

IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP,
HON. JUSTICE P.A. AKHIHIRO,
ON FRIDAY THE
11TH DAY OF APRIL, 2025.

BETWEEN:

SUIT NO: B/531/2024

1. **ABIGAEI UZAMERE**

2. **GODSPOWER GBENOBA -----CLAIMANTS/APPLICANTS**

AND

1. **PULLEN OBAYUWANA**

2. **JOSHUA EDO**

3. **GIDEON (A.K.A. OBOH)**

----- **DEFENDANTS/RESPONDENTS**

RULING

This is a Ruling on a Motion on Notice, dated on the 4th and filed on the 5th of June, 2024, brought pursuant to ***Order 39 Rules 1(1) & 2 and 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:

1) ***AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants/Respondents by themselves, their Officers, Agents, Servants, Employees, Workmen, Proxies, Privies and/or assigns from trespassing or cause to trespass or further trespassing into that piece or parcel of land measuring approximately 462.46 sqm vide Certificate of Occupancy number EDL90739 dated 29th January 2024, registered as no. 15 at page 1 volume 131 in the Register of EDOGIS registry office, Benin City, also as plot number 90739 Zone MD/A85/Obazagbon, the said land is situate and lying at Obazagbon Village, Oredo Local Government Area, Edo State, within the jurisdiction of this Honourable Court and or from doing anything that is inconsistent with the rights of the 1st Claimant to the said land in any manner***

howsoever, pending the hearing and determination of the substantive suit already filed;

- 2) *AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants/Respondents by themselves, their Officers, Agents, Servants, Employees, Workmen, Proxies, Privies and/or assigns from trespassing or cause to trespass or further trespassing into that piece or parcel of land that piece or parcel of land measuring 50ft by 100ft situate and lying at Obazagbon Village, Oredo Local Government Area, within the jurisdiction of this Honourable Court and or from doing anything that is inconsistent with the rights of the 2nd Claimant to the said land in any manner howsoever, pending the hearing and determination of the substantive suit already filed.*

And for such further order(s) as the Court may deem fit to make in the circumstance of this case.

The application is supported by a 31 paragraphs affidavit and the Written Address of the learned counsel for the Claimants/Applicants.

Arguing the motion, the learned counsel for the Applicant, *Prince P.E. Uwadiae* 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 in the circumstances of this case, the Applicants are entitled to the grant of the order sought for in their motion paper.”

Arguing the sole issue for determination, the learned counsel submitted that in considering an application for interlocutory injunction, the Court is enjoined to consider the following factors:

- i. Existence of a legal right, the infringement of which he seeks to protect.*
- ii. The strength of applicant’s case*
- iii. Preservation of res or status quo*
- iv. Balance of convenience*
- v. No delay in presenting application*
- vi. Subsisting action and relief*
- vii. Irreparable loss (damages inadequate)*

viii. Undertaking as to damages

In this regard he referred the Court to the case of *KOTOYE V. CBN (1989) 1 ALL NLR 76*.

Thereafter, the learned counsel addressed on each of the requirements seriatim.

LEGAL RIGHT

On the existence of a legal right, he submitted that an applicant for interlocutory injunction must show that he has a legal right the violation of which he seeks to prevent and or protect.

He referred the Court to the supporting affidavit to the motion together with the Exhibits attached thereto and submitted that the Claimants/Applicants have shown that their legal rights to the subject matter of this suit are worthy of protection from the acts of trespass by the Defendants/Respondents and their agents. He relied on the cases of *Okechukwu. Okechukwu (1989) 5 NWLR (Pt.108) 234* and *Ladunni vs. Kukoyi &Ors. (1972) 1 All NLR (pt.1) 133*.

Counsel maintained that the rights of the 1st and 2nd Claimants/Applicants have been unequivocally stated in their joint statement of claim and in the supporting affidavit to this application.

He said that the legal rights of the 1st and 2nd Claimants are covered by a Certificate of Occupancy number EDL90739 dated 29th January 2024, registered as No. 15 at page 1 Volume 131 in the Register of EDOGIS registry office, Benin City.

He said that the said legal rights are now being seriously threatened by the vicious acts of trespass of the Defendants/Respondents.

THE STRENGTH OF THE APPLICANT'S CASE.

Learned counsel submitted that the only requirement which the Applicants must show here is to satisfy the court that their application is not frivolous, vexations or that there is a serious question to be tried.

He referred the Court to the supporting affidavit and submitted that the Applicants have shown that there are serious acts of violation of the Applicants' rights and questions to be tried. He said that the issue of ownership or declaration of title and trespass are all serious questions to be tried and he relied on the case of *Obeya Memorial Specialist Hospital Ayi-Onyama Family Limited v. Attorney- General of the Federation (1987) 3 NWLR (pt.60) 325* which followed the English case of *American Cynamid Co. v. Ethicon Ltd (1975) AC 396*. He also relied on the celebrated case of *Kotoye v. CBN (1989) 1 NWLR (pt.98) 419 at 441*.

PRESERVATION OF THE RES OR STATUS QUO.

Counsel submitted that the Applicants have shown the need to preserve the res in the affidavit in support of the motion and he relied on the case of *Universal Trust Bank Ltd. v. Dolmetsch Pharmacy Nig. Ltd (2002)8 NWLR (pt. 770) 726.*

BALANCE OF CONVENIENCE

Counsel submitted that the Applicants have shown that they will suffer more inconveniences or hardship if the application is not granted by the court. He referred the Court to the Affidavit in support and submitted that the Applicants have shown that the physical state of the parcels of land are being altered and will be completely altered by the Defendants/Applicants if they are not restrained from their acts of trespass and the res preserved.

