

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
4TH DAY OF NOVEMBER, 2022.

BETWEEN:

SUIT NO. B/334/2022

1. **MR FIDELIX OKOSODO**
2. **TOSONDO COMPANY NIGERIA LTD** } **CLAIMANTS/APPLICANTS**

AND

1. **UNION BANK OF NIGERIA PLC**
2. **MR. AUSTIN OKOIBHOLE**
3. **DRELYN INVESTMENT LIMITED** } **DEFENDANTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice dated 7th and filed on the 8th of April, 2022 brought pursuant to Order 40 Rules 5 (1) and (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:

- i. ***AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants, either by themselves, their servants, agents, privies, assigns or whosoever acting for them or on their behalf from further trespassing into the 2ND claimant/applicant's premises lying/situate at No.2 new Agbor Road, Uromi Edo State pending the hearing and determination of the substantive suit.***
- ii. ***AND for such further order and other orders as this Honourable Court may deem fit to make in the circumstances of this suit.***

The motion is supported by a 32 paragraphs affidavit and a Written Address of the learned counsel for the Applicant.

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

In his written address, the learned counsel for the Applicants formulated a sole issue for determination as follows:

“Whether or not the claimants/applicants are entitled to the prayers sought in this application.”

Arguing the sole issue for determination, the learned counsel submitted that in an application of this nature, the Claimants/Applicants must establish the existence of certain cardinal principles of law as encapsulated in the Locus Classicus case of *KOTOYE V. C.B.N (1989) 1 NWLR (PART 98) page 419* to wit:

- (i) ***Existence of legal right the infringement of which they seek to protect.***
- (ii) ***Existence of triable issues.***
- (iii) ***Preservation of the Res or Status Quo***
- (iv) ***Real urgency***
- (v) ***Balance of convenience.***
- (vi) ***Inadequacy of damages.***
- (vii) ***No delay in presenting the application***
- (viii) ***Undertaking to pay damages.***

Thereafter, the learned counsel articulated his arguments on each principle seriatim.

EXISTENCE OF LEGAL RIGHT:

On the existence of a legal right, he submitted that before an Applicant for interlocutory injunction will succeed, he must establish that he has a legal right, the violation of which he seeks to protect.

On this point, he referred the Court to paragraphs 6 – 30 of the Affidavit in support of the Motion and Exhibits “A” “B”, “C”, “D”, E”, “F”, “F1”, “F2”, “F3” F4”, F5” and “F6” “G” and “H” attached to the Motion. He posited that these facts clearly establish that the Claimants/Applicants have legal right in the subject – matter of this application. Again he relied on the case of *KOTOYE V. CBN (1989) 1 NWLR (Part 98) Page 419; OKECHUKWU V. OKECHUKWU (1989) 5 NWLR (Part 108) Page 234; and LADUNNI V. KUKOYI AND ORS.(1972) 1 ALL N.L.R (Part 1) Page 133.*

He urged the Court to hold that the Claimants/Applicants have a legal right in the subject-matter of this application to protect.

EXISTENCE OF TRIABLE ISSUES:

On this point, counsel submitted that there are serious questions to be tried in the main suit between the parties. He referred the Court to paragraphs 6 – 30 of the Affidavit in support of the Motion on Notice and submitted that the facts deposed to in the aforesaid paragraphs of the main Affidavit establish that there are serious questions to be tried in the main suit by this Honourable Court. He relied on the following decisions on the point: ***OBEYA MEMORAL SPECIALIST HOSPITAL AYI-ONYAMA FAMILY LTD V.A.G., FEDERATION (187) 3 NWLR (part 60) page 325; AMERICAN CYNAMID V ETHICON LTD (1975) AC Page 396; KOTOYE V. CBN (1989) 1 NWLR (Part 98) Page 419 at Page 441.***

He posited that the Claimants/Applicants have established in this application that there are triable issues between the parties and he urged the Court to so hold.

