

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
ON MONDAY THE
18TH DAY OF JULY, 2022.

BETWEEN:

SUIT NO: B/247/2022

MR. FRANK OGBOMO -----CLAIMANT/APPLICANT

(Suing through his lawful attorney

Mr. Aziegbemhim Emmanuel)

AND

PERSON, NAME UNKNOWN -----DEFENDANT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice, dated on the 7th and filed on the 8th of April, 2021, brought pursuant to Order 40 rules 1 & 2 of the High Court (Civil Procedure) Rules of Edo State 2018 and under the inherent jurisdiction of this Court praying for the following orders:

- (i) *An order of interlocutory injunction restraining the Defendant/Respondent or any other person (s) either by themselves, servants, agents, privies or any other person whosoever that is acting on their behalf from continuing trespass on the Claimant/Applicant land in dispute measuring 200feet by 200Feet lying and situate at Uroho Village, Ikpoba-Okha Local Government Area, Edo State, particularly delineated in Property Survey Plan No. TDN/ED/402/2017, dated the 27/07/2019, covered by a Certificate of Occupancy No: 4f4a1-v0e5e-nf470-u0e5-nf771-rw493 dated 28th day*

of September, 2021 and registered as No. 120 at page 1 in Volume 43 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of the Edo State and Deed of Assignment dated 4th day of June, 2014 pending the hearing and determination of the suit.

- (ii) *An order of interlocutory injunction restraining the Defendant/Respondent or any other person or persons whether by themselves, servants, agents, privies, assigns or whosoever acting for them or on their behalf from dissipating, selling and committing further acts of trespass on the Claimant/Applicant land in dispute measuring 200feet by 200Feet lying and situate at Uroho Village, Ikpoba-Okha Local Government Area, Edo State, particularly delineated in Property Survey Plan No. TDN/ED/402/2017, dated the 27/07/2019, covered by a Certificate of Occupancy No: 4f4a1-v0e5e-nf470-u0e5-nf771-rw493 dated 28th day of September, 2021 and registered as No. 120 at page 1 in Volume 43 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of the Edo State and Deed of Assignment dated 4th day of June, 2014 pending the hearing and determination of the suit.*
- (iii) *AND for such further order or other orders of this Honourable Court may deem fit to make in the circumstances of this case.*

The application is supported by a 30 paragraphs affidavit and the Written Address of the learned counsel for the Claimant/Applicant.

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

In his Written Address, the learned counsel for the Applicant formulated a single issue for determination, to wit:

“Whether or not the Claimant/Applicant is entitled to the prayers sought in his application.”

Arguing this application, the learned counsel for the Claimant/Applicant relied on all the paragraphs of the Affidavit in support of application and the Exhibits attached to the Motion and submitted that it is trite law that the purpose of interlocutory injunction is to protect the right of the applicant and to preserve the res from destruction. He said that the courts have a duty to preserve the res for the

purpose of ensuring that the success of a suit is not rendered nugatory. He relied on the case of ***OSHIOMHOLEV.SALIHU NO2 (2021) 8 NWLR (PART 1778) PAGE 380@ PAGE 419 PARA.D-E.***

Furthermore, counsel submitted that it is trite law that the Claimant/Applicant must establish the existence of the following factors:

- (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, learned counsel addressed on each of the foregoing factors 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. In respect of this application, he referred to paragraphs 4-29 of the Affidavit in support of the Motion on Notice and the Exhibits attached to the Motion and submitted that these facts clearly establish that the Claimant/Applicant has a legal right in the subject-matter of this application. He relied on the cases of ***OSHIOMHOLE V. SALIHU NO2 (2021) 8 NWLR (PART 1778) PAGE 380; KOTOYE V. CBN (1989) 1 NWLR (Part 98) Page 41; and LADUNNI V. KUKOYI AND ORS. (1972) 1 All N.L.R. (Part 1) Page 133.***

Counsel submitted that the essence of a grant of interlocutory injunction is to protect the existing legal right or recognizable right of a person from unlawful invasion by another. He urge the Court to hold that the Claimant/Applicant has a legal right in the subject-matter of this application to protect.

