

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
23RD DAY OF FEBRUARY, 2023.

BETWEEN:

SUIT NO. B/393/2022

1. **MR. THANKGOD AGUMA**
2. **MRS. SOFIAT AGUMA** } **CLAIMANTS**

AND

ABUBAKAR OSHIOMA **DEFENDANT**

RULING

This is a Ruling on a Motion on Notice dated 25th of April 2022, filed on the 26th of April, 2022 brought pursuant to Order 40 Rules 5, 6, 7 and 8 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:

1) AN ORDER OF INTERLOCUTORY INJUNCTION *restraining the Defendant/Respondent, his agents, employees, workmen, servants or privies from trespassing into or interfering with the property of the Applicant situate at Amagba Village Area, Benin City, measuring approximately 10.67m x 32.61 x 18.90m x 32.00m which is within the area of 472.174 covered by Survey Plan No. SMD/EDO/2022/420 and from erecting any structure thereon or destroyed applicants building materials pending the hearing and determination of the substantial suit herein.*

2) AND FOR SUCH FURTHER ORDER OR ORDERS *as this Court may deem fit to make in the circumstances.*

The motion is supported by a 24 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 ***I.O.I Adebayo Esq.*** adopted his written address as his arguments in support of the motion.

In his written address, the learned counsel for the Applicants, ***I.O.I Adebayo Esq.*** formulated a sole issue for determination, to wit:

"Whether from the facts deposed to by the applicant and the circumstance of this case, this Honourable Court ought to grant this application."

Opening his arguments on the sole issue, learned counsel enumerated the factors the Court should consider and relied on the following authorities: ***UTB. LTD & ORS V. DOLMETSCH PHARMACY (NIG.) LTD. (2007) LPELR-3413(SC); and OKAFOR VS. ONWE (2003) F.W.L.R (PART 131) 1155 (A).***

Thereafter, counsel articulated his arguments on each of the factors seriatim.

THE LEGAL RIGHT OF THE APPLICANT:

Learned counsel submitted that for an applicant to succeed in an application for an Interlocutory Injunction, he must establish that he has a legal right to be protected by the Court in respect of the subject matter in dispute.

He submitted that the applicant has shown from the facts stated in the affidavit in support of this motion that they indeed, have a legal right in this suit. He referred to paragraphs 1, 3, 4, 6 and 7 and Exhibits A, B and C of the affidavit in support of the motion and posited that it is clear from that the Claimants purchased from Ediowan, Ambassador Peter Enoghayin having carried out all necessary investigation into the land and found out that there are no encumbrances. That after the purchase, the Claimants went ahead to Survey the land and started constructing a structure on the land.

He referred to the cases of ***SARAKI VS KOTOYE (1990) 4 NWLR (PT. 143) PG. 144 AT PG. 187 PARAS B - C RATIO 11; and AKAPO V. HAKEEM-HABEEB & ORS. (1992) LPELR - 325(SC).***

SUBSTANTIAL ISSUES TO BE TRIED:

Counsel submitted that from the applicants' affidavit evidence in support of this application, the applicant has presented triable issues to be determined between the parties in this case. He said that the issue in controversy is the acts of trespass committed by the Defendant in the face of glaring evidence that the Claimant is the Owner and is in possession of the land in issue and he relied on the cases of ***LADUNMI Vs. KUKOYI (1972) 1 ALL NLR (Pt. 1)133; and OBEYA***

***MEMORIAL HOSPITAL VS. ATTORNEY GENERAL OF THE FEDERATION
& ANOR (1987) 7 S.C (PT. 1) 52.***

PRESERVATION OF RES:

He submitted that from the applicant's affidavit evidence in support of this application the applicant has shown that there is a res that needs to be preserved by an Order made by this Honourable Court. He posited that the res in this instance is the Applicant's land over which the acts of trespass are being carried out.

EXISTENCE OF REAL URGENCY:

He posited that from the applicants' affidavit evidence, there is real urgency that warrants the granting of this order. He maintained that the Defendant has trespassed into the land and if not restrained may continue in his acts of trespass. Furthermore, he alleged that the Investigating Police Officer, Mr. Lucky is threatening to detain the 1st Claimants having earlier on detained the 2nd Claimant and released her when their Counsel I.O.I ADEBAYO (ESQ) intervened.

SUBSISTING ACTION AND RELIEF:

He submitted that from the applicant's affidavit evidence in support of this application and the originating processes, the applicant has shown that indeed there is a subsisting action and relief to found this application for an Interlocutory Injunction.

BALANCE OF CONVENIENCE:

Learned counsel referred to the cases of *KOTOYE VS. CBN (1989)1 NSCC 238*, *EDOSOMWAN VS. EREBOR (2001) 13 NWLR (PT. 730) PG. 265 AT PG. 270* and paragraphs 7, 8, 9, 14, 18, 19 and 20 of the affidavit in support of this motion and submitted that the balance of convenience is in favour of the Applicants whose land the Defendant's act would deface if not restrained.

IRREPARABLE DAMAGES:

He submitted that the Claimants/Applicants have shown through their affidavit that if this application is not granted and the Defendants are left to continue with their acts of trespass/interference with the Claimant/applicants land, the Claimant/Applicant will suffer irreparable loss which cannot be compensated by monetary damages. He said that the degree of damage which would have been done to the applicant's land before the conclusion of the substantive suit cannot be assessed and quantified with mathematical exactitude. Based on this, he urged that the res in this case be preserved by the grant of this application.