He relied on the cases of *NWANGANA V. MILITARY GOVERNOR OF IMO STATE (1987) N 3 NWLR (PT.59) 185; ACB LTD. V. AWOGBORO (1991) 2 NWLR (PT.176)711;* and *COMMISSIONER FOR WORKS, BENUE STATE V. DEVCOM DEVELOPMENT CONSULTANT LTD (1988) 3 NWLR (PT. 83) 407* where the courts have held that for the applicant to succeed there should be enough evidence that the applicant will suffer more inconveniences if the application is refused.

NO DELAY IN PRESENTING APPLICATION

Counsel submitted that there was no delay in presenting this application. He referred the Court to the supporting affidavit where the Applicants stated that the acts of trespass of the Defendant/Respondent were discovered recently.

Moreover, he submitted that the actions of the Defendants/Respondents are continuous and that makes this application timeous. He submitted that the Applicants did not delay in bringing this application.

IRREPARABLE LOSS

He referred the Court to the supporting affidavit and submitted that if the Defendants/Respondents are allowed to alter the status quo, there will be irreparable loss on the part of the Applicant and he relied on the cases of *OKECHUKWU V. OKECHUKWU (1989) 3 NWLR (PT.108)234;* and *AJEWOLE; ADETIMO (1972)1 ALLER 95 OKOTIE-EBOH V. MRS. JADESIMI (2001)10 NWLR (PT. 720)52.*

UNDERTAKING AS TO DAMAGES

Counsel submitted that the Applicants have given an undertaking to indemnify the Respondent by way of damages should it be shown that the order ought not to be granted and he relied on the case of *KOTOYE V. CBN (Supra).*

Finally, he urged the Court to grant this application.

The Defendants/Respondents were served with the motion papers but they did not file any response to the application so 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 Respondents are deemed to have admitted all the facts contained in the Applicants' affidavit in support of this application.

However, the mere fact that the application is not opposed does not guarantee the success of same. The Applicants still have the burden to convince the Court to exercise its discretion in their 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 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 the cases of *Ojukwu vs Governor of Lagos State (1986) 3 NWLR (Pt.26) 39*; and *Akapo vs Hakeem Habeeb (1992) 6 NWLR (Pt.247) 266-289*.

From the available evidence, I think the Applicants have identified some legal rights which they seek to protect. In paragraphs 5 to 12 of the supporting affidavit, the Applicants narrated how they acquired the parcels of land in dispute and remained in peaceful possession before the alleged acts of trespass by the Defendants/Respondents.

The Defendants/Respondents did not file any Counter-Affidavit to controvert the Applicants' assertions so they are deemed to have admitted them at this stage.

I am of the view that at this stage, the Applicants have adduced sufficient evidence to establish the fact that they have 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-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 their affidavit in support of this application, the Applicants narrated how the Defendants/Respondents forcibly entered their land and how all the efforts made to resolve the conflict proved abortive hence they have come to court to seek redress. From the available facts, it is apparent 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 Applicants are apprehensive that they will suffer more if this application is not granted and the Respondents are allowed to continue their alleged acts of trespass.

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 Applicants.

Next is on the requirement of inadequacy of damages. In the case of: *American Cyanamid Co. vs Ethicon Ltd. (1975) 1 ALL E.R. at 504 pp. 510*, the 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 25 of the supporting affidavit the deponent stated that the Claimants/Applicants will suffer irreparable damage if the Defendants/Respondents are not restrained from their alleged continuing acts of trespass. In the light of the circumstances of this case, I do not think damages can adequately compensate the Applicants if the Respondents are allowed to continue their alleged activities on the land.

On the condition of whether the Applicants were prompt in bringing the application, I observed that this application was filed along with the originating processes in this suit soon after the Applicants discovered the alleged acts of trespass, so there was no delay whatsoever on the part of the Applicants.

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 30 of the supporting affidavit, the Claimants/Applicants gave an undertaking to indemnify the Defendants/Respondent in the event that it turned out that this application ought not to have been granted.

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

Consequently, this application succeeds and the Claimants/Applicants are granted the following reliefs:

- 1) AN ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants/Respondents by themselves, their Officers, Agents, Servants, Employees, Workmen, Proxies, Privies and/or assigns from trespassing or cause to trespass or further trespassing into that piece or parcel of land measuring approximately 462.46 sqm vide Certificate of Occupancy number EDL90739 dated 29th January 2024, registered as no. 15 at page 1 volume 131 in the Register of EDOGIS registry office, Benin City, also as plot number 90739 Zone MD/A85/Obazagbon, the said land is situate and lying at Obazagbon Village, Oredo Local Government Area, Edo State, within the jurisdiction of this Honourable Court and or from doing anything that is***

inconsistent with the rights of the 1st Claimant to the said land in any manner howsoever, pending the hearing and determination of the substantive suit already filed; and

2) AN ORDER OF INTERLOCUTORY INJUNCTION *restraining the Defendants/Respondents by themselves, their Officers, Agents, Servants, Employees, Workmen, Proxies, Privies and/or assigns from trespassing or cause to trespass or further trespassing into that piece or parcel of land that piece or parcel of land measuring 50ft by 100ft situate and lying at Obazagbon Village, Oredo Local Government Area, within the jurisdiction of this Honourable Court and or from doing anything that is inconsistent with the rights of the 2nd Claimant to the said land in any manner howsoever, pending the hearing and determination of the substantive suit already filed.*

I make no order as to costs.

P.A.AKHIHIERO
JUDGE
11 /04/2025

COUNSEL:

PRINCE P.E. UWADIAE.....CLAIMANTS/APPLICANTS

S.O. OMOBUDE ESQ.....DEFENDANTS/RESPONDENTS