PRESERVATION OF THE RES OR STATUS QUO:

Counsel submitted that all the Claimants/Applicants seek to achieve is to preserve the *status quo* until the hearing and determination of the substantive suit and he relied on the case of ***UNIVERSAL TRUST BANK LTD V. DOLMETSCH PHARMACY NIGERIA LTD (2002) 8 NWLR (Part 770) Page 726.***

REAL URGENCY:

He submitted that the Claimants/Applicants must establish real urgency but not self-induced urgency in order to succeed in this application. He submitted that the Applicants have shown the existence of real urgency. He posited that in the cases of ***KOTOYE V. CBN (1989) 1 NWLR (Part 98) Page 419*** and ***OKECHUKWU V. OKECHUKWU (1989) 5 (Part 108) Page 234,*** the Courts have held that real urgency is the basis of granting an interlocutory injunction.

BALANCE OF CONVENIENCE:

Learned counsel submitted that the Claimants/Applicants have established that they will suffer more inconvenience or hardship, if the application is not granted by this Honourable Court. He referred the Court to paragraph 29 of the Affidavit in support of the Motion and submitted that the Claimants/Applicants will suffer greatly if the application is not granted.

He posited that the Defendants on the other hand will suffer no hardship whatsoever and he relied on the following authorities:

NWANGANA V. MILITARY GOVERNOR OF IMO STATE (1987) 3 NWLR (Part 59) Page 185; and ***COMMISSIONER FOR WORKS, BENUE STATE V.***

DEVCOM DEVELOPMENT CONSULTANT LTD (1988) 3 NWLR (Part 83) Page 407.

Counsel emphasized that the Claimant/Applicant will suffer more inconvenience as shown in his affidavit evidence, if this Honourable Court refuses this application.

INADEQUACY OF DAMAGES:

Counsel submitted that the hardship that will be occasioned to the Claimants/Applicants if the Defendants are not restrained, cannot be assuaged by damages and he referred the Court to paragraph 27 of the Affidavit in support of Motion on Notice. He relied on the following decisions:

OKECHUKWU V. OKECHUKWU (1989) 3 NWLR (Part 108) Page 234; ITA V. EYONG (1994) 1 NWLR (Part 318) Page 56; and OKOTIE-EBOH V. MRS. JADESIMI (2001) 10 NWLR (Part 720) Page 52.

NO DELAY IN PRESENTING THE APPLICATION:

Counsel posited that there was no delay on the part of the Claimants/Applicants in presenting this application. That the acts of the Defendants have been ongoing.

UNDERTAKING TO PAY DAMAGES:

He said that the Claimants/Applicants deposed in paragraph 27 of the Affidavit in support of the Motion on Notice that they undertake to pay damages to the Defendants, if the application is frivolous. He cited the case of ***KOTOYE V. CBN (1989) supra.***

In conclusion, he urged the Court to grant this application.

In opposition to this application, the 1st Defendant/Respondent filed a Counter Affidavit of 32 paragraphs and a Written Address of their counsel.

In his written address, the learned counsel, ***Chief R.E.O Esite*** formulated a sole issue for determination as follows:

“Whether or not the applicants are entitled to the grant of the prayer sought on the face of the applicants’ motion.”

Arguing the sole issue, learned counsel submitted that in an application for interlocutory injunction such as this, the court will take into consideration the following principles:

- 1. The strength of the applicant’s case***
- 2. The balance of convenience***
- 3. Whether monetary damages will be sufficient compensation***
- 4. The conduct of the parties***

5. Whether the applicant has a legal right to institute the substantive suit or a legal right worthy of protection at this stage

On the above, he cited the following authorities:

- a) **OBIDIEGWU.C.O NYESOH VS NZE CHRISTOPHER NNEBEDUN & ORS (1992) 9 LRCN 736**
- b) **GLOBE FISHING INDUSTRIES LTD & ORS VS CHIEF FOLARIN COKER (1990) 11 SCNJ 56.**

Thereafter, learned counsel expounded on each principle seriatim.

EXISTENCE OF A LEGAL RIGHT:

Here, learned counsel posited that apart from asserting that the property sold by the 1st defendant in exercise of its rights under the legal mortgage exhibit B, the claimants have not shown their legal relationship with the property covered by exhibit 'E' owned by Anthony Okosodo, the mortgagor/guarantor.

