

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIRO,
ON TUESDAY THE
31ST DAY OF JANUARY, 2023.

BETWEEN: **SUIT NO: B/880/2022**
GRACE EDOBOR ----- **CLAIMANT/APPLICANT**

AND

1. ONAIWU IDUEROBO }
2. PERSONS UNKNOWN } ----- **DEFENDANTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice, dated 5th September and filed on the 13th of September, 2022, brought pursuant to ***Order 40 Rules 1, 2 and 3 of the High Court of Edo State (Civil Procedure) Rules, 2018*** and under the inherent jurisdiction of the Court as preserved by ***Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)***.

The application is seeking for the following orders:

- a. AN ORDER of the Honourable Court directing maintenance of status quo and suspension of all the Defendants' actions and/or interference with the Claimant's parcel of land measuring 100 feet by 200 feet, part of which is now in dispute, situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 pending the hearing and determination of the substantive suit; and***
- b. AN ORDER of Interlocutory Injunction restraining the Defendants/Respondents by themselves, their servants, agents or privies or howsoever called from entering or erecting any structure on the parcel of land measuring 100 feet by 200 feet, part of which now in dispute situate at***

Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 pending the determination of the substantive suit.

And for such further order(s) or as this Honourable Court may deem necessary to make in the circumstances of this case.

The application is supported by a 26 paragraph affidavit sworn to by one Godwin Ogbaburhon, the Claimant/Applicant's brother.

Arguing the motion, the learned counsel for the Applicant, ***Ehinon Okoh Esq.***, adopted his Written Address as his arguments in support of the application and urged the Court to grant the application.

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

“Whether from the affidavit evidence and exhibits attached, the Applicant is entitled to the reliefs sought?”

Arguing the sole issue for determination, learned counsel submitted that the object of an injunction is to preserve the res and maintain the status quo ante bellum pending the determination of the case. See ***Falomo v. Banigbe (1998)7 NWLR (Pt. 557) 679***. He posited that before granting an Interlocutory Injunction, the court is enjoined to consider among others the following factors:

- 1. Whether the Applicant has a legal right, equitable or recognizable right to be protected by this Honourable Court pending the determination of the substantive suit;***
- 2. If there is a serious issue or question between the parties to be tried by this Honourable Court;***
- 3. If the balance of convenience is on the side of the Applicant;***
- 4. If monetary damages will not be adequate compensation for the injury resulting from the violation of the Applicant's right if they succeed at the end of the trial;***
- 5. If the conduct of the Respondents is reprehensible;***
- 6. If the Applicant is guilty of delay;***

7. *Certainty or identity of the land in issue; and*

8. *Undertaking as to damages.*

Thereafter, learned counsel marshalled out his arguments on each of the enumerated factors.

Legal right

On legal right, counsel submitted that an Applicant for injunction must show that she has a legal right the violation of which he seeks to prevent. He said that the Applicant has shown through her Writ of Summons/Statement of claim together with the Exhibits, that she has a right and interest over the land in dispute to be protected by this Honourable Court pending the determination of the action. He relied on the cases of *Kotoye v. CBN (1989) 1 NWLR (Pt. 98) 419*; *Obeya memorial Specialist Hospital v. AG Federation (1987) 3 NWLR (Pt. 60) 325*; and *Kasumu v. Shitta Bay (2006) 17 NWLR (Pt 1008) 372*.

Serious issue/question to be tried

Here counsel submitted that the Applicant has shown that her claim is not frivolous or vexatious and that there is a serious question to be tried as gleaned from the Writ of summons and affidavit evidence as the issue of ownership/trespass are all serious questions to be tried. He relied on the case of *Obeya memorial Hospital v. AG Federation supra*.

Balance of convenience.

He submitted that the issue at this stage is whether the balance of convenience is in favour of the Claimant/Applicant, that is, whether more injury will result in granting injunction than in refusing same. He said that the law enjoins the court to weigh the evidence on both sides and determine who stands to lose more if the status quo is not maintained. He cited the case of *Ilechukwu v. Iwugo (1989) 2 NWLR (Pt. 101) 99* and submitted that if the injunction is granted, the Defendants stands to lose nothing as parties will maintain the res pending the determination of the case (sic).

Furthermore, he referred to paragraph 22 of the Affidavit in support and submitted that the Applicant would suffer greatly if the application is not granted. He posited that making preparation to erect an illegal structure on the land will alter and destroy the res and this will be a factor for the Court to grant an injunction with the essence of preserving the res pending the determination of this case.

He further submitted that where the res will be damaged, fritted away or wasted so as to make the eventual outcome of the case nugatory, a court of justice is obliged to maintain the status quo pending the determination of the case.

He submitted that the balance of convenience is in favour of the Claimant/Applicant being the party that will suffer more and lose more if the subject matter of this suit is not preserved more so, when the act of trespass on the Claimant's land by the Defendants is continuing. He urged the Court to hold that the balance of convenience is on the side of the Claimant/Applicant.

