

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
20TH DAY OF JUNE, 2025.

BETWEEN:

SUIT NO: B/831/2022

MRS. IMONITIE IMADE BLESSING _____ CLAIMANT/APPLICANT

AND

1. MR. OSAGIE ERIMWINOROSA	}	
2. EDWIN OKOMHARU	}	DEFENDANTS/RESPONDENTS

RULING

This is a Ruling on a Motion on Notice, dated 14th April, 2025 and filed on the 15th of April, 2025, brought pursuant to ***Order 39 Rule 4(1) and 40 Rules 1 & 5(1) of the Edo State High Court (Civil Procedure) 2018*** and under the inherent jurisdiction of this Court, praying for the following order:

- 1. AN ORDER for interlocutory injunction restraining the Defendants/Respondents most particularly the 2nd defendant/respondent, either by themselves or through their servants, agents, privies or representatives, from building, working, constructing, erecting structures or further trespassing on all that vast area of land measuring 100feet by 100feet (One Hundred feet by One Hundred feet) particularly described and delineated in survey plan no. NSK/ED/022/2012 Lying and situate at Ward 36A, Amagba Village Area, Oredo Local Government Area, Benin City, Edo State, within the jurisdiction of this Honourable Court, pending the hearing and determination of the substantive matter.***

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

The application is supported by a 20-paragraph affidavit deposed to by the Claimant/Applicant herself and a written address of the Claimant's/Applicant's counsel.

In his written address, the learned counsel for the Claimant/Applicant, ***Carrington Omokaro, Esq.*** formulated a sole issue for determination as follows:

“Whether this honourable court can grant this application?”

Arguing the sole issue for determination, the learned counsel stated that the position of the law is that every order of a court which commands or forbids an act is an injunction. He defined an injunction as a judicial process or mandate operating in personam by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. In support of this definition, learned counsel cited the ***page 855, Ninth Edition of the Blacks Law Dictionary***. In support of this position, he also cited the case of ***Aboseldehyde Laboratories Plc v. Union Merchant Bank Ltd & Anor. (2013) LPELR - 20180 at page 55.***

Learned counsel submitted that the practice of granting an injunction to an applicant was developed to mitigate the risk of injustice to the applicant during the period the violation of the applicant's legal right can be resolved. He cited the case of ***Obeya Memorial Hospital v. A.G. Fed. & Anor. (1987) 3 NWLR (Pt. 60) 325*** and stated that undoubtedly, the object of an interlocutory injunction is to protect an applicant against injury by violation of his right for which he cannot be adequately compensated in damages if the dispute is resolved in his favour at the trial. In support of this learned counsel cited the case of ***Ogbonnaya v. Adapalm (Nig.) Ltd (1993) 5 NWLR (Pt. 292) 147 at 157, paras H, the Supreme Court, per Kutigi, J.S.C.***

Learned counsel emphasized that the conditions for the grant of interlocutory injunction were enumerated in the case of ***Obeya Memorial Hospital v. A.G. Fed. & Anor. (1987) 3 NWLR (Pt. 60) 325***, and ***Kotoye v. CBN (1989) 1 NWLR (Pt. 98) 419.***

Thereafter, the learned counsel articulated his arguments on the said conditions.

On the condition of substantial issue before the court, learned counsel submitted that what is required from the court at this stage is to discover whether

the case shows that there is a substantial question to be investigated. In support of this submission, learned counsel cited the case of *Globe Fishing Industries Ltd. & Ors. V. Chief Folarin Coker* (1990) 7 NWLR (Pt. 162) 265, page 288 per *Karibi-Whyte, J.S.C.*

Learned counsel also submitted that it is not necessary for an applicant to make out a case, as all that is sufficient for an applicant to establish is that there is a substantial issue to be tried at the hearing, and in doing so the applicant must establish that there are competing interests over the subject matter in the substantive suit. Learned counsel cited the case of *Egbe V. Onogun* (1972) 1 All NLR 95 to support this.

Also on the condition of substantial issue, learned counsel also cited the case of *Onyesoh V. Nnebedun*, (1992) 3 NWLR Part 229, 315 at Pages 345 – 346, paras F-C.

On the condition of balance of convenience, learned counsel submitted that the law is well settled that in determining whether an interlocutory injunction should be granted, the court takes into consideration the balance of convenience to the parties and the nature of the injury which the successful defendant, on the one hand, would suffer if the injunction was granted, and that which the successful plaintiff, on the other hand, might sustain if the injunction was refused. He cited the case of *American Cyanamid v. Ethicon Ltd.* (1975) A.C. 396.

He submitted that the balance of convenience lies on the party who will suffer more if the application is not granted and he cited the case of *W.A.O.S V. Pelfaco Ltd.* (1994) 1 NWLR Part 319, 164 Page 187 Paras D-E.

Thus, the learned counsel submitted that in the instant case where the Defendants, are using the materials of the Claimant to build, to her detriment, the proper step the court ought to take is to grant an interlocutory injunction to restrain the Defendants from carrying on with such an act.

Learned counsel also submitted that the ownership of the land is in dispute. Thus, it would be proper and just to restrain the defendants from engaging in acts that suggest that there is no dispute or rival claim, pending when the issue is resolved by this honourable court. He submitted that allowing them to continue even when the issue has already been submitted before this court will be discourteous and downgrading to the dignity of this honourable court.

