IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON WEDNESDAY THE
24TH DAY OF NOVEMBER, 2021

BETWEEN: ***SUIT NO: B/436/2021***

MR. FRIDAY MUSA …….. …….CLAIMANT/APPLICANT
(Trading under the name and style
Of Green F. Enterprise)

AND

1. COMMISSIONER OF POLICE, EDO STATE
2. EMWANTA IZEVBUHE ***DEFENDANTS/***
3. MR. ONYEMARIN EMMANUEL ***RESPONDENTS***

RULING

This is a Ruling on a Motion on Notice brought pursuant to Order 40 Rules 1(1) of the High Court Rules of Edo State 2018 and under the inherent jurisdiction of this Honourable Court.

The motion is praying the Court for the following orders:

1. An Order of interlocutory injunction restraining the Defendants whether by themselves, their agents, privies, servants or whoever or howsoever described from further arresting the Claimant and or his privies pending the final determination of this suit.

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

The motion is supported by a 15 paragraphs affidavit and one exhibit marked as exhibit A.

Also filed along with the application is the Written Address of the learned counsel to the Applicant.

Arguing the motion, the learned Claimants/Applicants' counsel, ***B.O.Ojumah Esq.*** adopted his Written Address as his arguments in support of the application.

In his Written Address, the learned counsel formulated a sole issue for determination as follows:

"Whether in the light of the facts deposed to by the Claimant/Applicant, the Claimant/Applicant has not made out a case for the grant of this application."

Arguing the sole issue for determination, the learned counsel submitted that the grant or refusal of an application of this nature is at the discretion of this honourable court, which discretion must be exercised judiciously and judicially. He posited that each case must be decided on its own peculiar facts or special circumstances and he relied on the following cases: ***Al Catel Kabelmetal Nig. Plc Vs. Ojuegbele (2003) 2 NWLR (Pt. 805) 429; Ogunsola Vs. Usman (2002) 14 NWLR (Pt. 788) 636; Ogunro Vs. Duke (2006) 7 NWLR (Pt. 978) 130 at 145; Ezebilo Vs. Chinwuba (1997) 7 NWLR (pt. 511) 108 at 129 paras B***.

Counsel submitted that in the exercise of its discretion, the Court should be guided by the following factors:

1. ***Whether there exists an established legal right capable of being protected;***
2. ***Whether there is a delay which may hamper the grant of injunction;***
3. ***Whether damages would be adequate compensation;***
4. ***Whether the balance of convenience is in favour of the Claimant/Applicant;***
5. ***Claimant/Applicant undertaking as to damages and;***
6. ***Status quo to be maintained; and***
7. ***Conduct of the parties.***

See ***Effiom Vs. Ironbar (2003) NWLR (Pt. 650) 545; NBM Bank Ltd. Vs. Oasis Group Ltd. (2006) 3 NWLR (Pt (912) 333 At 331.***

He posited that the main purpose of an injunction is to preserve the res or subject matter of the litigation from destruction and to maintain the status quo pending the determination of the matter. He said that the aim of an injunction is not to create a new right where none exists or wrest a right from one party and give it to the other. See ***Ogunro Vs. Duke (Supra) at 142; Ideozu Vs. Ochoma (2006) 4 NWLR (Pt. 970) 364 At 395; Alon Vs. Dandrill Nig. Ltd. (1997) 8 NWLR (Pt. 517) 495.***

He emphasised that the essence of this application is to preserve the res pending the determination of the substantive suit. He said that the res in this case are the Applicant's fundamental rights to personal liberty, human dignity and fair hearing.

On Whether There Exist an Established Legal Right Capable Of Being Protected:

Counsel submitted that the most important precondition is for the applicant to show that he has a legal right which is threatened and ought to be protected. He asserted that a court has no power to grant an injunction where the applicant has not established a cognizable legal right. He posited that as long as the acts

complained of will result in an infringement of the applicant's right, it is proper to grant an injunction and he cited the case of ***Akapo Vs. Hakeem-Habeeb (1992) 6 NWLR (Pt. 245) 266 At 290.***

Counsel submitted that by virtue of sections 34(1), 35(1) and 36(1) of the 1999 Constitution, the Applicant is entitled to respect for dignity of his person, personal liberty and right to fair hearing. He referred to paragraphs 5, 8 and 9 of the affidavit in support of the motion and posited that these rights have been infringed upon by the Respondents and are still threatening to continue to infringe them. He said that the Defendants are threatening to re-arrest and detain the applicant over a breach of contract which are not criminal wrongs that requires the intervention of the 1st and 2nd Defendants.

He submitted that if this application is refused the Respondents will proceed to re-arrest the applicant and detain him in their custody and or subject him to an ordeal of frivolous criminal trial.

He urged the Court to grant this application since the Claimant/Applicant has a cognizable legal interest to protect.

On Whether There Is a Delay Which May Hamper the Grant of the application.

