

SUPREME COURT OF NIGERIA
7TH APRIL 1995. SC. 73/1992
CORAM:- M.L. UWAIS, S.M.A. BELGORE, E.O. OGWUEGBU,
U. MOHAMMED, S.U. ONU JJSC.

SUNDAY ADISA ODUNTAN APPELLANT
AND
GENERAL OIL LIMITED RESPONDENT

COMPANY LAW- *Loss of goodwill and reputation - Whether a corporate body - Is entitled to be compensated.*

INTERLOCUTORY INJUNCTIONS - *Basis for the grant - against need for defendant to be protected against injury.*

INTERLOCUTORY INJUNCTIONS - *Substantial issue to be tried - Where established - Whether applicant should also establish entitlement to the claim.*

INTERLOCUTORY IN JUNCTIONS - *Balance of convenience - Whether established in favour of the applicant*

INTERLOCUTORY INJUNCTIONS - *Resolution of conflicts - Need for court to avoid determination - Of the substantive suit.*

INTERLOCUTORY INJUNCTIONS - *Damages - Undertaking as to damages - Whether to be secured from the applicant in all cases.*

FACTS

The plaintiff/respondent secured a 50 years lease from the defendant/ appellant in respect of a piece of land situate within the Ikeja Division of Lagos State The parties also entered into petrol service station dealership agreement operated on the said land leased to the respondent. Appellant complained that the respondent was not supplying petroleum products to him promptly. His solicitors even wrote alerter of protest. When there was no improvement, appellat caused his solicitors to write a letter terminating the dealership agreement, and the respondent's tenancy by forwarding a cheque for the unused rent. He started marketing petroleum products obtained Oil and Chemical Marketing Company Ltd.

Respondent filed an action against the appellant claiming quiet possession and enjoyment of the land till expiration of the 50 years lease. Respondent obtained an interim injunction on a motion ex parte and subsequently an interlocutory injunction restraining the appellant from trespassing on the land and from selling petroleum products thereon. Appellant's appeal against the ruling to the Court of Appeal was dismissed. The appellant has further appealed to the Supreme Court to determine whether the respondent made out a case for the grant of interlocutory injunction. And whether failure to extract an undertaking as to damages from the plaintiff/respondent was right.

HELD (Unanimously dismissing the appeal per lead judgment of OGWUEGBU JSC)

Basis for the grant of interlocutory injunction

1. The most usual basis for the grant of an interlocutory injunction is the need to protect the applicant by preserving the circumstances which are found to exist at the time of his application until the rights of the parties are able to be finally established by proper procedures. This is weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights from which he could not be adequately compensated in damages if in the end the substantive case is resolved in his favour. (p. 803 G)

Substantial issue to be tried

2. Since the respondent had established that there is a substantial issue to be tried at the hearing, it is not necessary to determine his legal right to the claim since at that stage there can be no such determination, because the case is yet to be tried on the merits. It is therefore erroneous as contended by the appellant that the respondent should show from the facts that he is entitled to the claim. When it was established before the court as in this case that there was a serious question to be tried, the burden of proof on the respondent was discharged. The respondent is not required in an application for interlocutory injunction to show indefeasible rights to the reliefs sought. This is not the stage when the question of the ownership of the Petrol service station, its land and buildings are to be determined. (P.804 A)

Balance of convenience

3. The next question is the balance of convenience. Who will lose more if the quo is restored and maintained till the final determination of the suit? From the

facts disclosed in the affidavit and counter-affidavit, I agree with the courts below that the respondent would lose more if the application was refused. There was sufficient risk that the respondent's commercial interest would be destroyed along with the goodwill attaching to the interest. (p. 804 D)

Resolution of conflicts

4. The court when considering an application for interlocutory injunction of this nature should not try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend or dead difficult questions of law which call for detailed argument and consideration. A judge in determining such application must be careful and ensure that he does not in the determination of the application, determine the same issues that would arise for determination in the substantive suit (p. 804 F)