Monetary Compensation

Counsel submitted that if the Defendants/Respondents are not restrained from further trespassing on the land in dispute before the determination of the case, the Defendants would have sold and/or erected illegal structures on the Claimant/Applicant's land thereby altering the physical topography of the land and this will result in irreparable damage psychologically and mentally to the Applicant which cannot be adequately compensated in monetary terms. He cited the cases of *Okechukwu v. Okechukwu (1989) 3 NWLR (Pt. 108) 234*; and *Okotie-Eboh v. Mts Jadesimi (2001) 10 NWLR (Pt. 720) 52*.

Reprehensible conduct of the Respondent

Counsel submitted that the conduct of the Respondents are unjustified and should not be allowed to go on with erection of illegal structures, or further selling off the Claimant's property which is now in dispute. He said that the general practice is that on application for an Order for interlocutory injunction all activities affecting the res in dispute are automatically terminated as a mark of respect to the court before whom the application is pending and he cited the case of *Okeke-Oba v. Okoye (1984) 8 NWLR (Pt. 346) 605*.

He submitted that an injunctive relief is available to restrain the Respondents from the continuance of his wrongful act complained of in order to keep matters in status quo until the issue between the parties is determined. See *Babatunde Adenuga v. J. K. Odumeru (2001) 10 NWLR (Pt. 696) 184*.

If the Applicant is guilty of delay

He submitted that from the length and breadth of their affidavit, it is categorically clear that the Claimant acted timeously before the act complained of is

completed by the Respondents since the plan to erect illegal structures is still underway.

Certainty or Identity of the land in dispute

He submitted that the land in dispute is certain and discernible as the parcels of land are well known to the parties.

Undertaking as to damages

Counsel submitted that at paragraph 24 of the affidavit in support, the Applicant gave an undertaking as to damages to the Defendants herein should the grant of this application turn out to be unmeritorious.

In conclusion, he urged the Court to grant the Claimant/Applicant's prayers in the interest of justice.

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 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.*

In paragraphs 6, 7 and 8 of the supporting affidavit, the deponent stated as follows:

“6) That the Claimant is the absolute owner in possession of the parcel of land part of which is now in dispute situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State measuring 100 feet by 200 feet, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 of the Lands registry in the office at Benin City. A copy of the Certificate of Occupancy is attached hereto and marked as Exhibit “A”.

7) That in exercise of the Claimant's right of ownership, she surveyed the parcel of land in her own name as per Survey Plan No. ISO/ED/713/93. A copy of the Survey Plan is attached hereto and marked as Exhibit “B”.

8) That prior to the grant of the Certificate of Occupancy in 1996 by the Edo State Government to the Claimant in respect of her entire land measuring 100 feet by 200 feet which part is now in dispute, the Claimant has been in peaceable possession.”

From the available evidence, I think the Applicant has identified a legal right which she seeks to protect in respect of the 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 paragraphs 11 to 13 of the affidavit in support of this application, the deponent stated as follows:

“11) That the Claimant has been in peaceable possession of her land, but to her greatest surprise, recently, i.e 14th of August 2022, the Claimant received a call from her friend that someone has deposited trips of sand in front of her land measuring 100 feet by 200 feet lying and situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State and have molded blocks in preparation of erecting illegal structure thereon.

12) That the Claimant instructed me to snap the fence erected on part of her land by the Defendants now in dispute with my android phone. Copies of the pictures evidencing the fence and sand deposited by the Defendants on the Claimant’s land at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, is attached hereto and marked as Exhibit “C”.

13) That the illegal activities of the Defendants on the Claimant’s land was snapped by me and at the time the said photograph snap was taken, the said phone was working properly and the information stored in/supplied to the said phone pertaining/depicting the features, condition of the land situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State have now been reproduced from the said phone and is contained in a document referred to as pictures which have been compared with the original. That the said documents were produced by the said phone during a period over which it was used regularly to store/process information for the purpose of the activities regularly carried on over the period by the Defendants.”

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. 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 paragraph 22 of the supporting affidavit the Applicant deposed to the fact that she cannot be compensated in damages by monetary terms.

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, I agree with the learned counsel for the Applicant that from their affidavit, the Applicant acted timeously and there was no delay whatsoever on her part.

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 24 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 it is granted as follows:

- a. ***AN ORDER of the Honourable Court directing maintenance of status quo and suspension of all the Defendants’ actions and/or interference with the Claimant’s parcel of land measuring 100 feet by 200 feet, part of which is now in dispute, situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy***

No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 pending the hearing and determination of the substantive suit; and

- b. AN ORDER of Interlocutory Injunction restraining the Defendants/Respondents by themselves, their servants, agents or privies or howsoever called from entering or erecting any structure on the parcel of land measuring 100 feet by 200 feet, part of which now in dispute situate at Ward 36/A, Ugbor Village, Oredo Local Government Area, Edo State, more particularly marked and delineated in Survey Plan No. ISO/ED/713/93 attached to the Certificate of Occupancy No. EDSR 13433 registered as No. 1 at page 1 in volume B.196 pending the determination of the substantive suit.*

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
31/01/2023

COUNSEL:

EHINON OKOH ESQ.....CLAIMANT/APPLICANT

UNREPRESENTED.....DEFENDANT/RESPONDENT