

**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**  
**13<sup>TH</sup> DAY OF DECEMBER, 2024.**

**BETWEEN:**

**SUIT NO. B/820/2023**

1. MR. BENARD IBHADON ESQ
2. LAWRENCE IBHADON
3. JOSEPH IBHADON
4. SOLOMON IBHADON ESQ
5. EGBEYAN IBHADON
6. MAGDALENE IBHADON - - - {- CLAIMANTS/APPLICANTS
7. EHILOSEN IBHADON
8. SADAT IBHADON
9. AIGBEBEMEN IBHADON

**(FOR THEMSELVES AND ON BEHALF OF THE SIBLINGS AND OTHER  
EXTENDED FAMILY MEMBERS OF LATE MR. MUSA AISAZOBOR IBHADON  
EXCLUDING MR. AUGUSTINE IBHADON)**

**AND**

1. MR. IMUETINYAN IDUOZEE

***(Defending and Counterclaiming through***

***His lawful Attorney Mrs. Doris Igie Iduozee)***

2. MRS. DORIS IGIE IDUOZEE - - {-DEFENDANTS/RESPONDENTS
3. MR. AUGUSTINE IBHADON

## **RULING**

This is a Ruling on a Motion on Notice filed on the 29<sup>th</sup> of May, 2024 brought pursuant to ***Order 39 Rule 6 and Order 40 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 ***an order of Interlocutory Injunction restraining the Defendants/Respondents either by themselves, through their privies, assigns, agents or nominees from further acts of trespass to wit: destroying and altering the shape and character of all that property: A Four Flat Storey Building at No:15B Ekowe Street, off Omozeghan Street, off okhoro Road, Benin City, pending the hearing and determination of this suit.***

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

The motion is supported by a 34 paragraphs affidavit and a Written Address of the learned counsel for the Applicants.

From the facts contained in the Claimants/Applicants' supporting affidavit, the Claimants/Applicants' case is that they are the children and siblings of one **LATE MR MUSA AISAZOBOR IBHADON**, who in his life time was the owner of a four flat storey building located at **NO:15B EKOYE STREET, OFF OMOZEGHAN STREET, OFF OKHORO ROAD BENIN-CITY**. They alleged that upon his demise intestate, his surviving family members led by the 4th Claimant/Applicant shared the said building amongst his other properties for his children.

According to them, the property in dispute in this suit was shared to the 1<sup>st</sup> to the 3<sup>rd</sup> Claimants/Applicants herein, the 5<sup>th</sup> to 9<sup>th</sup> Claimants/Applicants and the 3<sup>rd</sup> Defendant/Respondent. They alleged that these persons have over the years treated the said building as a family property and have jointly used and enjoyed it.

They maintain that recently, the 3<sup>rd</sup> Defendant/Respondent without the consent or concurrence of the Claimants/Applicants unilaterally sold the said property to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents who they allege have started to alter the structure of the building.

They have therefore filed this suit seeking the declarative and injunctive reliefs as indicated in the originating processes in the suit.

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

In his written address, the learned counsel for the Applicants articulated his arguments under various sub-headings.

## **LEGAL ARGUMENTS**

### **Legal Right of the Claimants/Applicants**

Learned counsel submitted that the Claimants/Applicants have established their legal right to the property which is worthy of protection by this Honourable Court. He said that they have deposed to facts showing how the said building devolved on them vide the Family Property Sharing Document which they annexed to their supporting affidavit as Exhibit "A".

He contended that since the property is a family property, the 3<sup>rd</sup> Defendant/Respondent had no right or authority to unilaterally sell same to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents. He therefore submitted that the Claimants/Applicants have a legal right to protect and he cited the cases of *Yusuf v. I.I.T.A [2009] All F WLR (Part 476) 1989 (CA)*; and *Ranston Properties Ltd v. P/c [2007] All FWLR (Part 392) 1954*.

