

**SUPREME COURT OF NIGERIA**

4TH JUNE, 1993. SC.137/1990

**CORAM:- M. L. UWAIS, S. M. A. BELGORE, A. B. WALI,  
I. L. KUTIGI, M. E. OGUNDARE, JJSC**

CHIEF DANIEL OGBONNAYA & ORS

(For themselves and on behalf of members of ..... APPELLANTS  
Obuozu-Ndoki village, Ukwu L.G.A.)

AND

ADAPALM NIGERIA LIMITED

..... RESPONDENT

*APPEALS*

*-Evidence - admissibility or rejection of not made  
a ground of appeal before appellate court - whether  
the issue is properly before the court*

*COURTS*

*- Interlocutory injunction - what court must consider  
- in the exercise of its discretion*

*INTERLOCUTORY  
INJUNCTIONS*

*- To restrain a party from entering the land in  
dispute pronouncements that tend to prejudice  
the main issues implications thereof*

*INTERLOCUTORY  
INJUNCTIONS*

*- Application for-object of-what the applicant must  
establish-when the application will be refused*

**FACTS**

In an action pending before the Imo State High Court, the Appellants sought to stop a move by the Imo State Government to acquire what they claimed was their only farmland, This appeal arose from the Appellants' motion for interim injunction seeking to restrain the Respondent from entering, clearing or continuing to enter the land in dispute.

From the affidavit evidence adduced by the parties, the Respondent had already planted on the land whilst arrangement towards paying compensation to the Appellants was being made. The trial court in refusing the application made far reaching pronouncements in respect of a

government gazette incorporating revocation of all rights to the land. Appellants' appeal to the Court of Appeal was dismissed with an order that the substantive suit be tried before another judge. Still dissatisfied, Appellants have now appealed to the Supreme Court. Appellants' submission that the gazette notice, Exh.A, being an illegal or improper evidence, ought to be disregarded was not made a ground of appeal before the appellate courts.

**HELD** (unanimously dismissing the appeal)

1. The Court of Appeal was right in holding that the validity of the gazette notice (Exhibit A) was not an issue before it seeing that the admissibility or rejection of evidence by a court being an issue of law ought to have been made a ground of appeal..(p.98 L.17)
2. Although the trial court made far reaching pronouncements on Exh. A. those pronouncements did not affect the conclusion reached and the learned trial Judge did not base his decision only on Exh. A, but considered the whole case put forward by the parties. (p.98 L.27)
3. The learned trial Judge erroneously made pronouncement that will tend to pre-judge the main issues at the trial when he held that the effect of Exh. A was to extinguish the rights of the Appellants in the land. And the Court of Appeal was right in transferring the substantive suit for trial by another judge. (p.99 L.15)
4. In an application for interlocutory injunction, an applicant should inter alia satisfy the court that there is a serious question to be tried with a reasonable factual probability that the applicant will be entitled to the relief sought. (p. 99 L. 24)
5. In the exercise of its discretion to grant an interlocutory injunction, the court must have regard to the strength of the claim vis-avis the strength of the defence and then decide what is best in the circumstance. (p.99 L.32)
6. 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. (p. 100 L8)

7. The trial court was not wrong to have held that the Appellants will be adequately compensated in damages if their claim for trespass succeeds since on the affidavit evidence, Appellants' crops had been enumerated for compensation. (p. 100 L11)
8. The Respondent having already planted on the land, the remedy sought cannot assist the Appellants, for an interlocutory injunction is not a remedy for a wrong that had since been committed. (p.100L16)
9. There is no serious question to be tried prima facie at the hearing of the substantive suit from a glance of the gazette notice, Exh. A, and the facts do not disclose a reasonable probability that the Appellants would be entitled to the relief of a permanent injunction sought by them against the Respondent. (p. 100 L.21)
10. It was not satisfactorily shown that without the courts intervention, the Respondent's action would irreparably alter the status quo or render ineffective any subsequent Decree of the court, (p. 100 L.28)