He submitted that the Claimant/Applicant has not delayed in bringing this application. That as can be gleaned from the facts deposed to in the affidavit, the activities of the Respondents are still ongoing and they cannot be said to be completed acts. He specifically referred to paragraph 10 wherein the Applicant deposed to the fact that the Respondents are threatening to re-arrest him upon being served with advanced copies of the originating processes of this suit.

He submitted that it is settled law that where the act complained of has not been completed, the court would grant an interlocutory injunction and he urged the Court to grant this application on this ground.

On Whether Damages Would Be Adequate Compensation

He submitted that an interlocutory injunction will not be granted if damages will be adequate compensation should the applicant succeed at the end of the day and he cited the case of ***Babatunde V. Olatunji (1994) 4 NWLR (pt. 339) 488***. He submitted that damages would not be adequate compensation to the Claimant/Applicant should this court refuse the application and at the end of the day he succeeds.

On Whether the Balance of Convenience is in Favour of the Claimant/Applicant

Learned counsel posited that in determining the balance of convenience, the trial court is expected to pose one or two questions:

I. Who will suffer more inconvenience, if the application is granted; and

II. Who will suffer more inconvenience if the application is not granted?

He posited that in order to answer these questions, the trial court must allow itself to be guided by the facts before it. See ***Ezebilo V. Chinwuba (1997) 7 NWLR (pt. 511) 108 at 127 paras C-D for ease of reference 114 ratio 17; Buhari Vs. Obasanjo (2003)17 NWLR (Pt.850) 612 Ratio 6; Adeyemi Works Construction Ltd. Vs. Omolehim (2004) NWLR (Pt. 870) 650 At 653 R 3; Ademale Vs. Gov. Ekiti State (2007) NWLR (Pt. 1019) 634 At 938 Rationess 5 And 7; Akinkugbe Vs. Bucknor (2004) NWLR (Pt. 885) 652 At 656 Ratio 3***.

He submitted that the balance of convenience is in favour of granting this application having regard to the facts as stated in the affidavit evidence before the court. He maintained that there is abundant evidence on record that the grievances of the 3rd Respondent which resulted in lodging a complaint against the Applicant is that he breached a contractual agreement between him and the Applicant which remedy is available to him in the civil court and not making the Applicant to suffer unjustly by incarceration.

He said that if this application is refused and the Defendants are allowed to have their way, the Applicant will suffer greatly as he may not be able to prosecute the action till the end by losing his freedom to personal liberty.

On the Conduct of the Parties

He submitted that the Court must take into consideration the conduct of the parties. He posited that a reprehensible conduct of an applicant such as when an application is brought late and the applicant cannot explain the cause of the delay may deny him of the grant of interlocutory injunction. See ***U.B.N. Ltd. Vs. Tropic Foods Ltd. (1992) 4 NWLR (pt.228) 231 pp 242-243, paras D-C; for ease of reference ratio 1, pp. 233-234.***

He submitted that the Claimant/Applicant has not conducted himself in an irreprehensible manner which would warrant the refusal of this action. He said that the applicant has been taking lawful steps to see that this matter is resolved in accordance with legal procedure for dispute resolution. He said that when a matter is pending in court, it will amount to judicial interference for one of the parties to the suit to engage in conduct likely to affect the outcome of the proceedings and he referred to the case of ***The Military Governor of Lagos State Vs. Ojukwu (1986)1 NWLR (Part 18) 621 at 634 paragraph F***.

He therefore urged the Court to grant the application.

The 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 his 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 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.***

From the available evidence, I think the Applicant has identified a legal right which he seeks to protect. In the supporting affidavit, the Applicant has shown that his rights to dignity of his person, personal liberty and right to fair hearing are being threatened by the Respondents who are threatening to re-arrest him over an alleged breach of contract. The facts deposed to by the Applicant were not challenged by the Respondents.

I am satisfied that at this stage, the Applicant has adduced sufficient evidence to establish the fact that he has a legal right 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-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 several paragraphs of the affidavit in support of this application, the Applicant has put forward sufficient facts to show that he intends to dispute the allegations of breach of contract which the Respondents are raising against him.

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 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 Applicant is apprehensive that he will suffer more if this application is not granted and the Respondents are allowed to continue to infringe on his rights. The Respondents have not shown what they stand to lose if this application is granted.

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) (1975) 1 ALL E.R. at 504 pp. 5l0*,** 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 paragraph 10 of the supporting affidavit the applicant deposed to the fact that no amount of damages will be sufficient to assuage him if this order is refused and the threat to be curtailed is allowed to happen.

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 alleged infringement.

On the condition of whether the Applicant was prompt in bringing the application, I am not aware of any delay on the part of the Applicant in bringing 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 12 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 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, whether by themselves, their agents, privies, servants or whoever or howsoever described from further arresting the Claimant and or his privies pending the final determination of this suit.***

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
24/11/2021

<u>COUNSEL:</u>
B.O.OJUMAH ESQ……..……..……..CLAIMANT/APPLICANT
UNREPRESENTED……..……DEFENDANTS/RESPONDENTS