EXISTENCE OF TRIABLE ISSUES:

On this point, learned counsel submitted that there are serious questions to be tried in the main suit between the parties. He referred the Court to paragraphs 4-15 of the Affidavit in support of the Motion on Notice. He said that the facts deposed to in the paragraphs of the Affidavit establish the facts that there are serious questions to be tried in the main suit by this Honourable Court. He posited that the issues of who has a better title to the land in dispute and who is in trespass on the land in dispute are all serious questions to be tried and he relied on the case of ***OBEYA MEMORIAL SPECIALIST HOSPITAL AYI-ONYAMA FAMILY LTD V. A.G. FEDERATION (1987) 3 NWLR (Part 60) Page 325.***

PRESERVATION OF THE RES OR STATUS QUO:

Learned counsel submitted that all the Claimant/Applicant seeks to achieve is to preserve the *status quo* until the hearing and determination of the motion on Notice and the substantive suit. He referred the Court to paragraphs 23-26 of the Affidavit in support of the Motion on Notice and relied on the case of ***KOTOYE V. CBN (1989) 1 NWLR (Part 98) Page 419.***

REAL URGENCY:

He submitted that the Claimant/Applicant must establish real urgency but not self-induced urgency before he can succeed in this application. He referred to paragraph 35 of the Affidavit in support of the Motion and the Affidavit of Urgency which established that there is real urgency and submitted that the Claimant/Applicant has shown the existence of real urgency. He relied on the cases of ***KOTOYE V. CBN supra*** and ***OKECHUKWU V. OKECHUKWU (1989) 5 NWLR (Part 108) Page 234*** where the Courts held that real urgency is the basis of granting an Interlocutory Injunction.

BALANCE OF CONVENIENCE:

On balance of convenience, counsel submitted that the Claimant/Applicant has established that he will suffer more inconvenience or hardship, if the application is not granted by this Honourable Court. He referred to paragraphs 27 of the Affidavit in support of the Motion and submitted that the Claimant/Applicant will suffer greatly if the application is not granted. On the other hand, he posited that the Defendants/Respondents will suffer no hardship whatsoever and he relied on the cases of ***NWANGANA V. MILITARY***

GOVERNOR OF IMO STATE (1987) 3 NWLR (Part 59) Page 185; and ACB V. AWOGBORO (1991) 2 NWLR (Part 176) Page 711.

ALTERATION OF THE CHARACTER OF THE LAND IN DISPUTE:

Counsel referred to the Claimant/Applicant's deposition in paragraphs 23, 24 and 25 of the Affidavit in support of this application that the character of the land in dispute would be greatly altered by the Defendant if he continues his acts of trespass on the land and that great expenses would be incurred by the Claimant/Applicant to remove the structures that are being illegally erected on the land by the Defendants. He referred to the dictum of *Coker JSC* in the case of *KUFEJI V. KOGBE (1961) All N.L.R. Page 1 at Page 22* where he stated thus:

“In this case the applicant maintained that he was dispossessed by the defendant, who is indeed proceeding to alter the condition of the land. In the interests of justice and as the applicant has stated that he is not interested in the type of building now being erected on the land by the defendant, I take the view that the present status quo must be maintained until the determination of this case. In the interests of the defendant himself it is advisable that the issue of title be resolved, and that in his favour, before he continues with the expenditure of large amounts of money in developing the land”.

Counsel also relied on the case of *EZEBILO V. CHIWUNBA (1997) 7 NWLR (Part 511) Page 108 at Page 133.*

INADEQUACY OF DAMAGES:

On this point, counsel submitted that the continuous trespass of the Defendant on the land of the Claimant/Applicant will occasion irreparable damage on the land such that the character of the land would have been altered substantially if the Defendant is not restrained. He said that the Applicant may not be able to repair the defects caused by the alteration of the land which could result in permanent damage to the land. That the hardship that will be occasioned to the Claimant/Applicant, if the Defendant continues his alteration of the land cannot be assuaged by damages. He referred to paragraph 28 of the Affidavit in support of the Motion on Notice and also relied on the cases of *OKECHUKWU V. OKECHUKWU (1989) 3 NWLR (Part 108) Page 234;* and *OKOTIE-EBOH V. MRS. JADESIMI (2001) 10 NWLR (Part 720) Page 52.*

NO DELAY IN PRESENTING THE APPLICATION:

Learned counsel submitted that there is no delay on the part of the Claimant/Applicant in presenting this application. He posited that the Defendant's acts of trespass has been ongoing and referred to paragraph 30 of the Affidavit in support of the Motion. He submitted that the Applicant did not delay in bringing this application.

UNDERTAKING TO PAY DAMAGES:

Counsel referred to paragraph 29 of the Affidavit in support of the Motion on Notice where the Applicant made an undertaking to pay damages to the Defendant, if the application is frivolous and he cited the case of ***KOTOYE V. CBN supra.***

Finally, he urged the Court to grant this application.

The Respondent was served with the motion papers by means of substituted service but he failed to appear in Court, neither did he file any response to the application. In effect, the application was unopposed.

It is settled law that where facts contained in an affidavit are not countered, they are deemed to have been admitted. See the cases of: ***NWOSU V IMO STATE ENVIRONMENTAL PROTECTION AGENCY 1990 2 NWLR Pt. 135, 688; and EGBUNA V EGBUNA 1989 2 NWLR Pt. 106 773, 777.***

Thus, the Respondent is 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 his 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 his favour.