He said that the 1st defendant by documentary evidence has established its legal right to the property covered by exhibit E under exhibit 'B' and there is therefore no competing right from the claimants. In the circumstance, he urged the Court to hold that the claimants/applicants have not established any legal right in relation to the property sold by the 1st defendant/respondent to vest them with the right to even commence this suit which can be protected by an interlocutory injunction.

Furthermore, counsel submitted that an interlocutory injunction cannot be a remedy for a completed act as in the present case and he relied on the case of **AR SECURITY SOLUTION LIMITED VS ECONOMIC AND FINANCIAL CRIMES COMMISSION (2018) ALL FWLR (PT962) 1656 at page 1666 parag G.**

He posited that in the instant case, by virtue of exhibits 'D' and 'F', it is clear that the new buyer Mr. Austin Okojie is in physical and effective possession of the petrol station. He referred the Court paragraphs 21 and 21b of the Claimant's supporting affidavit and the exhibits attached thereto.

On this note he urged the Court to refuse the application.

BALANCE OF CONVENIENCE:

Counsel referred to the decision of the Supreme Court in the case of **Hon. Justice T.A.A. AYORINDE VS A.G. AND COMMISSIONER FOR JUSTICE, ONDO STATE & ORS (1996) 35 LRCN 257** where the apex Court held that the determination of where the balance of convenience rests in a case is a question of fact and not law.

He submitted that from the affidavit evidence of the parties, the balance of convenience is in favour of the 1st Defendant/Respondent. He said that it is on record

from the 1st Defendant/Respondent's affidavit evidence and the exhibits attached thereto that one Anthony Okosodo and Tonsodo and company Nigeria Limited obtained a N7, 000,000.00 overdraft facility from the 1st Defendant and refused to repay the loan. He said that this sum is investors' funds held in trust by the 1st Defendant.

He posited that the Applicants are meddlesome interlopers and complete strangers to the mortgage transaction so they have nothing to suffer if the application is refused.

THE STRENGTH OF APPLICANTS' CASE:

He submitted that the Applicants have not shown any locus in bringing this suit. That the Applicant's affidavit evidence did not establish their relationship with Mr. Anthony Okosodo and Tonsodo and Company Nigeria Limited the owner and mortgagors of the property now in dispute.

He said that on the other hand, the 1st Defendant/Respondent has shown its relationship with them from whom it derived its legal rights.

CONDUCT OF THE PARTIES:

Counsel posited that there was delay on the part of the Applicant in bringing this suit and the instant application. He said that Exhibit C was received by one Hon. Usigbe Francis Whyte on 30th June, 2021 on behalf of Tonsodo and Company Nigeria Ltd. while exhibit D was issued on 17th January, 2022 on the Managing Director of Tonsodo and Company Nigeria Ltd and the Applicants filed this suit on 20th April, 2022.

He said that the applicants cannot create an emergency for themselves for the court to assist them.

On the issue of monetary compensation, he submitted that in the unlikely event of the Applicants succeeding in the substantive trial, monetary compensation will be adequate for them, whereas, the 1st Defendant will suffer irreparable damage from the unpaid loan and interest thereon if the possession is ordered to be reversed by an order of injunction.

Learned counsel submitted that where the court will have to try the same issue both at the interlocutory stage and at the trial of the substantive suit, it is advisable to stop the hearing of the interlocutory application and grant accelerated hearing of the substantive suit. See: ***GLOBE FISHING INDUSTRIES LTD & ORS VS CHIEF FOLARIN COKER (1990)11 SCNJ 56 at page 79.***

He said that injunction is also a relief in the substantive suit.

In the circumstance, he urged the Court to order accelerated hearing of the substantive suit and refuse this application.

In opposition to the application, the 2nd and 3rd Defendants/Respondents filed a Counter-Affidavit of 16 paragraphs and a written address of their learned counsel. In her written address, the learned counsel, *Mrs. Afamefune-Agbakor* formulated a sole issue for determination which she argued.

ISSUE FOR DETERMINATION

Whether the Claimants/Applicants are entitled to an order of Interlocutory Injunction by this Honourable Court.

