

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON WEDNESDAY THE
11TH DAY OF MAY, 2022.

BETWEEN:

SUIT NO. B/750/2021

1. GODMON INVESTMENTS COMPANY LIMITED
2. CHARLES OMONUA
3. STEPHEN OMONUA
4. MICHAEL OMONUA } **CLAIMANTS/
APPLICANTS**

AND

1. MARGARET OMONUA
2. NIGERIA EROSION AND WATERSHED
MANAGEMENT PROJECT (NEWMAP)
3. THE ATTORNEY GENERAL, EDO STATE } **DEFENDANTS/
RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice dated 24th of August 2021, filed on the 26th of August, 2021, brought pursuant to Order 40 Rules 1(1) & (2) 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:

1. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the 1st Defendant/Respondent (“1st Respondent”), her agents, privies, servants or otherwise howsoever, from parading or using the purported illegally obtained certificate of occupancy registered as No. 120 at Page 1 in Volume 35 (the “Certificate of Occupancy”) at the Edo State Geographic Information Service

(EDOGIS) in respect of the real estate property situate at No 10 Godwin Omonua Street, GRA, Benin City (the “Property”) belonging to the 1st Applicant to claim, receive or negotiate with the 2nd and 3rd Defendants/Respondents (2nd and 3rd Respondents) compensation benefits in respect of the 1st Applicant’s Property AND/OR howsoever intermeddling with, disposing, dissipating, alienating, use or howsoever dealing with the Property of the 1st Claimant, pending the determination of the substantive suit which is filed alongside this application;

2. AN ORDER OF INTERLOCUTORY INJUNCTION *restraining the 2nd and 3rd Respondents from paying any form of compensation benefits to the 1st Defendant in respect of the property on the basis of the 1st Respondent’s purported illegally obtained certificate of occupancy registered as No. 120 at Page 1 in Volume 35 (the “Certificate of Occupancy”) at the Edo State Geographic Information Service (EDOGIS) in respect of the real estate property situate at No 10 Godwin Omonua Street, GRA, Benin City (the “Property”) belonging to the 1st Applicant AND/OR howsoever in recognising or giving effect to the Certificate of Occupancy for the purposes of intermeddling with, disposing, dissipating, alienating, use or howsoever dealing with the Property of the 1st Applicant, pending the determination of the substantive suit which is filed alongside this application.*

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

The motion is supported by a 44 paragraphs affidavit and a Written Address of the learned counsel for the Applicants.

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

In his written address, the learned counsel for the Applicants **Cyriacus Orlu Esq.** formulated a sole issue for determination, to wit:

Whether the Applicants have made out a case for the grant of the injunctive reliefs they seek in the application?

Opening his arguments on the sole issue counsel submitted that an application for interlocutory injunction operates on the need to preserve and protect the rights of the parties and keep matters in status quo until the determination of the substantive suit.

He posited that in a plethora of cases, our courts have handed down the conditions to be satisfied by an applicant for an Interlocutory injunction. These considerations include:

- I. Whether there is a legal right to be protected and a serious question to be tried;
- II. Whether the balance of convenience is in favour of granting the application;
- III. Whether damages will adequately compensate the applicant for the damage or injury suffered or to be suffered from the threat to its legal right;
- IV. Whether the Applicant has given a satisfactory undertaking as to damages; and
- V. Whether the Applicant's conduct is reprehensible or shown indolence.

In support, he cited the following decisions: *Obeya Memorial Hospital v. A.G. Federation & Anor* [1987] 3 NWLR (Pt. 60) 325, para. G; *Kotoye v. CBN* [1989] 1 NWLR (Pt 98) 419; *Global Fishing Ind. Ltd v. Coker* [1990] 7 NWLR (Pt. 162) 265; *Buhari v. Obasanjo* [2003] 17 NWLR (Pt. 850), 587 at 652, paras A-D; *Unibiz (Nig) Ltd. v. CBCL Ltd.* [2003] 6 NWLR (Pt. 816), 402 at 430, para. D, 431, para D.

Thereafter, he addressed on each condition seriatim.

Existence of legal right and serious question to be tried

He submitted that it is settled law that a court will grant an injunction to protect the violation of an applicant's legal right if the application raises a serious issue to be tried. He relied on the case of *Reckitt & Colman Ltd. v Gongoni* [2001] 8 NWLR (Pt. 716) 592, the court held at p. 612, para. D-E where the Court stated as follows:

“All that an applicant for a relief for injunction, interim or otherwise, needs to establish is first he has a legal right which ought to be protected pending the determination of the substantive action and second that there is a serious issue on the evidence before the court between the parties to be tried in the substantive action...”

