

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIERO,
ON THURSDAY THE
26TH DAY OF OCTOBER, 2023.

BETWEEN: **SUIT NO. B/1021/2022**
INT TOWERS LIMITED ----- CLAIMANT/ APPLICANT
AND
EMMALIZ ENTERPRISES LIMITED DEFENDANT/ RESPONDENT

RULING

This is a Ruling on a Motion on Notice dated 19th of October 2022, filed on the 20th of October, 2022 brought pursuant to Order 40 Rules (1) (2) and (3) of the Edo State High Court of Edo State (Civil Procedure) Rules, 2018 and under the inherent Powers of this Honourable Court.

By this application, the Applicant is praying the Court for the following orders:

An order of interlocutory injunction restraining the Defendant/Respondent whether by herself, servants, agents or privies or anybody acting on her behalf and instruction from further locking up, denying, interrupting, interfering or continuing to deny, interrupt, interfere and disturb the Claimant/Applicant in the

quiet possession, use and enjoyment of her rights in the leased portion of land measuring approximately 225 Square Meters lying and situate at No. 280/282, Benin-Agbor Road, Benin City Edo State and also known as IHS_EDO_0760A (T0168) pending the determination of the substantive suit.

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

The motion is also supported by a 27 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

In his written address, the learned counsel for the Claimant/Applicant *E. Oghahenhen Esq.* submitted that the remedy of an interlocutory injunction is an equitable remedy to restrain the Defendant/Respondent from the repetition or continuance of a wrongful act in relation to the subject matter of the suit and to maintain the status quo pending the determination of the substantive suit.

He posited that in considering an application for interlocutory injunction, the courts are guided by the following principles:

- a. Whether there is or are serious question(s) to be tried;
- b. Whether the Applicants have a legal right or interest to be protected in the suit or on the subject matter that warrants the grant of the injunctive order;
- c. Whether the order of injunction sought falls within the purview of the Applicant's claim.

See *C.G.C (Nig.) Ltd. V. Baba (2004)10 NWLR (Pt. 882) 658. Obeya Memorial Hospital v. A.G. Federation (1987)3 NWLR (Pt.60) 325.*

Thereafter, the learned counsel argued each of the principles seriatim.

SERIOUS QUESTION(S) TO BE TRIED

On this principle, counsel submitted that there is a serious question to be tried and he referred to paragraph 5 of the supporting affidavit stated which stated thus:

"By lease agreement dated 1st day of August, 2018 executed between Defendant's predecessor in title Kayona Oil Nigeria Limited and the

Claimant/Applicant, the Defendant's predecessor in title Kayona Oil Nigeria Limited leased a portion of its land lying and situate at No. 280/282 Benin-Agbor Road, Benin City Edo State measuring approximately 225 Square Meters to the Claimant/Applicant's for a term of 10 years commencing from the 1st day of August, 2018 and ending on the 31st day of July, 2028"

He also referred to paragraphs 6, 7 and 9 of the supporting affidavit and submitted that two questions of law that calls for the determination by this Honourable Court are: (i) whether the Claimant/Applicant is not entitled to quiet possession, use and enjoyment of the demised property; and (ii) whether the Defendant/Respondent can lock up and prevent the Claimant/Applicant from entering the demised premises.

He relied on the following cases: ***Sulu-Gambari v. Bukola (2004)1 NWLR (Pt.853) 122. In Onyensoh v.Nze Christopher Nnebedum of others (1992)3 NWLR (Pt.229)314 at 318.***

He submitted that in satisfying the above laid down principle, the Claimant/Applicant need not show a prima facie case but to convince the court that on the balance of evidence before the Honourable Court, it is more likely to obtain a perpetual injunction at the trial because an application for interlocutory injunction is not the same with a perpetual injunction which is granted after a trial when a Claimant has established his right and its actual infringement by the Defendant. He pointed out that an interlocutory injunction is granted pending the trial of the action in order to keep the matter in status quo until the issues in controversy between the parties are determined.