### ***REPRESENTATION***

Chief M. I. Ahamba, SAN., E. J. Bassey, for the Appellants

G. I. Njemanze, for the Respondent

### ***CASES REFERRED TO:***

1. Balogun v. Labiran (1988) 3 NWLR (Pt. 80) 66
2. Obikoya & Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (Pt.50) 385
3. U.B.A. v. Stalbau GMBH (1989) 3 NWLR (Pt. 110) 374
4. Egbe v. Onogun (1972) SC 140
5. Dick v. Piller (1943) 1 KB 497
6. Governor of Lagos State V. Ojukwu (1986) 1 NWLR (Pt. 18) 621

7.     Obeya Memorial Hospital V. A-G of the Federation & Ors. (1987)  
       3 NWLR (Pt. 60) 325
8.     Ladunni v. Kukoyi (1972) 3 SC 31
9.     Ojemen v. Momodu (1983) 1 SCNLR 188
10.    N.T.A. v. Anigbo (1972) 5 SC 156
- 5 11.    Osawuru v. Ezeiruka (1978) 6 - 7 SC 135
12.    Kudoro v. Alaka (1956) 1 FSC 82
13.    Omadide v. Adajero (1976) 12 SC 87
14.    John Holt Nigeria Ltd v. Holts African Workers Union (1963) 1  
       ALL NLR 379
- 10 15.    Globe Fishing Industries Ltd. v. Coker (1990) 7 NWLR (Pt.162)265
16.    American Cyanamid Co. v. Ethicon Ltd. (1975)1 ALL ER 504

**RULE REFERRED TO**

Court of Appeal Rules 1981 0.3 r. 2

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**LEAD JUDGMENT BY KUTIGI JSC**

The plaintiffs, now appellants, in paragraph 17 of their Statement  
20 of Claim, claimed against the defendant, now respondent, the following:-

*(a) A declaration that it is not consistent with public interest to deprive the  
members of Obuozu Ndoki Community of their only farm land (Ala Oru  
Obuozu) for the establishment of a palm plantation particularly in a situa-  
25 tion of general scarcity of food and survival by self reliance.*

*(b) A declaration that it is an act of trespass for the defendant to enter the  
Ala Oru Obuozu situate at Obuozu Ndoki within jurisdiction in a manner  
inconsistent with section 40 of the 1979 Nigeria Constitution.*

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*(c) N1,000.00 General Damages for trespass, to Ala Oru Obuozu*

*(d) An injunction restraining the defendant, his agents, assigns, personal  
representative or any person acting through or by his authority from enter-  
ing, clearing or doing any act on the land called Ala Oru Obuozu.*

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*This appeal arose from a motion on notice by the Plaintiffs/  
Appellants.*

*"for an order of court restraining the defendant/respondent from entering, clearing or continuing to enter or clear or in any manner dealing with the Ala Oru Obuozu pending the determination of this suit."*

*The motion was supported by an affidavit sworn to by one Chief Daniel Ogbonnaya, the first plaintiff, Paragraphs 5, 6, 7, 8, 10, 11, 12, 13, 14 read as follows -*

*5. That ala oru Obuozu is the only farmland we have that in it is the only land without big trees which will not inhibit crop cultivation.*

*6. That at this moment we have our cassava farm on it, and this is what the village hopes to survive in these days when garri costs 2 cups for N1.00*

*7. That if the respondent is allowed as he plans to do, to clear that land for its plantation we shall lose our food farm and be exposed to starvation, a situation which cannot be solved by palm seedlings or even monetary compensation as bulk payment will not serve to bring food as long as going to the farm would serve.*

*8. That after the compensation money is finished that it will be the end of us as we cannot then produce more food, nor shall we have money to purchase from the market.*

*9. That when the Adapalm approached us about acquiring our land we did make it clear that we have no alternative land to plant our food crops.*