He said that to demonstrate the existence of a “serious question to be tried”, the Applicant is not necessarily required to prove that his case will succeed on the merits but that there is ***“a right threatened which needs to be protected pending the hearing of the substantive dispute”*** See *Reckitt & Colman Ltd. v. Gongoni (supra)*; See also *Oyeyemi v. Irewole Local Government, Ikere* [1993] 1 NWLR (Pt. 270) 462 at 461; *Kotoye v. CBN (supra)*.

He said that the Applicants' supporting affidavit disclosed that the 1st Applicant is the legal owner of the property in issue in this suit and the 2nd – 4th Applicants are the directors of the 1st Applicant. So the Applicants have established their interest in the property.

Furthermore, he submitted that by establishing their interest in the property, they have shown that they are the ones with the legal right to any compensation to be paid by the 2nd and 3rd Respondents. He said that their legal right to the said compensation is now being threatened by the fraudulent and unlawful acts of the 1st Respondent.

He said that in the circumstances, it has become imperative for the Applicant to seek the protection of this Honourable Court from the 1st Respondent's actions which threatens the Applicants' ability to take benefit of their compensation. He maintained that the Applicants have a cognizable legal right which ought to be protected and has presented serious issues and questions of law for the determination of this Honourable Court in the substantive suit. He said that these questions include, among others, whether or not the 1st Respondent has any ownership rights to the property, whether the 1st Respondent has fraudulently and illegally attempted to secure payment of the compensation by forgery of documents and whether the Applicants in fact are entitled to the payment of compensation for the property.

He submitted that the Applicants have demonstrated eminently both the existence of her legal rights and the presence of substantial issues to be resolved at trial.

The balance of convenience is in favour of granting the application

Counsel submitted that it is settled law that a court will normally issue an order of Interlocutory injunction where an applicant demonstrates that the balance of convenience is in favour of granting the application. See *Inter-bau Const. Co. & Ors. v. Ike* [1993] 7 NWLR (Pt. 304) 151 at 171; *Buhari v. Obasanjo (supra)*; *Ejiofor v. Emejulu* [2008] 17 NWLR (Pt. 1117), 459 at 661.

He submitted that the balance of convenience tilts heavily in favour of granting the application, and more justice will result from granting the application than refusing it. He said that the Affidavit in Support of the instant Application will show that there is an imminent threat that the 1st Respondent may obtain the compensation for the property in issue unless she is restrained by this Honourable Court. He said that these facts show the real, potent and irreparable harm the Applicants would suffer if this application is denied.

He said that by contrast, the Respondents will not suffer any loss or damage at all if this Court grants the Applicant's prayers for interlocutory injunction. He submitted that the balance of convenience tilts heavily in favour of granting this application.

The Applicant has not engaged in reprehensible conduct or shown indolence

He submitted that in this application, the Affidavit in Support clearly shows that the Applicants have acted in a timely and responsible manner in respect of the facts in issue in these proceedings. The Applicant, immediately upon becoming aware of the actions of the 1st Respondent, commenced the substantive action and filed the instant application.

Damages will not be an adequate compensation for the Applicant's damage or injury

Counsel referred to paragraph 41 of the supporting affidavit where the deponent stated that ***“the Applicant will suffer irreversible and irreparable loss which cannot be quantified monetarily if its application is not granted.”***

He posited that in the case of *Saraki v. Kotoye [1990] 4 NWLR (Pt. 143) 144 at 187*, the Supreme Court explained what a court is expected to look out for in determining irreparable damage in the context of an application for injunction.

He submitted that damages can never be adequate compensation for the Applicant in the event that the Respondents are not restrained so he urged this Honourable Court to grant the injunction which would preserve the status quo until the rights of the parties have been determined in the substantive suit.

The Applicants have given a satisfactory undertaking as to damages

He posited that in paragraph 42 of the affidavit in support of this application, the Applicants gave an undertaking to compensate the Respondents for any damage or injury that may result if this Honourable Court should ultimately determine that the order ought not to have been made.

He finally urged the Court to resolve the sole issue for determination in favour of the Applicant.

In opposition to this application, the Ist Defendant/Respondent filed a counter – affidavit of 30 paragraphs and a written address of his counsel.

In his written address, the learned counsel for the 1st Respondent, *G.E.Oaikhena Esq.* identified two issues for determination as follows:

- i. Whether the 1st claimant has satisfied the court with evidence of her right to the res.***
- ii. Whether the 1st claimant is known to law.***

He argued the two issues seriatim.