WHETHER THE APPLICANT HAS A LEGAL RIGHT OR INTEREST TO BE PROTECTED

Counsel posited that by the aforesaid lease agreement, the Claimant/Applicant has an equitable interest coupled with possession in the subject matter which calls for the Court's protection. See ***Cobham v. Duke (2004)2 NWLR (PL. 850) 150, Odumeru v. Adenuga (2000(4)NWLR (PL: 052) 224, Obeya Memorial Hospltal v. A.G. Federation (Supra).***

He further submitted that all the Applicant is required to prove at this stage is a lawful occupation of the property.

WHETHER THE DAMAGES THAT WILL OCCUR IF THE ACT IS NOT RESTRAINED BY AN INJUNCTION ARE IRREPARABLE OR ARE SUCH THAT CANNOT BE ADEQUATELY COMPENSATED IN MONETARY TERMS

Counsel referred to paragraphs 10, 17 and 18 of the supporting affidavit and submitted that if the Honourable Court does not make this order as sought, the Defendant/Respondent will continue to interfere with Claimant's/Applicant's right to the use, possession and enjoyment of the demised premises and this will have great consequences on the business and services provided by the Claimant/Applicant to its customers and the country in general.

He also submitted that damages will not be enough to compensate the Claimant/Applicant for the injury that they would suffer if at the end this Honourable Court finds in their favour as they would have by that time lost the confidence and patronage of its customers which will not be compensated in damages. He also submitted that the security apparatus of the country would be jeopardized as well especially in this critical period.

He urged the Honourable Court to hold that the Claimant/Applicant has satisfied the above principle.

WHETHER THE BALANCE OF CONVENIENCE IS ON THE APPLICANT'S SIDE

Counsel posited that in the instant case, the Claimant/Applicant averred that it has a pending lease till 31/7/2028 in respect of the demised premises. He referred the Court to the case of *W.A.O.A v. Pelfaco Ltd. (1994)1 NWLR (Pt. 319)104* where the court held that the balance of convenience is generally in favour of the party in possession with an established enterprise.

He referred to paragraph 20 of their supporting affidavit and submitted that the balance of convenience tilts in favour of the Applicant than the Defendant/Respondent who wants to take possession by force.

UNDERTAKING AS TO DAMAGES

He referred to paragraph 25 of the supporting affidavit where the Applicant gave an undertaking to pay damages.

THE CONDUCT OF THE APPLICANT

Counsel submitted that the conduct of the Claimant/Applicant is quite commendable. That because Applicant does not want to cause a breach of peace it chose to resolve the issue with the Respondent by filing this action.

On the basis of the above, he urged the Honourable Court to grant this application.

In opposition to this application, the Defendants/Respondents filed a Counter-Affidavit of 51 paragraphs and the written address of his counsel.

In his written address, the learned counsel for the Defendant/Respondent, *D.T. Achi Esq.* formulated three issues for determination which he argued seriatim.

ISSUE 1:

Whether the Claimant has put sufficient facts before this Honourable Court to warrant the grant of an order of interlocutory injunction restraining the Defendant herein regard being had to the Claimant/Applicant's refusal for over four years to pay rents to the Defendant who is its landlord in respect of the portion of Defendant's land upon which Claimant/Applicant erected and operates a telecommunications mast?

Counsel enumerated the principle guiding the court in an application for interlocutory injunction and cited the cases of: *Leasing Company of Nigeria Ltd v Tiger Industries Limited [2007] 14 NWLR (Pt 1054) p. 346 at pp. 374 paras. C – H; and Udo v ITCMEC [2010] All FWLR (Pt. 507) p. 88 at Pp. 103 -104, paras. C - A.*

He submitted the Claimant/Applicant has failed to show from its Affidavit in Support of its Application that it has a serious triable issue in this suit. He said that having admitted that the Defendant is its landlord and that it entered into negotiation for a lease of the land housing its telecommunications mast, the

Claimant/Applicant has failed to establish why negotiation with its landlord the Defendant failed.