Undertaking as to damages

5. In deciding upon the course which most accords with the balance of justice the court on an application for interlocutory injunction makes use of its power to require undertakings of the plaintiff himself or the defendant as the case may be, the purpose being to enable the court if it thinks that justice of the case requires it, to compensate a person who has been temporarily restrained should it turn out, that he was needlessly enjoined for damages which he has suffered meanwhile. It is not in every case that an undertaking as to damages ought to be given. In the appeal before us I am of the view that an undertaking as to damages will not be appropriate in the circumstances of this case. (p. 805 A)

Company law - Loss of goodwill and reputation

6. It is a wrong proposition of the law that a incorporated body such as respondent can only be redressed or compensated for loss of revenue opposed to intangible losses of goodwill and reputation. A company can sue for defamation. It has reputation and goodwill which can be protected. An injury to its reputation can lead to loss of its goodwill. The court in appropriate cases protect the reputation and goodwill of a company by award of damages and injunction. While it is true that a company being an artificial person is incapable of having natural grief and distress, this does not mean the same thing as its reputation in the way of its trade and business. (p. 805 D)

NOTABLE POINTS OF INTEREST**OGWUEGBU.JSC*****1. Interlocutory injunction - Pronouncing on the merits of the case***

The court below made pronouncements on the merits or otherwise of the case. It ought not have done so and this court had frowned at such comments in many of its decisions. That notwithstanding, the comments did not touch on the merits of the application. (p. 805 C)

ONU.JSC***2. Issues for determination - To fall within the scope of the grounds***

It is now fairly well settled that issues for determination formulated appeal must of necessity be limited, circumscribed and fall within the scope of the grounds of appeal filed. Since they arise from the grounds of appeal ought to have so emanated, the issues ought to take account of the grounds of appeal and cannot raise issues outside their contemplation. (p. 807G)

3. Principles for the grant of interlocutory injunction

Now, the principles for the grant or refusal of interlocutory injunction were succinctly restated and adequately re-emphasized in *Kotoye v. C.B.N.* (1989)1 NWLR (Part 98) 419 following this court's earlier decisions in *Obeya Memorial Specialist Hospital v. A.G. of the Federation* (1987)3 NWLR. (Part 60)325 and *Ojukwu v. Governor of Lagos State* (1986)3 NWLR (Part 26)39. They include the following factors:- (a) That the applicant must show that there is a serious question to be tried i.e. that the applicant has a real possibility, not a probability of success at the trial, notwithstanding the defendant's technical defence (if any). ... (p.810 C)

CASES REFERRED TO

Duyile v. Ogunbanjo (1988) 1 N. W.L.R. (Pt 72) 601

Kotoye v. C.B.N. (1989)1 N. W.L.R. (98) 450 at 474

Akinsete v. Akindutire (1966)1 All N.L.R. 147

Eboh v. Oki (1974) 1 S.C. 179 at 189-190

Egbe v. Onogun (1972) All N.L.R. 99 (Reprint)

Kufeji v. Kogbe (1961) All N.L.R. 122 (Reprint)

Obeya Memorial Specialist Hospital v. Attorney-General of the Federation (1987) 3 N.W.L.R. (Pt. 61) 325

Williams v. Dawodu (1988) 4 N.W.L.R. (Pt. 88) 210

Akpo v. Habeeb (1992)6 N.W.L.R. (Pt. 247)

Adelaja v. Fanoiki (1990)2 NWLR (Part 131) 137 at 148

Chinweze v. Masi (1989)1 NWLR.(Part 97) 254

Agu v. Ikewibe (1991)3N W.L.R (Part 180) 395 at 407

Ugo v. Obiekwe (1989)1 NWLR (Part 99) 566

Ojukwu v. Governor of Lagos State (1986)3 NWLR (Pt.26)39

B Missini v. Balogun (1968)1 All NLR 318

Kanno v. Kanno (1986)5 NWLR (Part 40)138

American Cynamid Co. v. Ethicon Ltd.(1975)2 W.L.R. 316; (1975)1 A11ER 504 at 510.