*10. That the respondent's officials know the farmland in dispute for they have marked it out.*

*11. That we did in 1986 brief a lawyer to write to the respondent and make our stand clear. A copy of that letter is exhibited and marked Exhibit 'A'.*

*12. That when the Commissioner for Lands and Survey visited us on 1st day of August 1986, we made our stand clear in our welcome address which is herewith exhibited and marked Exhibit.*

*13. That we were later forced to go through an enumeration of our crop on the land for purposes of compensation. But while participating in the enumeration we made it abundantly clear we only agreed to participate in case our plea to prevent the take-over failed.*

*14. That my community has not received any compensation. The defendant/respondent in response filed a counter-affidavit. The following paragraphs appear quite relevant.*

*5. That paragraph 5 of the affidavit in support of motion is not true. The land in dispute is not the only farm land without big trees owned by the plaintiff/applicants as they have other farm lands.*

*6. That paragraphs 6 and 7 of the affidavit in support of motion are not correct. The plaintiffs/applicants would not be exposed to starvation as they have other farm lands with economic crops and trees planted on them.*

*7. That paragraph 8 of the affidavit in support of motion is not correct as the plaintiffs/applicants would be able to produce more food with the other farm lands they have.*

*8. That by the REVOCATION OF RIGHTS OF OCCUPANCY ORDER 1986, IMO STATE LEGAL NOTICE NO. 12 OF 1988, the Military Governor of Imo State of Nigeria COMMANDER AMADI IKWECHEGH revoked all rights to land over the Alaoru Obuozu land of the plaintiffs/applicants. The said REVOCATION OF RIGHTS ORDER 1986 is hereto exhibited and marked as EXHIBIT 'A'.*

*9. That the Alaoru Obuozu land of the plaintiffs/applicants is required by the Military Governor of Imo State of Nigeria generally and in particular for the establishment of ADAPALM OIL PALM PROJECT, Ukwu Local Government Area.*

*10. That paragraph 9 of the affidavit in support of motion is not correct as the establishment of ADAPALM OIL PALM PROJECT would generate employment opportunities for the plaintiffs/applicants and the income thus derived from the said project will further enhance the preservation of lives of the plaintiffs/applicants.*

*11. That paragraphs 10, 11 and 12 of the affidavit in support of motion are not true. The plaintiffs/applicants have alternative lands to plant their food crops.*

*12. That paragraphs 13 and 14 of the affidavit in support of motion are not correctly stated. The plaintiffs/applicants have willingly enumerated their food crops on the said land for the purposes of compensation.*

13. *That the defendant/respondent has already cleared the said land for the establishment of ADAPALM OILPALM PROJECT Ukwa Local Government Area and work is in progress at the site.*

*In a considered ruling dated 15/11/88 the learned trial judge Chianakwalam J. dismissed the application when he concluded thus* 5

*There is no merit in the application by the plaintiffs for an order for interim injunction at this stage. The plaintiffs will be fully compensated by way of damages should their claim on trespass succeed after the substantive suit must have been heard on the merits, if necessary. For now, the application fails and is hereby dismissed.* 10

*The plaintiffs will pay to defendant costs fixed at N100 (one hundred Naira).*

*Application dismissed.*

*Dissatisfied with the ruling of the trial court the appellants appealed to the Court of Appeal, Port Harcourt on two grounds of appeal* 15  
*thus -*

*Ground 1*

*Error of Law*

*The learned trial Judge erred in law when he dismissed the application for interim injunction when there was before him a triable issue* 20  
*necessitating the maintenance of the status quo ante litem.*

*Particulars of Error*

*Omitted*

*Ground 2*

*Error of Law* 25

*The learned trial Judge erred when he dismissed the application for interim injunction when the purpose was to protect the crops on the land pending the determination of the suit a fact that ought to have tilted the balance of convenience to the side of the applicants.*