He said that on the contrary, the Defendant/Respondent has shown from its Counter-Affidavit that it is the owner and in possession of the land including the part upon which the Claimant/Applicant erected and maintains a telecommunications mast. He said that the Claimant admits and recognizes the Defendant/Respondent's proprietary right over the said land and referred to paragraph 5 to 18 of the Defendant's Counter-Affidavit and paragraph 4 of Claimant's Affidavit in Support. He also referred to Exhibit "A". He said that having admitted the Defendant's title over the land including the portion housing its site, it is incumbent upon the Claimant to establish why it cannot pay rent to the Defendant who has maintained all along that the Claimant has no subsisting lease on the land or the site in issue.

He submitted that the Claimant/Applicant cannot have a serious triable issue over land which does not belong to it and over which it no longer has legal possession its lease having being determined by effluxion of time. He said that an order of injunction is not supposed to take from the rightful owner and place possession in a party who has come onto same through some underhand tactics as in the case of the Claimant herein.

He posited that the grant of an application like this requires the equitable discretion of the Court and all parties especially the applicant is supposed to come before a court of equity with clean hands. He submitted that the Claimant's hands are tainted. He maintained that refusing this application will in no way foist a *fait accompli* upon this Honourable Court and he referred to the case of *Akapo v Hakeem-Habeeb (1992) 6 NWLR (Pt. 247) p. 266 at p.288, paras A – B and p.289, paras F – G.*

Counsel submitted that the Claimant/Applicant has failed to make out a "prima facie" case to warrant any legal right to be protected by this Honourable Court through an order of interlocutory injunction. He said that the Claimant claims to have a lease for ten (10) years dated 1st August, 2018 in its favour which terminates on 31st July, 2028 but failed to exhibit same. That what is before this Court is "Exhibit B1" which is an undated document put together by the Claimant

and purporting to be a lease in the Claimant's favour. He said that the said "Exhibit B1" is a fabricated document poorly concocted and produced in anticipation of this suit to mislead this Honourable Court into believing that a lease agreement of such nature exists when in fact, none exists.

He therefore urged the Court to hold that there is no "serious issue for trial" disclosed in the application.

Furthermore, he posited that the Claimant has failed to show by its affidavit that it has been in unchallenged possession of the land/telecommunications mast in issue especially after its lease expired on the 31st day of July, 2018.

Counsel submitted that the balance of convenience is in favour of the refusal of this application as the Defendant/Respondent is the one who stands to lose greatly should it be restrained by an injunctive order of this Honourable Court pending the hearing and determination of this suit. He referred to the case of *Udo v ITCMEC (Supra) at Pp. 104 -105, paras. H* and posited that the Claimant/Applicant has illegally held onto the landed property of the Defendant and wishes to illegally and fraudulently use the instrumentality of the law to force the Defendant to allow it to remain on same free of charge. He said that it will be unjust and inequitable in the circumstances to grant this application because same is brought *mala fide*/in outright bad faith. That the Defendant/Respondent stands to lose unquantifiably should it be restrained as prayed. He referred the Court to paragraphs 40, 41, 42, 43, 44, 46 and 47 of the Counter-Affidavit.

Furthermore, he submitted that no amount of damages will adequately compensate the Defendant/Respondent should the Claimant be allowed to continue its illegal use and possession of part of its land.

He submitted that the Claimant/Applicant's conduct is reprehensible in that it has acted fraudulently. He said that the Defendant through its Counter-Affidavit has shown that the action Claimant is seeking to restrain has since been completed. He said that the Claimant was fully aware that the Defendant denied its agents access into the site in issue long before it filed this suit and this application.

He submitted that the Claimant/Applicant has not placed any materials or exhibits before this Court to enable it to exercise its discretion in favour of the

Claimant/Applicant. He said that the Applicant has not stated its financial wherewithal to pay damages to the Defendant/Respondent commensurate to the pain and loss it has already caused the Defendant. He urged the Court to resolve Issue One in favour of the Defendant/Respondent.