### **Balance of Convenience**

Learned counsel submitted that the balance of convenience is on the side of the Claimants/Applicants. He said that the Claimants/Applicants will suffer more if the injunction is refused and that more justice will result in granting the application than in refusing it. He cited the cases of *Akinpelu v. Adebore [2008] 10 NWLR (Part 1096) 531 (SC)*; *[2008] LPELR-354(SC)*; *W.A.O.S v. Pelfaco Ltd. (1994) NWLR (Part 319) 104,187*, *Kotoye v. CBN [2000] 16 WRN 71 (SC)*; *Obeya Memorial Hospital v. A.G, Federation [2000] 24 WRN 138 (SC)*; and *Total Nig. Plc. v. VIIRA [2004] 37 WRN 65 (C.A)*.

### **Damages Cannot be an Adequate Compensation**

Counsel referred to the case of *Mn.aju & Ors. v. Echegbunam [1998] 2 NWLR (Part 539);(1997)LPELR-5601 (CA)* and posited that the affidavit evidence of the Claimants/Applicants have revealed that the property in question is a family property and that no amount of money can replace the emotional and psychological attachment that they have for the said property. He therefore urged the Court to hold that the Claimants/Applicants cannot be adequately compensated by the award of damages necessitating the granting of this Application.

### Undertaken to Pay Damages

Counsel posited that the Claimants/Applicants have undertaken to pay damages if at the end of trial, the court holds that the Claimants/Applicants are not entitled to the injunction sought.

He therefore urged the Court to grant this application in the interest of justice.

In opposition to this application, the Defendants/Respondents filed a Counter Affidavit of 87 paragraphs and a Written Address of their counsel.

From the facts contained in the Counter-Affidavit of the Defendants/Respondents, their case is that the 1<sup>st</sup> Defendant legally acquired the said property by purchase from the 3<sup>rd</sup> Defendant and from the date of purchase till in the recent time there was no adverse claim to the said property.

They alleged that the 3<sup>rd</sup> Defendant inherited the property in his capacity as the eldest son of his late father, Mr. Musa Aisazobor Ibadon.

According to them, the 3<sup>rd</sup> Defendant's late father while he was alive handed over ownership of the said buildings and all the documents to the 3<sup>rd</sup> Defendant, his eldest surviving son being the tradition in Esan land wherein the eldest surviving son is entitled to inherit all the property of his late father.

According to them, upon the demise of his late father, the 3<sup>rd</sup> Defendant upon inheriting the property discovered that he was unable to maintain the building, so he commissioned an estate agent to seek for a buyer of the property.

The 1<sup>st</sup> Defendant alleged that when he became aware that the 3<sup>rd</sup> Defendant was desirous of selling the property, he made very diligent investigation from the tenants in the building and the neighbours around and they all confirmed that the 3<sup>rd</sup> Defendant is the owner of the property.

The Respondents allege that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents have spent huge sums of money to renovate the building after the purchase.

In his written address, the learned counsel for the Defendants/Respondents, **J.O. Emiantor Esq.** submitted that in the determination of an application of this nature, one of the factors the court will consider is the legal right of the Applicants which need to be protected. He submitted that the Applicants have not been able to demonstrate that they have any legal right to be protected by the grant of an interlocutory injunction. He said that from the affidavit evidence before the court, the Applicants have not been able to show or identify their root of title either linking the ownership with the documents such as the application for

building plot, Certificate of occupancy, survey document or showing that the property belongs to them.

He posited that in the absence of the title documents linking the Applicants with the property, they have failed to establish any legal right and this application for interlocutory injunction is bound to fail. He referred the Court to the case of **ACHEBE v. MBANEFO & ANOR (2017) LPELR-41886(CA)**.

Furthermore, learned counsel addressed the Court on the requirement of whether damages are adequate remedy on the event of refusal to grant the application for interlocutory injunction and referred to the case of **MOLOKWU & ORS v. OBIUDU & ORS (2014) LPELR-22863(CA)**.

He maintained that from the affidavit evidence and circumstances presented by the Applicant, it is clear that damages are adequate remedy to the Applicant in the event of refusal to grant the application.