*Particulars of Error* 30

*Omitted.*

*The Court of Appeal in the lead judgment of Jacks J.C.A. and concurred by Olatawura J.C.A. (as he then was) and Omosun J.C.A. dismissed the appeal when he said -*

*In view of all that I have said grounds 1 and 2 of the appeal fail.* 35  
*There is no merit in this appeal which is hereby dismissed by me. The relief sought is denied by this Court. The substantive suit should be heard by another judge. There will be N200.00 costs to the respondents.*

*Still dissatisfied with the judgment of the Court of Appeal the appellants have now further appealed to this Court. Two Grounds of Appeal were filed. They read as follows-*

"Ground A Error of Law

- 5 *The learned Justices of the Court of Appeal erred in law when they upheld the ruling of the High Court dismissing the appellant's application for interim injunction when the decision was based upon evidence which the Court of Appeal agrees ought not to have been relevant in the proceeding before the High Court.*

10 Particulars of Error  
*Omitted*

Ground B Error of Law

- 15 *The learned Justices of the Court of Appeal erred in law when they held that the appellants could be compensated by way of damages when the substance of the suit, and the averments in the affidavit of the appellants was that deprivation of the appellants of the land in dispute would lead to starvation as there was no alternative farmland.*

20 Particulars of Error  
*Omitted.*

Briefs of argument were filed and exchanged by the parties. They were adopted and relied upon at the hearing. Oral submissions were also made in addition thereof.

- 25 Chief Ahamba learned Senior Counsel for the appellants submitted that the Court of Appeal was wrong to have discountenanced his submission on the Gazette. Exhibit A. attached to the respondents counter-affidavit, on the ground that there was no ground of appeal questioning its  
30 admissibility. He referred to particulars (b) & (c) of ground one of appeal and said they formed part of that ground. He said although Exhibit A was published on 30/6/88 and that this suit was filed on 22/4/88, rather than discountenance Exhibit A the learned trial Judge used same to deny the appellants a prima facie case by holding that their rights to the land had  
35 been extinguished. Exhibit A therefore had erroneously affected the exercise of the discretion by the trial court. That failure by the Court of Appeal to consider ground 1 of the grounds of appeal was fatal to the judgment of the court. He cited in support Balogun v. Labiran (1988) 3 NWLR (Pt.80) 66.



It was also submitted that the Court of Appeal was wrong to have affirmed the exercise of the discretion by the trial court based on illegal or improper evidence (Exhibit A). He said Exhibit A was a fact that arose after the commencement of the suit and that by virtue of the provisions of Order 43 of the High Court Rules of Eastern Nigeria, then applicable in Imo State, Exhibit A, could only be allowed to form part of the case with leave of the court. No leave was obtained here. The Court of Appeal therefore ought to have reviewed the conclusions reached by the High Court after disregarding the illegal evidence, Exhibit A. He referred to Obikoya & Sons Ltd. v. Governor of Lagos State (1987) 1 NWLR (Pt.50) 385 at 405.

It was further submitted that the Court of Appeal having condemned the pronouncement by the trial court that 'the rights of the appellants to the land had been extinguished by Exhibit A, ought to have proceeded further to set aside the ruling, since it was the premature pronouncement of the trial court that formed the basis of the exercise of its discretion. The following cases were cited -

U.B.A. v. Stahlbau GMBH (1989) 3 NWLR (Pt.110) 374;

Egbe v. Onogun (1972) S.C. 140 at 149;

Dick v. Piller (1943) 1 K.B. 497 at 507.

It was also contended that since the respondents were yet to enter the land, the status quo of possession by the appellant ought to have been maintained pending the determination of the suit. He referred to Governor of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621 and Obeya Memorial Hospital v. Attorney-General of the Federation & ors (1987) 3 NWLR (Pt. 60) 325. He said the possibility of payment of compensation was no justification for allowing a preventable wrong to occur. The Court of Appeal therefore ought not to have upheld the decision of the trial court. The averment of the appellants that they would be exposed to starvation ought to have been taken into consideration in the determination of the balance of convenience. We were referred to Ladunni v. Kukoyi (1972) 3 SC 31 at 36. Obeya v. Attorney-General of the Federation & Ors. (supra). We were urged to allow the appeal.