ISSUE 1:

Whether the 1st claimant has satisfied the court with evidence of her right to the res.

He posited that the 1st claimant supported her claim to the property with Exhibit “A3 – A4”. Exhibit “A3” is a survey plan of 2012 while Exhibit “A4” is an unclear building plan with no name of author and the name of the 1st claim is stamped on it. He said that the claimants did not show any document of title of the *res* to the of the 1st claimant and that Exhibit “A3” came into existence after the death of Godwin Omonua in 2010.

He said that the applicants in paragraphs 14 stated that the 1st applicant became the owner of the property by a deed of transfer dated 16th October 1977 whereas a copy of the deed of transfer was not exhibited. He said that the only title document is a property survey of 2012 carried out after the death of the 1st defendant’s father and the said Exhibit 12 bears the name of Godwin Investments Limited.

He submitted that ownership of property cannot be decided by a survey plan carried out after the death of the owner of the property in a different name of the owner. He maintained that the name of the 1st claimant in the process filed is different from the one in Exhibit “A3”.

He submitted that for an applicant to get an injunction, he must establish that he has a right to the *res* in dispute which he said that the 1st claimant has failed to establish.

He submitted that for a person to claim an interest in land, he must show the document of title or written memorandum signed by the party to be charged in his favour. That in the absence of such document the transaction is void in law and he referred to Sections 77, 78 and 79 of the Property & Conveyance Law of Bendel State 1976 applicable in Edo State.

He emphasized that the 1st applicant has not exhibited the root of title, she has not shown an interest in the *res*. He relied on the case of ***A.I.C. LTD VS. NNPC 7 (2005) 129 LRCN, 1678 Ratio 9***, where the court held that an injunction is an equitable remedy and it can only be granted in support of a right known to law or equity.

He also relied on the case of ***A.G ANAMBRA STATE VS. A.G FEDERATION (2005) 131, LRCN 2357 Ratio 7*** where the court held as follows:

“There must be evidence to back up the injunctive order sought against the President. In the absence of such evidence, the order of injunction must be refused and it is hereby refused.”

See also the case of ***A.G. ABIA STATE VS. A.G FEDERATION (2005) 132 LRCN 2681 Ration 6 at 2687***. He urged the court to hold that the applicants have not established their legal right to the *res* and the application should be dismissed.

ISSUE 2:

Whether the 1st claimant is known to law.

He posited that the 1st applicant exhibited Exhibit “A2” as the document of registration of the 1st claimant as a company that give her the right to sue and be sued in law.

He said that Section 42 of the Companies and Allied Matters Act 2020 gives a registered company the power to hold land and sue and be sued in law.

He said that the 1st defendant deposed to the counter affidavit and exhibited Exhibit “MO4” which is the Investigation Report by the Inspector General Police carried out to the Corporate Affairs Commission to know whether the 1st claimant is registered under the law.

He said that the report stated that the Corporate Affairs Commission in their letter declared that the 1st claimant is not registered and that Exhibit “A2” was forged. He said that the Report ordered the prosecution of the 2nd – 4th claimants for fraud, forged and stealing.

He posited that in view of the police Investigation Report, the 1st claimant is not a legal entity that can maintain any action in law and hold property. He therefore submitted that the action is incompetent as the claimants trace the rights to the 1st claimant.

He relied on the case of ***NNPC VS. LUTIN INVESTMENT (2006) 134 LRCN, 316 AT PAGE 316 RATION 2 at 320***, where the court held as follows:

The best evidence of proof of incorporation of a company is the production of a genuine Certificate of Incorporation from the Company registration authority of any particular country.

He submitted that the Certificate of Incorporation of the 1st claimant is shown to be forged and an Illegal Act cannot counter any right in law.

An Illegal Act is illegal and cannot counter any legal right in law. Once an illegality has been brought to the attention of a court, the court must not close the eyes to it and he relied on the case of ***AGIP (NIG.) LTD VS. AGIP PETROLI INT. (2010) 18, LCRN, 119 at page 129 Ratio 9***, the court held as follows:

On the whole he submitted that the claimants/applicants’ case been based on illegality, the court should not lend its power to aid their illegality and the application should be dismissed.

Upon receipt of the 1st Defendant’s Counter Affidavit, the Claimants filed a marathon Reply on point of law.

