the sale of the portion belonging to her and she took it happily without complaint. He wondered why the 2nd Claimant was joined as an applicant to this motion.

Learned counsel submitted that the conduct of the Applicants is reprehensible, misleading and an abuse of court process and he cited the case of *LEASING COMPANY NIG. LTD. VS TIGER INDUSTRY LTD (2007) ALL FWLR (part 347) page 659 R 4*.

Furthermore, he submitted that an interlocutory injunction is not a tool to encourage the illegal act of the claimant in order to and give an undue advantage over the Defendant. He said

that an interlocutory injunction can only be granted to restrain a threatened wrong to a right and not to restrain the legal enjoyment of a legal right. See the case of *AKIBU & 4 ORS VS ODUNTAN & 5 ORS (1991) 2 NWLR part 171 at page 1 Ratio 1*.

Counsel referred the Court to Exhibit “A” attached to the motion where these properties were shared to various children of late Dawson Ikhinmwini Edokpolor. He said that the said Exhibit “A” indicated that the various beneficiaries took possession of their various portions shared to them. He therefore submitted that the law that allows somebody to possess land also carries with it the right to dispose of such land and this was the right which the Defendants have exercised over their land.

Counsel further submitted that there are no serious questions or substantial issues to be tried and he relied on paragraph 26 of the Counter affidavit and paragraphs 15, 16 of the affidavit in support of the motion.

He further submitted that the balance of convenience is not in favour of the Applicants. He referred to paragraphs 24, 21, 22, & 23 of the Counter affidavit and submitted that the sharing document which the Applicants are relying on did not forbid any beneficiary from selling his or her own portion of the land. He referred to paragraph 9 of the Counter affidavit to show that a beneficiary one Mr. Moderate sold a portion of the land shared to his mother and there was no complaint. Also in paragraph 16 of the Counter affidavit he noted that another beneficiary, Matthew Edokpolor sold the portion shared to him and his late brother, Joseph. He said that there was no complaint from the Claimants or any person over these sales.

Counsel submitted that monetary compensation will be adequate compensation to the Applicants and he referred to paragraphs 17, 18, 19 and 25 of the Counter affidavit. He emphasized that this property was never declared as a family property because the surviving beneficiaries are the children and grandchildren of late Pa Dawson Ikhinmwini Edokpolor. He said that some of the original beneficiaries have died leaving the properties to their children who are now grandchildren. He said that some of the grand children are from the female side who are no longer bearing Edokpolor as surname. He said that example of such persons include Mr. Moderate and Mr. Evbaziegbere Edokpolor.

Counsel submitted that the Applicants have no legal rights which they want this court to protect and that the property in dispute does not belong to the 1st Claimant. More so, he alleged that the 2nd Claimant has received N1, 000,000.00 for the sale of her own portion of the land.

He said that the 1st Claimant is unnecessarily angry because his own land is the only land left out of the sale and he may not find a good buyer if he intends to sell because the land is small in size. He cited the case of *RANSTON PROPERTIES LTD VS FBN PLC (2007) ALL FWLR part 392 page 1954 particularly Ratios 7 & 10*.

Upon receipt of the Defendants/Respondents’ Counter-Affidavit and Written Address of their counsel, the Claimants/Applicants filed a 10 paragraphs Further Affidavit and a Reply on Points of Law.

In his Reply on Points of Law, the learned counsel submitted that the process filed by the applicants does not amount to an abuse of court process because the act of the defendants necessitated the action. He emphasized that the applicants have shown that there are serious issues to be tried in this suit. He posited that in the case of *Onyeson v. Nnebedum [1992] 3 NWLR Pt 229 pg 315 at 337 para 4* the court held that it is only sufficient for the applicant to show that there is a serious question between the parties to be tried at the hearing for application of this nature to be granted.

He submitted that there is a threatened wrong done to the claimant and the defendants did not deny the fact that they sold the area or parts of the house that was left for the general use of the family. Also he said that the 1st defendant did not deny that he bought same. He said that if the 1st defendant is allowed to demolish the property the claimants will not have access to their rooms.

Finally, he referred to the case of *Orhue v. Edo* {1996} 9 NWLR Pt 473 pg 475 at 487 paras B where the court held that in considering whether or not to grant an interlocutory injunction the Judge must look at the entire case as a whole.

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 exchange of affidavits it is an undeniable fact that the Claimants/Applicants are members of the family of late Pa Danson Ikhinmwinn Edokpolor. According to the Applicants, on the completion of the burial ceremonies of their late father, the Okaegbe and elders of the Edokpolor family held a meeting on 3/4/1988 at the house at No 96, Owina Street, Benin City and shared his properties among his children. The sharing was documented and the document of sharing was attached as Exhibit A to the supporting affidavit.

The Applicants maintain that by virtue of the sharing documents, all the children named therein are joint owners of their late father's No 96, Owina Street, Benin City which some of the Defendants are trying to sell to the 1st Defendant without their consent.

In this suit the Claimants/Applicants are seeking to enforce their rights as the beneficiaries of the estate of their deceased father against the Defendants who they allege are trying to rob him of those rights by disposing of the property in dispute without their consent.

In their counter affidavits and written address of their counsel, the Defendants/Respondents are seriously contending that the Applicants have no legal rights to protect because the Applicants, the 2nd to 5th Defendants including the Okaegbe of the family and the occupants of the building were notified in a meeting held in respect of the intention to sell the property in dispute. They maintain that the property in dispute has been sold to the 1st Defendant with the consent of all the family members including the Claimants/Applicants.

With respect to the contention that the disputed property was sold to the 1st Defendant with the consent of all the members of the family, 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 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 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 Applicants have identified their legal rights which they seek to protect as beneficiaries of their deceased father's estate. 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 over the disputed property, whether the property has been sold and the validity of the purported sale of the property.

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.

Presently, the Applicants are apprehensive that if this application is not granted and house is demolished and they eventually win the case, they will suffer more as they would have lost their legacy from their father forever.

The Applicants have asserted that the respondents have nothing to lose if this application is granted and their intended new activity on the property is delayed.

Going through the Respondents' Counter-Affidavit I observed that they dwelt mainly on the fact that the property was sold to the 1st Defendant with the consent of all the members of the family. They did not state what they 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. 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”

From the affidavit evidence adduced by the Claimants/Applicants, the Applicants have shown that they cannot be adequately compensated by the award of damages if the Defendants are allowed to demolish ancestral home. I agree with them that damages may not be adequate compensation for the Applicants if the property is demolished and they eventually win the case.

On the condition of whether the Applicants were prompt in bringing the application, I observed that this application was filed along with the originating processes in this suit so I do not think there was any 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 29 of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendants if at the end, this application is one which ought not to have been granted.

On the whole, I am satisfied that the Applicants have fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and I hereby order as follows:

AN ORDER OF INTERLOCUTORY INJUNCTION restraining the defendants/respondents whether by themselves, their agents, servants, assigns, cohorts, representatives and anyone connected with the respondents in anyway whatsoever and howsoever from demolishing, restructuring and/or defacing the house situate at and known as No 96, Owina Street (By Eguadase Junction) Benin City. Edo State and/or doing anything to the said house pursuant to the purported sale of same to the 1st respondent pending the determination of the substantive suit.

I award the sum of N50, 000.00 (fifty thousand naira) as costs in favour of the Claimants/Applicants.

**P.A.AKHIHIRO
JUDGE
30/05/2022**

COUNSEL:

***E.F. OSIFO ESQ-----CLAIMANTS/APPLICANTS
C.C. OSARENKHOE ESQ-----DEFENDANTS/RESPONDENTS***