Arguing the sole issue, learned counsel posited that the law is settled on what the Claimants/Applicants must establish before the court can grant an application for Interlocutory Injunction and she relied on the case of *KOTOYE V. C.B.N (1989) 1 NWLR (PART 98) page 419*.

Thereafter, she articulated her arguments on the relevant principles seriatim.

EXISTENCE OF LEGAL RIGHT:

Learned counsel submitted that an Applicant for interlocutory injunction must establish that a legal right exists, that same has been violated, and he seeks its protection.

He posited that the Claimants/Applicants have failed to establish that there exists a legal right in the subject-matter under reference and he relied on the cases of *OKECHUKWU V. OKECHUKWU (1989) 5 NWLR (Part 108) Page 234; INTER-BAU CONSTRUCTION LTD V. IKE (1973) 7NWLR (Part 304) Page 151*.

EXISTENCE OF TRIABLE ISSUES:

Counsel submitted that there are no triable issues with respect to the “RES” between the parties, as the Claimants/Applicants lack the *locus standi* to institute a civil proceeding in a court of law to seek a determination of their civil rights against the Defendants. She again relied on the case of *KOTEYE V. C.B.N (1989)1 NWLR (Part 98) Page 419 at Page 441*.

PRESERVATION OF THE RES OR STATUS QUO:

She submitted that the RES which the Claimants/Applicants seek to protect is already in the peaceable possession of the 2nd & 3rd Defendants/Respondents so there is no RES or Status Quo to be preserved.

REAL URGENCY:

Counsel submitted that the Claimants/Applicants have failed to establish that there is real urgency in this matter to warrant a grant of an Interlocutory Injunction.

BALANCE OF CONVENIENCE:

She posited that the balance of convenience is in favour of the Defendants/Respondents, because they will suffer great inconveniences if the application of the Claimants/Applicants is granted. He said that it is obvious that the Claimant/Applicant will not suffer any inconvenience if this Honourable Court refuses this application.

INADEQUACY OF DAMAGES:

Counsel submitted that the refusal of the application will not warrant the payment of damages, more so inadequacy of damages and she cited the case of *OKOTIE-EBOH V. MRS. JADESIMI (2001) 10 NWLR (PART 720)*.

NO DELAY IN PRESENTING THE APPLICATION:

She submitted that the alleged actions sought to be restrained by the Claimants/Applicants, which is, the possession of the subject matter has been long concluded, because the 2nd & 3rd Defendants are in peaceable possession of the RES.

UNDERTAKING TO PAY DAMAGES:

Counsel submitted that the application is frivolous and lacks merit and she urged the Court to order the Claimants/Applicants to pay for damages as they deposed in paragraph 27 of the Affidavit in support of their Motion on Notice.

She therefore urged the Court to discountenance the application since they have failed to establish the requirements of the law. She submitted that it is trite law that a Claimant must have the locus standi to institute a suit and she relied on the decision of the Supreme Court in the case of *Attorney General of the Federation v. Attorney General of Lagos State, (2017) 8 NWLLR (PT 1566) 20 AT 55 PARA D*; and the case of *Festus Adesanoye v. Prince Adewole (2006) 14 NWLR (Pt 1000) 242, LN-e-LR/2006/4(SC)*.

She submitted that the Claimants/Applicants have no locus standi in this suit and urged the Court to resolve the sole issue in favour of the 2nd & 3rd Defendants/Respondents.

Upon receipt of the 1st, 2nd and 3rd Defendants/Respondents processes, the Claimants/Applicants filed his Replies on Points of Law.

In his Replies on Points of Law, the learned counsel for the Applicants submitted that assuming but without conceding that the act sought to be restrained in this application is a completed act, the law is settled that when the party sought to be restrained deliberately proceeds with the action sought to be restrained after becoming aware of the pendency of the application before a competent Court for his

restraint, such a party ought not be allowed to profit from his misconduct or total disrespect to the Court. He said that in such a situation, the injunction should be granted and he relied on the cases of *SHUAIB V. MUAZU (2007) 7 NWLR (PART 1033) Page 271 at Page 303*; and *SULU-GAMBARI V. BUKOLA (2004) 1 NWLR (PART 853) Page 122 at Page 126*.