On the balance of convenience, learned counsel submitted that it is an established principle of law that in land cases, the balance of convenience is in favour of the party in possession and he referred the Court to the case of **W.A.O.S. VS Pelfaco Ltd.** which he alleged is **reported at page 61 of Afe Babalola's book.**

He submitted that the Applicant has not been able to demonstrate to the satisfaction of this Honourable Court, the injury he would suffer in the event of failure to grant the application.

Counsel posited that the Respondent has shown copiously that the Applicants are the ones who are trespassing by laying false claim to the land in dispute.

He finally urged the Court to dismiss this application with substantial costs.

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 contents of the Claimants/Applicants supporting affidavit, the Claimants/Applicants have traced their title to the property in dispute to the sharing document which they annexed to their supporting affidavit as Exhibit "A", wherein the property in dispute in this suit was shared to the 1<sup>st</sup> to the 3<sup>rd</sup> Claimants/Applicants herein, the 5<sup>th</sup> to 9<sup>th</sup> Claimants/Applicants and the 3<sup>rd</sup> Defendant/Respondent. They alleged that the property is jointly owned by all of them.

Thus, by their affidavit evidence, the Applicants have shown that they have a legal right to the property which they seek to protect with this interlocutory injunctive order.

However, in vehement opposition to this application, the Defendants/Respondents are seriously contending that the 1<sup>st</sup> Defendant/Respondent is the present owner of the property; having purchased same from the 3<sup>rd</sup> Defendant/Respondent whom they allege inherited the property as the sole owner upon the demise of his father.

It is apparent that the issue of the ownership of the disputed property is part of the issues to be determined in the substantive suit. So it is my 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 any 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*; and *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 in relation to the disputed property. 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/Applicants and the Defendants/Respondents over the disputed property, particularly regarding the ownership of the property.

On the balance of convenience, the Applicants must show that the balance of convenience is on their 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.

In their supporting affidavit, the Applicants have alleged that the 1<sup>st</sup> Defendant/Respondent and his agents are carrying out some structural alterations of the property that are capable of changing the character of the building completely. The Defendants/Respondents actually confirmed this fact that they are carrying out some major renovation works on the building presently. The Applicants are apprehensive that if the Respondents are not restrained, the whole structure of the building will be changed.

Although the Defendants/Respondents have alleged that they have expended huge sums on the renovation of the building, I think it may be risky for them to continue to work on the building when the ownership of the property is seriously in dispute in this suit. Prudence demands that the Respondents should not be allowed to continue to tamper with the disputed property until the issue of ownership is determined.

From the foregoing, I hold that the balance of convenience is very much 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) 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 aforementioned affidavit evidence, the Applicants stated that if the Defendants/Respondents are not restrained, no amount of monetary damages can adequately compensate them for the injuries that they may suffer in the event that they win this suit as the structural character of property would have been altered permanently. They also mentioned their emotional attachment to the property.

I am of the view that if the Claimants/Applicants eventually win this case, damages would not be adequate compensation for them to assuage their losses.

On the condition of whether the Applicants were prompt in bringing the application, I do not think there was any inordinate 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 32 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.

From the foregoing it is apparent that the Claimants/Applicants have met with all the requirements to enable this court exercise its discretion to grant this application. The sole issue for determination is therefore resolved in favour of the Claimants/Applicants.

Consequently, the Claimants/Applicants are granted ***an order of Interlocutory Injunction restraining the Defendants/Respondents either by themselves, through their privies, assigns, agents or nominees from further acts of trespass to wit: destroying and altering the shape and character of all that property: A Four Flat Storey Building at No:15B***

*Ekowe Street, off Omozeghan Street, off Okhoro Road, Benin City, pending the hearing and determination of this suit.*

*I make no order as to costs.*

**P.A.AKHIHIERO**  
**JUDGE**  
**13/12/2024**

**COUNSEL:**

**PROF.J.O. ODION-----CLAIMANTS/APPLICANTS**

**J.O. EMIANTOR ESQ-----DEFENDANTS/RESPONDENTS**