ISSUE TWO:

Whether the interim injunction granted against the Defendant ought not to be vacated regard being had to the misrepresentation of facts by the Claimant especially as the event the order sought to prevent happened before Claimant's suit and applications were filed.

Counsel adopted his submissions under issue one and submitted that the Order of Interim Injunction granted the Claimant against the Defendant herein on the 28th day of October, 2022 should be vacated as same was obtained fraudulently by misrepresenting facts which if properly presented before this Honourable Court would not have led to the grant of the said Interim Order. He maintained that there is no subsisting lease agreement in respect of the Claimant's site on Defendant's land.

Furthermore, he posited that the life span of an order of interim injunction is not more than 14 days and he relied on the case of *Enekwe v Ima Ltd [1997] 10 NWLR (Pt.526) p.601 at 611.*

ISSUE THREE:

Whether the grant of the relief sought in this application will not amount to determining the substantive suit or part of it at interlocutory stage.

Counsel submitted that the grant of this application will tantamount to determining the substantive suit at interlocutory stage. That it is trite law that a court of law cannot grant at interlocutory stage, a relief vide an application which has the effect of deciding the substantive case and he relied on the case of *College of Education, Ekiadolor v Osayande [2011] All FWLR (Pt. 566) p. 504 at p. 527, paras. E – F.*

In conclusion, he urged the Court to refuse the application.

Upon receipt of the Counter-Affidavit and written address of the Defendant/Respondent's counsel the Claimant/Applicant filed a Further Affidavit and a Reply on points of law. In his Reply on points of law, the Respondent's counsel urged the Court to strike out some paragraphs of the Counter-Affidavit for contravening section 115(2) of the Evidence Act, 2011. He also articulated some arguments in support of the application. Most of his arguments look like a repetition of his previous arguments in support of the application.

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 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 contents of paragraphs 5 to 10 of the affidavit in support of this application, the Claimant/Applicant has asserted that there is a subsisting lease agreement dated 1st day of August, 2018 executed between Defendant's predecessor in title Kayona Oil Nigeria Limited and the Claimant/Applicant, in respect of the disputed property.

With respect to the assertion of the Defendant/Respondent that the said lease has expired, I am of the view that it is premature to make any such finding 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 in relation to the disputed property and 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 Claimant and the Defendant over the disputed 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.

From the facts contained in the affidavits of both parties, it is evident that the Applicants are apprehensive that if this application is not granted and the Respondents will prevent them from accessing the site where they have some valuable equipment. They maintain that unless this application is granted, their business will suffer seriously.

Going through the Respondent’s Counter-Affidavit, I observed that they dwelt mainly on their claims of ownership of the disputed property. They have not told me what they will actually suffer if this application is granted.

I think the balance of convenience is on the side 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 Claimant/Applicant, they Applicants have asserted that they cannot be adequately compensated by the award of damages if the Defendants are allowed to continue to prevent them from accessing the property.

On the condition of whether the Applicant was 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 Applicant 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 25 of the supporting affidavit, the Claimant/Applicant 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 Applicant has fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and I hereby grant an order *of interlocutory injunction restraining the Defendant/Respondent whether by herself, servants, agents or privies or anybody acting on her behalf and instruction from further locking up, denying, interrupting, interfering or continuing to deny, interrupt, interfere and disturb the Claimant/Applicant in the quiet possession, use and enjoyment of her rights in the leased portion of land measuring approximately 225 Square Meters lying and situate at No. 280/282, Benin-Agbor Road, Benin City Edo State and also known as IHS_EDO_0760A (T0168) pending the determination of the substantive suit.*

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

P.A.AKHIHIERO

JUDGE

26/10/2023

COUNSEL:

E. OGHAHENHEN ESQ-----CLAIMANT/APPLICANT

D.T. ACHI ESQ-----DEFENDANT/RESPONDENT