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 applicant to establish that they have 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 Applicants have identified a legal right which they seek to protect. In paragraphs 13, 14 & 15 of their supporting affidavit, the Applicants stated thus:

“13. The Property was acquired by the 1st Applicant as part of its corporate assets vide a transfer agreement dated 16 October 1977 between the Administrators of the Estate of late Chief Felix Owen Elema and the 1st Applicant. The 1st Applicant has ever since been exercising rights of ownership over the Property without any form of encumbrance whatsoever. The Property is more particularly described in

Godmon Investments Limited Survey Plan No. DSS/ED/081/2012 prepared by Surveyor F.O Oduyebo (MNIS), Registered Surveyor of No. 28 Sapele Road, Benin City. Attached and marked as Exhibit A3 is the Survey Plan.

14. Until its acquisition by the 1st Applicant, the Property formed part of a larger piece of land conveyed to the late Chief Felix Owen Elema by the Oba of Benin vide a Deed of Conveyance dated 22nd December 1962 and registered as instrument No 69 at Page 69 in Volume 386 at the Lands Registry, Benin City.

15. Immediately after the acquisition, the 1st Applicant obtained relevant building permits issued on 29 June 1981 by the then Bendel State Development Property Authority (BDPA) now known as the Edo State Property Development Authority (EDPA). Thereafter, the 1st Applicant took full possession by erecting buildings/structures on the Property and since then exercised every right of ownership and possession over the Property. To date, the building is referred to as “white house”. Attached and marked as Exhibit A4 is the 1st Applicant’s building permit obtained on 29 June 1981.”

I am of the view that at this stage, the Applicants have adduced sufficient evidence to establish the fact that they have some legal rights to protect in relation to the properties in issue.

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”*.

I am of the view that since the Applicants have a legal right which ought to be protected they have also presented some serious issues and questions of law for the determination of this Honourable Court in the substantive suit. These issues include whether the Claimants are the bona fide owners of the property and whether they are entitled to the payment of compensation for the property.

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, there is an imminent threat that the 1st Respondent may obtain the compensation for the property in issue unless she is restrained by this Honourable Court. These facts show the real, potent and irreparable harm the Applicants would suffer if this application is denied. Meanwhile, the Respondents have not shown what they stand to lose if this Court makes an order restraining them from carrying out the alleged threats.

From the available evidence, the balance of convenience tilts in favour of the Applicants.

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. 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 Applicants if the Respondents are allowed to carry out the alleged threats.

On the condition of whether the Applicants were prompt in bringing the application, I observed that the application was filed along with the originating processes in this suit so there was no delay whatsoever on the part of the Applicants.

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 42 of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendants for the grant of the instant application in the unlikely event that the substantive suit is found to be frivolous.

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 make the following orders:

1. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the 1st Defendant/Respondent (“1st Respondent”), her agents, privies, servants or otherwise howsoever, from parading or using the purported illegally obtained certificate of occupancy registered as No. 120 at Page 1 in Volume 35 (the “Certificate of Occupancy”) at the Edo State Geographic Information Service (EDOGIS) in respect of the real estate property situate at No 10 Godwin Omonua Street, GRA, Benin City (the “Property”) belonging to the 1st Applicant to claim,

receive or negotiate with the 2nd and 3rd Defendants/Respondents (2nd and 3rd Respondents) compensation benefits in respect of the 1st Applicant's Property AND/OR howsoever intermeddling with, disposing, dissipating, alienating, use or howsoever dealing with the Property of the 1st Claimant, pending the determination of the substantive suit which is filed alongside this application;

2. AN ORDER OF INTERLOCUTORY INJUNCTION restraining the 2nd and 3rd Respondents from paying any form of compensation benefits to the 1st Defendant in respect of the property on the basis of the 1st Respondent's purported illegally obtained certificate of occupancy registered as No. 120 at Page 1 in Volume 35 (the "Certificate of Occupancy") at the Edo State Geographic Information Service (EDOGIS) in respect of the real estate property situate at No 10 Godwin Omonua Street, GRA, Benin City (the "Property") belonging to the 1st Applicant AND/OR howsoever in recognising or giving effect to the Certificate of Occupancy for the purposes of intermeddling with, disposing, dissipating, alienating, use or howsoever dealing with the Property of the 1st Applicant, pending the determination of the substantive suit which is filed alongside this application.

Costs assessed at N50, 000.00 (Fifty Thousand Naira) in favour of the Claimants/Applicants.

P.A.AKHIHIERO
JUDGE
11/05/2022

COUNSEL:

CYRIACUS ORLU ESQ.....CLAIMANTS/APPLICANTS

G.E.OAIKHENA ESQ.....1ST DEFENDANT/RESPONDENT

ATTORNEY GENERAL.....2ND & 3RD DEFENDANTS/RESPONDENTS