C **LEAD JUDGMENT BY OGWUEGBU JSC**

The plaintiff in the application for interlocutory injunction which led to this appeal brought an action against the defendant in the Lagos High Court claiming the following reliefs:-

D (a) A declaration that the plaintiff is entitled to quiet possession and enjoyment of the land situate, lying and being at Onisigidi village near Agege along Lagos-Abeokuta Express-Way in Ikeja Division of Lagos State which is more particularly described and delineated on the Plan No. RO/LA 750 dated 27th March. 1973 for a period of 50 years commencing from 30th June, 1983 under a valid and enforceable contract between the plaintiff and the defendant.

E (b) A declaration that the defendant is not entitled in law to terminate the said contract before the due date.

F (c) An order of perpetual injunction restraining the defendant by himself, his servants, workmen, privies or agents or otherwise howsoever from trespassing on the said land or disturbing or otherwise interfering with the plaintiff's quiet enjoyment thereof or from carrying on the business of purchasing, storing or selling petroleum products thereon without the authority and consent of the plaintiff."

G The plaintiff later filed a motion on notice for an order of interlocutory injunction restraining the defendant from trespassing or otherwise interfering with the plaintiff's quiet enjoyment of the land or from carrying on the business of purchasing, storing or selling petroleum products thereon. The application was granted. The defendant appealed against the ruling and having lost the appeal in the court below, has further appealed to this court.

H From the four grounds of appeal filed, he formulated eight issues for determination. In effect two issues were formulated from one ground of appeal. Issues 2, 4, 6 and 7 are based on complaints against the decision of the learned trial Judge. By formulating those issues the learned counsel for the

appellant appeared to have forgotten that this is an appeal against the decision of the Court of Appeal. Since issues 1,3,5 and 8 will dispose of the appeal, I will therefore confine myself to those issues which rightly complain against the decision of the court below. Issues 2, 4, 6 and 7 are incompetent and are hereby struck out. The respondent on the other hand did not file any brief of argument. He was neither present at the hearing nor represented by counsel. The facts giving rise to this application can be summarised as follows:

The plaintiff and the defendant entered into an agreement whereby the defendant leased a parcel of land at Onisigidi Village near Agege along Lagos- Abeokuta Expressway in Ikeja to the plaintiff for a period of fifty years commencing from 30th June, 1983 at a yearly rent of N2,500.00. The defendant let the plaintiff into possession of the land upon receipt by him of the sum of N25,000.00 being rent for the first ten years of the lease granted. The plaintiff paid another sum of N50,000.00 to the defendant for construction works already executed on the land by the defendant. The plaintiff erected a petrol service station on the land with his own money.

The plaintiff agreed with the defendant to appoint the defendant the operator of the Petrol Service Station and for the defendant to manage the same as a dealer. The defendant paid the sum of N50,000.00 which the plaintiff paid into the defendant's Dealership Deposit Account for the supply of petroleum products.

The defendant through his solicitors wrote to the plaintiff determining the said dealership agreement on 15/4/87 and asked the plaintiff to remove its signs and pumps lawfully placed on the land including the plaintiff's other machinery and equipment thereon.

The defendant in his counter-affidavit deposed that sometime in 1983, he rented the petrol station to the plaintiff at a yearly rent of N2,500.00 and that the plaintiff paid the sum of N25,000.00 as rent for ten years; that he has been in possession of the property selling petroleum products from the plaintiff on an owner/dealer basis.

He further averred that all that the plaintiff contributed were logo, pumps and underground tank; that there was irregular supply of petroleum products by the plaintiff and this adversely affected his business. As there was no improvement in the supply, he instructed his solicitors to write a letter of protest. When there was no improvement in the supply of petroleum products, he procured a license from Nigerian National Petroleum Corporation (N.N.P.C.) for storage and sale of petroleum products through National Oil and Chemical Marketing Company Ltd.

Before he started receiving supplies from the National Oil and Chemi

cal Marketing Co. Ltd he instructed his solicitors to write to the plaintiff terminating the dealership agreement and forwarded a certified cheque for the sum of N15,000.00 being the unused rent paid by the plaintiff. The solicitors carried out the instructions.

B He deposed that he had been receiving constant and regular supply of petroleum products from the National Oil and Chemical Marketing Co. Ltd. Since 27/4/87 and 12/5/87, the plaintiff and his agents took over the running of the petrol station and started selling the petroleum products purchased from the National Oil and Chemical Marketing Co. Ltd.