CONDUCT OF THE PARTIES:

He submitted that the Claimants/Applicants have not indulged in any form of delay in asserting their ownership and possession of the land in dispute and are therefore entitled to the grant of this application.

Furthermore, he maintained that the conduct of the Defendant is reprehensible based on the fact that despite the fact that the claimant sent messages through the defendant's agents about their trespass, the Defendant is still going ahead to destroy the structure -on the land and about to start building in a bid to arm-twist the Claimants/Applicants.

STATUS QUO ANTEBELLUM:

Counsel submitted that the status quo antebellum to be preserved in this case is that which existed before the Defendant entered the Claimant's land and destroyed the fence and structures on the land in dispute and started to build. He referred to all the paragraphs of the affidavit in support of the Motion and we relied on the case of ***OBEYA MEMORIAL HOSPITAL VS. A.G FEDERATION (SUPRA)***.

In opposition to this application, the Defendant/Respondent filed a Counter-Affidavit of 24 paragraphs and a written address of counsel.

In his written address, the learned counsel for the Defendants/Respondents ***Osasere Osabuohienme Esq.*** formulated a sole issue for determination as follows: ***“Whether the Defendant has made out a case for the refusal of the claimant’s application for interlocutory injunction.”***

Arguing the sole issue, learned counsel submitted that the grant or refusal of an interlocutory injunction is at the absolute discretion of the court and in the

exercise of its discretionary powers the court must act judicially and judiciously see. ***Dekit Construction Co. Ltd & Anor v Adebayo & Ors (2010) LPELR-4030(CA).***

He posited that the factors the Court will take into consideration were enumerated in the cases of ***Obeya Memorial Specialist Hospital V A.G. Federation 1998 3 NWLR 60 325***; and ***Kotoye V C.B.N (1989) 1 NWLR (98) 419 at 441 B-H.***

He referred to paragraphs 2 to 20 of the Defendant Counter affidavit in opposition to the claimant motion on notice and submit that it is in the interest of justice for the court to exercise its discretion in favour of the defendant by dismissing the application for interlocutory injunction as the land in dispute has since been in the possession of the Defendant.

He maintained that the claimants want the court to determine at this stage the crux of the substantive suit as the application before this court would amount to prejudging and prejudicing the issues that would arise for determination at the trial as the 3rd defendant (sic) is ready to prove ownership.

Furthermore, counsel posited that since part of the relief sought by the claimant is for the sum of N15 million as general damages it shows that the claimant can be compensated in damages if this application is refused.

He submitted that in view of the affidavit evidence before the Honorable Court and the foregoing submissions, he urged the Court to resolve the sole issue in favour of the Defendant and refuse 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) 9 NWLR (PT. 719) 689 at 709***; and ***Okomu Oil Palm Co. vs. Tajudeen (2016) 3 NWLR (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 contents of Paragraphs 3 and 4 of the affidavit in support of this application, the Applicants have put forward sufficient facts to substantiate their claims to the disputed land. In the aforesaid paragraphs, they narrated how they bought the land from one Ediowan, Ambassador Peter Enoghayin for the sum of N5,000,000.00 (Five Million Naira). That after the purchase, a Deed of Transfer transferring the land to them by the owner that was duly executed and it was attached as **Exhibit "A"** to the supporting affidavit.

From the available evidence, I think the Applicants have identified their legal rights which they seek to protect in relation to the disputed parcels of land 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 Claimants 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.

Presently, the Applicants are apprehensive that if this application is not granted and the Respondent is allowed to continue his alleged acts of trespass on the land, the Defendant/Respondent would go ahead and start constructing buildings on the land, which is clearly outside the purpose for which the purchased the land.

Going through the Respondent's Counter-Affidavit I observed that the Defendant/Respondent did not say what he will suffer if he is restrained from the land. As a matter of fact in paragraph 20 of his Counter-Affidavit, he stated that he has no intention of developing the land until the conclusion of the matter.

In the event, I think the balance of convenience is on the side 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 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 Claimants/Applicants, the Applicants have asserted that they cannot be adequately compensated by the award of damages if the Defendant is allowed to continue his alleged acts of trespass.

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 so I do not think there was any 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 16 of the supporting affidavit, the Claimants/Applicants gave an undertaking to pay damages to the Defendant if at the end, this application is one which 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 I hereby grant ***an order of interlocutory Injunction restraining the Defendant/Respondent, his agents, employees, workmen, servants or privies from trespassing into or interfering with the property of the Applicant situate at Amagba Village Area, Benin City, measuring approximately 10.67m x 32.61 x 18.90m x 32.00m which is within the area of 472.174 covered by Survey Plan No. SMD/EDO/2022/420 and from erecting any structure thereon or destroyed applicants building materials pending the hearing and determination of the substantial suit herein.***

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

P.A.AKHIHIERO
JUDGE
23/02/2023

COUNSEL:

I.O.I ADEBAYO ESQ-----CLAIMANTS/APPLICANTS

P.E. MADOJEMU ESQ-----DEFENDANT/RESPONDENT