The most important pre-condition is for the applicant to establish that he 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 he seeks to protect. In paragraphs 4 to 8 of the supporting affidavit, the Applicant narrated how he acquired the parcel of Land measuring 200feet by 200Feet carved out of the parcel of Land measuring 200Feet by 300Feet lying and situate at Uroho Village, Ikpoboba-Okha Local Government Area, Benin City, Edo State from his predecessor-in-title, Mr. Sunday Osazuwa vide a Deed of Transfer dated the 4th day of June, 2014 attached as Exhibit "B" to the supporting affidavit.

After acquisition of the Land, the Claimant/Applicant surveyed the land and the Survey Plan was attached to the supporting affidavit as Exhibit "D". Thereafter he obtained a Certificate of Occupancy which he attached as Exhibit "E". Thereafter,

he erected a building of Two (2) bedrooms flat on the said land and attached the photograph of the Two Bedroom flat as Exhibit “F”.

I am of the view that at this stage, the Applicant has adduced sufficient evidence to establish the fact that he has a legal right 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-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.”

See also the case of: ***Ladunni vs. Kukoyi (1972) 1 All NLR(Pt.1) 133***.

In paragraphs 9 to 15 of the affidavit in support of this application, the deponent narrated how in November, 2021, he paid a visit to the Land in dispute and noticed that there was an act of trespass on the Claimant/Applicant’s land. The Claimant/Applicant instructed the deponent to write a petition through his legal representative against the Defendant/Respondent for criminal trespass on the Claimant/Applicant’s land in dispute and for the malicious destruction of the Claimant/ Applicant’s fence.

That all attempt made by the officers of the Nigeria Police force to apprehend the Defendant/Respondent who trespassed on the Claimant/Applicant’s land proved abortive as the Defendant/Respondent is nowhere to be found.

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 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.

Presently, the Applicant is apprehensive that he will suffer more if this application is not granted and the Respondent is allowed to continue his alleged acts of trespass. The Respondent has not shown what he stands to lose if this Court makes

an order restraining him 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) (1975) 1 ALL E.R. at 504 pp. 510*, the court stated that:

“If damages ...would be an adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff’s claim appeared to be at that stage”

In paragraph 21 of the supporting affidavit the deponent stated that damages will be inadequate to assuage the untold hardship the Claimant/Applicant will suffer if the Defendant/Respondent is not restrained from his continuing act of trespass.

In the light of the circumstances of this case, I do not think damages can adequately compensate the Applicant if the Respondent is allowed to continue his alleged activities on the land.

On the condition of whether the Applicant was prompt in bringing the application, I observed that this application was filed shortly after the originating processes in this suit were filed, so there was no delay whatsoever 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 22 of the supporting affidavit, the Claimant/Applicant gave an undertaking to pay damages in the event that it turned out that this application ought not to have been granted.

On the whole, I am satisfied that the Applicant has fulfilled the requirements to enable this court exercise its discretion to grant this application.

Consequently, this application succeeds and it is granted as follows:

- (i) An order of interlocutory injunction restraining the Defendant/Respondent or any other person (s) either by themselves, servants, agents, privies or any other person whosoever that is acting on their behalf from continuing trespass on the Claimant/Applicant’s land in dispute measuring 200 feet by 200 feet lying and situate at Uroho Village, Ikpoboa-Okha Local Government Area, Edo State,***

particularly delineated in Property Survey Plan No. TDN/ED/402/2017, dated the 27/07/2019, covered by a Certificate of Occupancy No: 4f4a1-v0e5e-nf470-u0e5-nf771-rw493 dated 28th day of September, 2021 and registered as No. 120 at page 1 in Volume 43 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of the Edo State and Deed of Assignment dated 4th day of June, 2014 pending the hearing and determination of the suit;and

- (ii) *An order of interlocutory injunction restraining the Defendant/Respondent or any other person or persons whether by themselves, servants, agents, privies, assigns or whosoever acting for them or on their behalf from dissipating, selling and committing further acts of trespass on the Claimant/Applicant's land in dispute measuring 200feet by 200Feet lying and situate at Uroho Village, Ikpoba-Okha Local Government Area, Edo State, particularly delineated in Property Survey Plan No. TDN/ED/402/2017, dated the 27/07/2019, covered by a Certificate of Occupancy No: 4f4a1-v0e5e-nf470-u0e5-nf771-rw493 dated 28th day of September, 2021 and registered as No. 120 at page 1 in Volume 43 of the Certificate of Occupancy Digital Register in the EDOGIS Registry Office of the Edo State and Deed of Assignment dated 4th day of June, 2014 pending the hearing and determination of the suit.*

I make no order as to costs.

P.A.AKHIHIERO

JUDGE

18/07/2022

COUNSEL:

JOSHUA E. IGUMAH ESQ.....CLAIMANT/APPLICANT

UNREPRESENTED.....DEFENDANT/RESPONDENT