C He denied that the plaintiff built the petrol station and that apart from the rent of N25,000.00 part of which he had refunded, the plaintiff did not give any other money to him.

The above are the facts giving rise to the substantive action, which is yet to be determined, and the application for interlocutory injunction which D led to this appeal.

I think the two main issues calling for determination in this appeal are:-

(a) Whether on the affidavit evidence, the court below was right in affirming the decision of the learned trial Judge that the plaintiff made out a case for the grant of the order pending the determination of the substantive E suit.

(b) Whether the court below was right in affirming the decision of the trial court which did not extract an undertaking as to damages from the plaintiff.

The plaintiff is the respondent in this court as well as in the court below. The defendant has remained the appellant both in the court below and F in this court.

In considering the first issue. The trial court made the following findings before granting the application:

(1) That the respondent has sufficient interest either as a lessee or as somebody with special interest on the land which can be protected by way of G interlocutory injunction.

(2) That there was a serious question to be tried at the hearing, that is, whether the respondent has a leasehold interest in the land and whether the appellant unilaterally terminated that interest, before its expiration.

(3) That the plaintiff would suffer irreparable damage if the order was H refused because the plaintiff would lose goodwill and reputation in the area where it was operating the petrol station whereas the appellant if he wins could easily be compensated in damages.

The court below agreed that the respondent has interest on the land worthy of protection by way of injunction whether such interest is leasehold

or a licence to be on the land. It said:

“The learned Judge is right in my view in the resolution of this problem in favour of the respondent. If the injunction had not been granted, irreparable damage would have been done to the respondent’s business, and any goodwill he hopes to build for the sale of his products would be lost.” ‘ B

This conclusion is justified by the facts disclosed in the affidavit in support of the application and the counter-affidavit of the appellant.

It was submitted in the appellant’s brief that the balance of convenience was in his favour and he stood to suffer irreparable injury which included the loss of livelihood and only source of income because in addition to the loss of his landed property, the appellant had petroleum products on the land at the time the order was made on 6/5/87. C

It was further argued that a corporation should only be redressed or compensated for loss of revenue as opposed to intangible loss such as loss of goodwill or reputation. The case of *Duyile & Or v. Ogunbayo* (1988) 1 NWLR (Pt. 72) 601 was cited. D

It was also urged on behalf of the appellant that no order of interlocutory injunction should be made unless the applicant gives a satisfactory undertaking as to damages and where a court of first instance failed to do so, an appellate court ought normally to discharge the order. In support of this argument, reference was made to the case of *Kotoye v. C.BN* (1989) 1 NWLR (Pt. 98) 419 at 456 and 474. It was also contended that the court below was in error not to have discharged the order made by the trial court. E

The appellant conceded that there is a serious question to be tried but maintained that from the facts, the respondent was not entitled to the relief he sought and on this ground the order should not have been made. F

It was submitted that there was conflict in the affidavit evidence before, the court and this should have been resolved by calling oral evidence. Counsel referred to the cases of *Akinsete v. Akindutire* (1966) 1 All NLR 147 and *Eboh v. Oki* (1974) I S.C. 179 at 189-190. G

I have considered the above submissions. The most usual basis for the grant of an interlocutory injunction is the need to protect the applicant by preserving the circumstances which are found to exist at the time of his application until the rights of the parties are able to be finally established by proper procedures. H

This is weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his legal rights from which he could not be adequately compen

sated in damages if in the end the substantive case is resolved in his favour.

Since the respondent had established that there is a substantial issue to be tried at the hearing, it is not necessary to determine his legal right to the claim since at that stage there can be no such determination, because the case is yet to be tried on the merits, It is therefore erroneous as contended by the appellant that the respondent should show from the facts that he is entitled to the claim. See *Egbe v Onogun* (1972) All NLR 95 (Reprint); *Kufegi v. Kogbe* (1961) All NLR 113 (Reprint) and *Obeya Memorial Specialist Hospital v. Attorney General of the Federation & Or.* (1987) 3 NWLR (Pt. 60) 325.