Mr Njemanze learned counsel for the respondent in reply submitted that the Court of Appeal was right to have held that the issue of the

validity of the gazette (Exhibit A) Was for the trial court in the substantive suit. He said there was no ground of appeal challenging the admissibility or even the validity of Exhibit A in the Court of Appeal. That it was only in the particulars of Error to Ground One of the Grounds of Appeal that the appellants referred to Exhibit A. It was submitted that there is a difference  
 5 between the Ground of Appeal complaining of Error in Law and the Particulars of Error in support thereof. That a ground of appeal which complains of an Error in Law is the foundation of the ground of appeal, while the particulars of error are merely supportive of the Ground of Appeal. The Particulars of Error cannot be argued as separate Grounds of Appeal. They  
 10 cannot stand alone. He referred to *Ojemen v. Momodu II* (1983) 1 SC NLR 188; *Nla. v. Anigbo* (1972) 5 S.C 156; *Osawaru v. Ezeiruka* (1978) 6 -7 S.C. 135, and to Order 3 Rule 2 of the Court of Appeal Rules 1981.

I am in complete agreement with the able submissions of respondent's counsel above. In addition the admissibility or rejection of  
 15 evidence by a court being an issue of law ought to have been made a ground of appeal. The Court of Appeal was therefore right to have held that the validity of Exhibit A was not an issue before it. Further a closer look at Exhibit A itself showed that it was made on 29th October 1986 and not on 30/6/88 as contended by the appellants. At any rate I think the  
 20 issue of its validity must be left for determination in the substantive suit, enough of that.

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Mr. Njemanze further submitted that the learned trial Judge exercised his discretion properly before rejecting appellant's motion. He said the learned Judge did not base his decision only on Exhibit A but that he  
 30 considered the whole case put forward by the parties. I agree. It was also submitted that although the trial court made far reaching pronouncements on Exhibit A, the Court of Appeal rightly came to the conclusion that those pronouncements did not affect the conclusion reached and therefore decided to transfer the substantive case for trial by another judge. That both  
 35 the High Court and the Court of Appeal gave adequate consideration to the case put forward by the parties and the appellants have shown nothing to warrant the setting aside of the discretion properly exercised. We were referred to the following cases -

OBEYA MEMORIAL HOSPITAL V. ATTORNEY-GENERAL OF THE FEDERATION (supra). KUDORO V. ALAKA (1956) 1 FSC 82; (1956) SCNLR 255; OMADIDE V. ADAJERO (1976) 12 SC. 87.

Learned counsel also submitted that from the affidavit and counter-affidavit filed by the respective parties, it was clear that the respondent had entered the land since 1986 before the institution of this action on 22/4/88. He referred to paragraphs 11, 12 & 13 of the appellants affidavit, their claims and paragraph 13 of the respondents counter-affidavit (see above). In the circumstances of the case as a whole the trial court could not have made an order of interlocutory injunction against the respondent who was already in possession. The trial court was therefore right in the exercise of its discretion and the Court of Appeal was also right in upholding the said exercise of discretion. We were urged to dismiss the appeal.

This being an interlocutory appeal, I have to confine myself to those issues necessary for disposing of the appeal and make no pronouncement on anything that will tend to pre-judge the main issues at the trial. The learned trial Judge committed the same error when he held that the effect of Exhibit A was to extinguish the rights of the appellants in the land. I think the Court of Appeal rightly dealt with that issue when it stated that that kind of positive pronouncement ought not to have been made at that stage and consequently transferred the substantive suit for trial by another Judge.