He posited that from the facts and circumstances of this case, it is clear that the 2nd and 3rd Defendants resorted to self-help by unlawfully entering into the Claimant's aforesaid Petrol Station with thugs armed with Guns and other dangerous weapons and continued with their unlawful and activities after being aware of the pendency of this action at this Honourable Court and the pending application for interlocutory injunction having been duly served on them.

He said that the 2nd and 3rd Defendants were subsequently chased out of the 2nd Claimant's Premises by the youths of Uromi, Edo State who were displeased with their unlawful trespassory activities on the 2nd Claimant's premises thus ensuring that the Claimants remained in possession of the 'Res' the subject matter of this suit before this Honourable court till date pending the hearing and determination of this application and the substantive suit before this Honourable court.

He urged the Court not to shut its eyes against the continued attempt by the 2nd and 3rd Defendants to unlawfully dispossess the 1st Claimant of the 'Res' in this suit despite the fact that the 1st Claimant is still in possession of the 2nd Claimant's premises.

He submitted that it is settled law that an adjudged trespasser is not entitled to the protection of the Court. See *IJADOLA V. REGT. T.C. XS. C.M (2008) 15 NWLR (PART 1110) Page 387*.

He contended that the authority of *KOTOYE VS. C.B.N (1989) 1NWLR PART 98 PAGE 419 AT 441 AND OKECHUKWU VS. OKECHUKWU (1989) 5NWLR PART 108 PAGE 234, INTER-BAU CONSTRUCTION LTD VS. IKE (1973) 7NWLR PART 304 PAGE 151* cited by the Counsel to the 2ND and 3rd Defendants/Respondents is distinguishable and therefore inapplicable in the instant Application.

He further submitted that from the depositions in the Claimants/Applicants' affidavit in support of the extant application for interlocutory injunction, the certificate of incorporation of the 2nd Claimant issued by the corporate Affairs Commission of Nigeria and the survey plan in respect of the 2nd Claimant attached as exhibits thereto, it is manifestly clear that the Claimants have established their locus standi in the subject matter of this application and the substantive suit before this Honourable Court and that there are triable issues in this suit before this Honourable court.

He submitted that it is the law that locus standi denotes a Claimant's capacity to sue in a court of law to enforce a legal right. That once the Claimant has the right or vested interest to protect and enforce legally disclosed in a writ of summons and statement of claim, the Claimant is adjudged to have shown sufficient interest which entitles him to sue on the subject matter. He relied on the decision of the Apex court in the case of *INEC vs. OGBADIBO LOCAL GOVERNMENT (2016) 3NWLR PART 1498 PAGE 167 AT 187.*

Submitting on the purported documents of ownership attached to the 2nd and 3rd Defendants/Respondents' counter affidavit as exhibits A, B, C and D respectively, he posited that it is trite law that a Court of law should not delve into issues meant for the substantive suit when considering relevant motions or applications. He relied on the following decisions on the point: *GLOBE FISHING INDUSTRIES LTD V. CHIEF FOLARI COKER (1990) 7 NWLR 9PART 265 at page 277; BENJAMIN ADAMU V. A.G. NASSARAWA STATE (2007) NWLR (PART 1031) PAGE 485 AT PAGES 493-494.*

He said that based on the above cited judicial authorities, this Honourable Court cannot look at the contents of the documents attached to the 2nd and 3rd Defendants counter affidavit at this stage save for the main case.

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

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 exchange of affidavits it is an undeniable fact that there was a loan transaction between a company known as **TONSODO AND COMPANY NIGERIA LIMITED** and the 1st Defendant where the disputed property was allegedly used as a collateral security.

In the substantive suit, the Claimants/Applicants are seriously contending that the name **TONSODO AND COMPANY NIGERIA LIMITED** is not the same as the name of the 2nd Claimant which was duly registered with the Corporate Affairs Commission of Nigeria (CAC). They also allege that there was no resolution of the board of directors of the 2nd claimant signed by the 1st Claimant as the alter ego of the 1st Claimant. Meanwhile, the Claimants/Applicants are laying claim to the disputed property.