When it was established before the court as in this case that there was a serious question to be tried, the burden of proof on the respondent was discharged. The respondent is not required in an application for interlocutory injunction to show indefeasible rights to the reliefs sought. This is not the stage when the question of the ownership of the petrol service station, its land and buildings are to be determined.

The next question is the balance of convenience. Who will lose more if the status quo is restored and maintained till the final determination of the suit? From the facts disclosed in the affidavit and counter-affidavit, I agree with the courts below that the respondent would lose more if the application was refused. There was sufficient risk that the respondent's commercial interest would be destroyed along with the goodwill attaching to that interest. The appellant must not be encouraged to believe that he may do a wrongful act on the payment of a given sum of money as damages if the application was refused. The appellant has nothing to lose and would not suffer any damage as he himself terminated the dealership agreement. In my view, where there is a clear breach of the respondent's right by the unilateral termination of their agreement, the question of balance of convenience should not arise. The termination of the contract was a deliberate act of the appellant.

The court when considering an application for interlocutory injunction of this nature should not try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend or decide difficult questions of law which call for detailed argument and consideration. A judge in determining such application must be careful and ensure that he does not in the determination of the application determine the same issues that would arise for determination in the substantive suit. See *Williams v. Dawodu* (1988) 4 NWLR (Pt. 87) 189; *Akapo v. Hakeem Habeeb & Ors* (1992) 6 NWLR (Pt. 247) 266; *Obeya Memorial Hospital v. Attorney-General of the Federation & Or.* supra and *Egbe v. Onogun* (1972) 1 All NLR 95 (Reprint).

In deciding upon the course which most accords with the balance of justice, the court on an application for interlocutory injunction makes use of its power to require undertakings of the plaintiff himself or the defendant as the case may be, the purpose being to enable the court if it thinks that the justice of the case requires it, to compensate a person who has been temporarily restrained should it turn out, that he was needlessly enjoined, for damages which he has suffered meanwhile (the italics is mine for emphasis only). It is not in every case that an undertaking as to damages ought to be given.

In the appeal before us, I am of the view that an undertaking as to damages will not be appropriate in the circumstances of this case. The appellant is the owner of the land and the respondent is only a lessee. In any case what undertaking does he require where by his action, he purported to terminate the dealership agreement?

Finally, the court below made pronouncements on the merits or otherwise of the case. It ought not have done so and this court had frowned at such comments in many of its decisions. That notwithstanding, the comments did not touch on the merits of the application.

It is a wrong proposition of the law that a corporate body such as the respondent can only be redressed or compensated for loss of revenue as opposed to intangible losses of goodwill and reputation. A company can sue for defamation. It has reputation and goodwill which can be protected. An injury to its reputation can lead to loss of its goodwill. The courts will in appropriate cases protect the reputation and goodwill of a company by award of damages and injunction While it is true that a company being an artificial person is incapable of having natural grief and distress, this does not mean the same thing as its reputation in the way of its trade and business. The case of *Duyile v. Ogunbayo & Sons Ltd.* (supra) cited by learned counsel for the appellant did not decide that a corporation has no reputation which can be protected.

I hold that the order granting the injunction was made upon a proper exercise of discretion and the court below acted correctly in affirming it. The appeal is accordingly dismissed. The decision of the court below is hereby affirmed. I make no order as to costs.

UWAIS JSC

I have had the privilege of reading in draft the judgment read by my learned brother Ogwuegbu. J.S.C. I agree with the judgment and have nothing to add. I accordingly dismiss the appeal with no order as to costs since the

B **BELGORE JSC**

I agree with the judgment of my learned brother, Ogwuegbu, J.S.C. and I adopt his reasons as mine in dismissing this appeal. I make the same orders as contained in the said judgment.

C **MOHAMMED JSC**

I too would dismiss this appeal for the reasons given by my learned brother, Ogwuegbu, J.S.C. in the lead judgment, just read. From the affidavit evidence it is quite clear that the respondent is entitled to a grant of an inter-D locutory injunction pending the determination of the substantive suit. There was a lease agreement between the parties for a period of fifty years. In addition the respondent, under the agreement, paid N25,000.00 as rent for ten years and also paid N50,000.00 into the account of the appellant for his dealership in petroleum products to be supplied by the respondent. The appellant E terminated both the tenancy and the dealership agreements.