There is no doubt that in an application for an interlocutory injunction, an applicant should inter alia satisfy the court that there is a serious question to be tried at the hearing of the suit and that the facts disclose a reasonable probability that the applicant will be entitled to the relief sought. The remedy is clearly a discretionary one and is not granted as a matter of course see OBEYA MEMORIAL SPECIALIST HOSPITAL V. ATTORNEY-GENERAL OF THE FEDERATION (supra), JOHN HOLT NIGERIA Ltd V. HOLTS AFRICAN WORKERS UNION (1963) 1 All NLR 379; (1963) 2 SCNLR 383. In the exercise of its discretion the court must look at the whole case. It must have regard not only to the strength of the claim but also to the strength of the defense and then decide what is best to be done in the circumstance. (See generally LADUNNI V. KUKOYI (supra), GLOBE FISHING INDUSTRIES LTD. V. COKER (1990) 7 NWLR (Pt. 162). 265.)

I have already set out above the claims of the appellants as well as the relevant paragraphs of both the affidavit and the counteraffidavit. In Paragraph 13 of the affidavit it was averred that the appellants were  
5 forced to enumerate their crops on the land for the purposes of compensation. A careful reading of appellant's claims, paragraphs 10 of their affidavit and paragraph 13 of respondent's counter affidavit, all tend to show that the respondent was already on the land. Undoubtedly the object of an interlocutory injunction is to protect an applicant against injury  
10 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. On the affidavit evidence before the court, since the crops of the appellants had been enumerated for compensation, it cannot be said in my view that the trial court was wrong when it held that the appellants will be adequately  
15 compensated by way of damages should their claim for trespass against the respondent succeed at the trial. In addition I fail to see how the remedy sought could have assisted the appellant, when it was evident that the respondent was already on the land, cleared it and planted palm seedlings  
20 on it. An interlocutory injunction is not a remedy for a wrong that had since been committed. (See *John Holt v. Holts African Workers Union* (supra). It would also appear from a glance of the gazette notice, Exhibit A, that prima facie, repeat prima facie. There is no serious question to be tried at the hearing of the substantive suit and that the facts do not dis-  
25 close a reasonable probability that the appellants would be entitled to the relief of a permanent injunction sought by them against the respondent. (See *American Cyanamid Co v. Ethicon Ltd. (1975) 1 All ER 504*). I am not satisfied that without the intervention by the court, the respondents' action would irreparably alter the status quo or render ineffectual any  
30 subsequent decree of the court (See *Ladunni v Kukoyi* (supra)).

On the whole I do not think there is any merit in this appeal. It is accordingly dismissed. The judgment of the Court of Appeal, Port Harcourt  
35 together with its orders is hereby confirmed. Costs of N1,000.00 (one thousand Naira) are hereby awarded to the respondent.

**UWAIS JSC**

I have had the privilege of seeing in draft the judgment read by my learned brother Kutigi, J.S.C. I agree that the appeal has no merit and that it should be dismissed. Accordingly, the appeal is hereby dismissed with 5 N1,000.00 costs to the respondent.

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**BELGORE JSC**

I have the privilege of reading in advance the judgment of my 10 learned brother Kutigi, J.S.C. with which I am in full agreement. I adopt his reasoning and conclusions as mine in dismissing this appeal. I also award N 1,000.00 as costs of this appeal against the appellants in favour of the respondent. 15

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**WALI JSC**

I have read before now, the lead judgment of my learned brother 20 Kutigi, J.S.C., and I entirely agree with his reasons for dismissing the appeal.

For those same reasons which I hereby adopt as mine, I too will 25 dismiss and hereby dismiss this appeal for lack of merit.

The judgment and orders of the Court of Appeal, Port Harcourt Division are Here by affirmed. Costs of N1,000.00 is awarded against the appellants in favour of the respondent.

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**OGUNDARE JSC**

I have had the advantage of a preview of the judgment of my 35 learned brother Kutigi, J.S.C. just read. I agree, for the reasons given by him, which this appeal is without any merit. I too dismiss it and abide by the order for costs made in the lead judgment.