Learned counsel also submitted that if the Defendants are not restrained and are allowed to persist in their act, it may be interpreted to mean that the court is

giving a tacit approval for acts of unconstitutionality. He thus stated that the proper step the court ought to take in the circumstance is to grant an injunction in order to put parties in status quo pending the hearing and determination of the substantive suit and he cited the case of *Akakpo V. Habeeb – Hakeem (1992) 6 NWLR Part 247 Page 266 at 291-292*.

On the condition of undertaking as to damages, learned counsel submitted that an undertaking as to damages is the price which the person asking for an interlocutory injunction has to pay for it and he cited the case of *W.A.O.S Ltd. V. Pelfaco (supra) at page 189, paras B-C*.

In concluding his arguments, learned counsel submitted that on the issue of legal right/subsisting action and a triable issue, in paragraphs 2 and 3 of the affidavit in support of the instant application, the Applicant disclosed her interest/right in bringing this application. He also stated that by the conduct of the Defendants in Paragraph 7 there are triable issues before the court for which the court is enjoined to preserve the subject matter, pending the hearing and determination of the substantive suit.

On the condition of balance of convenience, learned counsel concluded by submitting that the balance of convenience in this application tilts in the Applicant's favour and he referred to paragraphs 15 and 16 of the supporting affidavit.

On the condition of irreparable damage or injury to the Applicant, learned counsel concluded by submitting that the applicant has shown by way of affidavit evidence in paragraph 17 that failure to restrain the Defendants, no amount of damages will be adequate compensation.

On the condition of undertaking as to damages, learned counsel submitted that in paragraph 18 of the affidavit in support of this application, the Applicant made an undertaking to pay damages in the event that this honourable court ought not to have granted the instant application.

Learned counsel concluded by urging the court to grant this application on grounds that the applicant has satisfied the requirements of the law for the grant of applications of this nature.

The Defendants/Respondents were served with the motion papers however the 2nd Defendant counsel failed to appear in Court or file any response to this application. The 1st defendant counsel, *C.U. Okunbor Esq.* appeared in court but did not file any counter affidavit in opposition to this application. The 1st

Defendant counsel's plea for a date to file a counter affidavit in opposition to this application was objected to by the claimant counsel, ***Carrington Omokaro, Esq.***, and from the record of proceedings, the 1st Defendant's counsel conceded to the Claimant's counsel moving this application.

Thus, this 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.*

From the available evidence, I think the Applicant has identified a legal right which she seeks to protect. In the supporting affidavit, the Applicant stated that she is the bonafide owner in possession of the parcel of land measuring 100feet by 100feet (One Hundred feet by One Hundred feet) particularly described and delineated in a survey plan No. NSK/ED/022/2012 made on the 01/02/2012 by SURV. KENNETH S. ONOSOHWO and marked with Beacon Nos. SC/ED/K1454ZC, SC/ED/K1455ZC, SC/ED/K1164ZC, SC/ED/K1163ZC, lying and situate at Ward 36A, Amagba village Area, Oredo Local Government Area, Benin City, Edo state, by virtue of a DEED OF GIFT dated 28th June, 2013 from one **FRANK OBADIGIE**. She attached the deed of gift as Exhibit "A" to the supporting affidavit.

I am of the view that at this stage, the Applicant has adduced sufficient evidence to establish the fact that she has a legal right to protect in relation to the parcel of 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 her supporting affidavit, the Applicant stated that she decided to use the name of Frank Obadigie who gifted the said parcel of land to her, to buy from the 1st Defendant as reflected in a Deed of Transfer as purchase receipt and Survey plan dated 01/02/2012 respectively. The Deed of Transfer and survey plan are attached to the affidavit and marked as *Exhibit “B” and “B2”* respectively. In her affidavit, the Claimant also made further claims such as that she erected a building structure of three (3) bedroom flat built up to DPC level on a portion of the land leaving the other portion where she allegedly dug a well, left blocks and trips of sand with the intention to also build on it in future. She alleged that the 1st Defendant was aware of this development and was even the one encouraging her.

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. Meanwhile, 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 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, the Applicant stated that sometime in 2021, she discovered that her alleged building structure of three (3) bedroom flat built up to DPC level was maliciously destroyed by the Defendants, she made inquiries and discovered that the 1st Defendant sold the subject matter of this application to the 2nd Defendant who is currently building on the land. This case was instituted in August 2022 as the claimant stated that she did not want to take laws into her hands or engage in self-help. Thus, I do not see any delay on the part of the Applicant.

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 18 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 Claimant/Applicant has fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and *I hereby make an order of interlocutory injunction restraining the Defendants/Respondents most particularly the 2nd Defendant/Respondent, either by themselves or through their servants, agents, privies or representatives, from building, working, constructing, erecting structures or further trespassing on all that vast area of land measuring 100feet by 100feet (One Hundred feet by One Hundred feet) particularly described and delineated in survey plan no. NSK/ED/022/2012 Lying and situate at Ward 36A, Amagba Village Area, Oredo Local Government Area, Benin City, Edo State, within the jurisdiction of this Honourable Court, pending the hearing and determination of the substantive matter.*

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
20/06/2025

COUNSEL:

CARRINGTON OMOKARO, ESQ.....CLAIMANT/APPLICANT

A. OSAYOMWANBOR, ESQ1ST DEFENDANT/RESPONDENT

UNREPRESENTED2ND DEFENDANT/RESPONDENT.