I entirely agree that from the affidavit evidence there is substantial issue to be resolved between the parties at the trial. Thus, it would be judicious to order for the maintenance of the status quo pending the determination of the substantive action. Accordingly, this appeal is dismissed. I abide F by the orders made on costs in the lead judgment.

ONU JSC

Having been privileged to read in draft before now the judgment of my learned brother Ogwuegbu, J.S.C. just delivered. I agree that this appeal G lacks merit and ought to fail.

I wish however to make some comments in expatiation thereto as follows: The eight prolix issues formulated at the instance of the appellant, who was the defendant in an action which the respondent, as plaintiff brought against him in the High Court of Lagos State as distilled from the four grounds H in this interlocutory appeal emanating from the Court of Appeal sitting in Lagos, are as follows:-

1. Whether there was before the Court of Appeal, all the essential ingredients for the grant of an order of interlocutory injunction in favour of the respondent.

2. Whether the learned trial Judge properly appreciated the issues of balance of convenience of the parties and the nature of the injury which the appellant on the one hand will suffer if the injunction was granted and the case is subsequently decided in his favour and that which the respondent on the other hand might sustain if the injunction was refused and the respondent ultimately obtains judgment. B

3. Whether the failure of the learned trial Judge to extract an undertaking as to damages in the face of the fact that there were petroleum products belonging to the appellant on the land at the time of the order of interlocutory injunction was not fatal to the learned trial Judge's order which should have been a major ground for discharging the order of interlocutory injunction on appeal by the Court of Appeal. C

4. Whether the learned trial Judge came to the right conclusion on the status quo ante litem to be maintained by the parties.

5. Whether in view of the radically conflicting affidavit evidence of the parties the Court of Appeal ought not to have set aside the order of interlocutory injunction and correct the error of the learned trial Judge in refusing to set the matter down for early trial rather than grant the order of interlocutory injunction. D

6. Whether in the circumstances of this case the learned trial Judge ought not to have exercised his powers under Order 39 rule 2 of the High Court of Lagos State Civil Procedure Rules, 1972 rather than grant the order of interlocutory injunction. E

7. Whether in the face of making an interlocutory order that was likely to prejudice the substantive suit the learned trial Judge ought not to have granted an accelerated hearing of the action instead. F

8. Whether the Court of Appeal in all the circumstances of the case properly exercised its role as an appellate court in affirming the trial court's order of interlocutory injunction."

On a careful scrutiny and judging by the fact that only four grounds of appeal were filed in the Notice of Appeal dated 25th of November, 1992, there is clearly a proliferation of issues. It is now fairly well settled that issues for determination formulated in an appeal must of necessity be limited, circumscribed and fall within the scope of the grounds of appeal filed. Since they arise from the grounds of appeal or ought to have so emanated, the issues ought to take account of the grounds of appeal and cannot raise issues outside their contemplation. See *Adelaja v. Fanoiki* (1990) 2 NWLR (Pt. 131) 137 at 148; *Chinweze v. Masi* (1989) 1 NWLR (Pt. 97) 254; *Agu v. Ikewibe* (1991) 3 G H

NWLR (Pt. 180) 385 at 407 and Ugo v. Obiekwe (1989) 1 NWLR (Pt. 99) 566.

B Besides, issues 3,4,6 and 7 being complaints against the learned trial Judge's decision, no appeal lies on them nor are they cognisable by this Court. They are accordingly struck out. That being so, I am of the view that only one issue that was formulated by the respondent at Page 115 of the Record herein would have provided a sufficient launching pad for the argument of the appeal.