Meanwhile, the Defendants/Respondents are seriously contending that the Claimants/Applicants have no locus standi in the substantive suit for the reasons already articulated in this judgment.

With respect to the contention of the Defendants on the Claimants' locus standi, I am of the 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 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. 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 over the disputed property, whether the property has been sold and the validity of the purported sale of the 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.

In paragraphs 29 and 30 of their supporting affidavit, the Applicants stated as follows:

“29. That the applicants will suffer more inconvenience or hardship, if the application is not granted by this Honourable Court;

30. That the Defendants will not suffer any hardship whatsoever if this Application is granted by this Honourable Court.”

It is instructive that the Applicants did not explain how or why they will suffer more if the application is not granted.

Meanwhile in paragraphs 8 and 9 of their Counter-Affidavit the 2nd and 3rd Defendants stated as follows:

“8. That the act sought to be restrained has already being completed, as I am already in possession of the said property, and I personally put the 3rd Defendant to occupy the said property under reference, before the Claimant/Applicant’s application was brought before this Honourable Court.

9. That one Mr. Peter Usigbe, who claimed to be the Claimant/Applicant’s tenant was present on the day the 1st Defendant handed over the property under reference to me, and he (Mr. Peter Usigbe) pleaded to be given time to sell his petroleum products. (I herein attach a copy of the video clip and pictures showing same, and it is marked as Exhibit C).”

From the above, it is apparent that the 2nd and 3rd Defendants are presently in possession of the disputed property. In paragraphs 19 to 22 of their supporting affidavit, the Claimants/Applicants confirmed the fact that the 2nd and 3rd Defendants

are presently in possession of the disputed property, although they took possession *vi et armis* (with force of arms).

It is thus evident that the act which the Applicants are seeking to restrain is a completed act. It is well settled that an interlocutory injunction cannot be granted where there is nothing to restrain. It is not a remedy for an act that has already been carried out. If the act has been completed, nothing remains to be safeguarded or to be restrained by the grant of an interlocutory injunction. See: *Commissioner for Works Benue State & Anor v Devcon Development Consultants Ltd & Anor (1988) LPELR-884(SC)*; and *Angadi v PDP (2018) LPELR-44375(SC)*.

Where the act of trespass has been done, the only form of injunction than can be granted during the pendency of the suit is a mandatory injunction. In the case of *KWANKWASO V. GOV OF KANO STATE & ORS (2006) LPELR-11617(CA) (PP. 26-28 PARAS. C)*, the Court of Appeal expounded thus:

"Although a mandatory injunction is sometimes classified as an interlocutory order of injunction in that it may be granted upon an interlocutory injunction, it is a different type of injunction with its own features, and requiring a consideration of its own distinct principles. It is noteworthy in this respect that it is usually targeted upon a completed act and the order therefore may be made, for example to order a building which has been erected to be pulled down if it is established that the defendant erected it stealthily in order to steal a match on the plaintiff on having notice that an injunction was to be taken out against him; An order of interlocutory injunction is, on the other hand negative and restrictive in nature and, so, is made to preserve the res pending litigation or to prevent a breach."

Unfortunately, the present application is for an interlocutory order of injunction and not for a mandatory injunction. Thus on the law and on the facts, the application cannot succeed. Furthermore, upon the available evidence, the balance of convenience is in favour of the Defendants/Respondents.

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 available affidavit evidence adduced by the parties, I am of the view that if that the Claimants/Applicants eventually wins this case, damages would 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 27 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 failed to fulfill some of the salient requirements to enable this court exercise its discretion to grant this application.

Consequently, the application is dismissed with *N50, 000.00 (fifty thousand naira) as costs in favour of each of the Defendants/Respondents.*

P.A.AKHIHIERO
JUDGE
04/11/2022

COUNSEL:

STEVE ONOKPACHERE ESQ-----CLAIMANTS/APPLICANTS
CHIEF R.E.O. ESITE-----1ST DEFENDANT/RESPONDENT
MRS. C.I AFAMEFUNE -AGBAKOR---2ND & 3RD DEFENDANTS