That lone issue states as follows:-

C *"Whether on the affidavit evidence in support of the application for interlocutory injunction, the respondent made out a case for the grant of an interlocutory injunction pending the determination of the substantive suit."*

D Now, a consideration of this appeal will be incomplete without firstly ascertaining what reliefs the respondent who was the plaintiff in the trial court and respondent in the court below, was claiming in the trial court and which prompted it to ask for the interlocutory injunction that has led to the appeal herein. The reliefs it sought, founded on its writ of summons, were as follows:-

E *(1) A declaration that the plaintiff is entitled to quiet possession and enjoyment of the land situate, lying and being at Onisigidi village near Agege along Lagos-Abeokuta Express Way in Ikeja Division of Lagos State which is more particularly described and delineated on the Plan No. HU/LA 750 dated 27th March, 1978 for a period of 50 years commencing from 30th June, 1983 under a valid and enforceable contract between the plaintiff and the defendant.*

F *(2) A declaration that the defendant is not entitled in law to terminate the said contract before the due date.*

G *(3) An order of perpetual injunction restraining the defendant by himself, his servants, workmen, privies or agents or otherwise however from trespassing on the said land or disturbing or otherwise interfering with the plaintiff's quiet possession and enjoyment thereof or from carrying on business of purchasing, storing or reselling petroleum products thereon without the authority and consent of the plaintiff."*

The background facts of the case giving rise to the appeal as made out by the respondent may be briefly stated as follows:-

H Under a subsisting agreement between the parties hereof, the respondent was given quiet possession and enjoyment of the appellant's piece of land named in relief I above by virtue of a lease agreement for a period of 50 years commencing from 30th June, 1983 at a yearly rent of N2,500. The sum of N25,000 was paid to the appellant as rent for 10 years and the respondent then

appointed the appellant as the operator of the petrol station: Sequel to this, a sum of N50,000.00 was paid into the appellant's dealership Deposit Account. As the supplies of petrol and petroleum products were said to be irregular coupled with other difficulties arising between the parties. The appellant terminated both the dealership and tenancy agreements. Hence, the action, the offshoot of which is the interlocutory injunction giving rise to this appeal. B

The appellant's case is that he is the owner of all that piece or parcel of land the subject matter of this suit by virtue of a deed of conveyance dated 7th October, 1977 and registered as 16/16/63 at the Lands Registry, Lagos. That he obtained a building approval for the construction of a petrol station in his name from the Town Planning Authority. That he built a petrol station on his land and all of these, before he ever knew the respondent. That as owner/dealer, he entered into an agreement with the respondent whereby the respondent supplied a tank, dispensing pumps and its logo and he bought products and marketed the respondent's petroleum products in his petrol station. Under this agreement, the appellant was and had always been in actual physical possession of his petrol station until he was ejected on 12th May, 1987 by virtue of an order of injunction made ex parte. C D

Prior to the action and order of ex parte injunction, the appellant bought petroleum products from the respondent by paying in advance for same with his own money. That inspite of paying in advance for the petroleum products, he did not get prompt and regular supplies of these products from the respondent. After writing a formal letter of protest by himself and another by his counsel complaining to the respondent and there was no visible change or improvement in supplies, he terminated both the dealership and tenancy agreements and also refunded N15,000.00, being outstanding rent for 6 years. After termination of the agreement, he entered into a new agreement with National Oil and Chemical Marketing Company which had regularly supplied him with petroleum products prior to the institution of this suit by the respondent. G

The respondent first came by way of motion ex-parte and was granted an interim injunction in the same terms as the one now on appeal herein. On 12th June, 1987, the trial court further granted to the respondent an interlocutory injunction restraining the appellant and made a finding that the manner in which the appellant purported to determine the respondent's dealership agreement was invalid and that the respondent had a serious interest in the dispute. The trial court in addition came to the conclusion that the balance of convenience was in favour of the respondent who would suffer loss of goodwill and H

reputation should the interlocutory injunction be refused. Further, that even though the appellant might suffer lack of income and possible unemployment, such would be incomparable with respondent's loss of goodwill and reputation. The trial Judge did not call for oral evidence to resolve the points raised B in the affidavit evidence nor did he extract an undertaking as to damages from the respondent based on the facts disclosed in its counter-affidavit.

By a Notice of Appeal filed on 24th June, 1987, the appellant, who was dissatisfied with the trial court's decision, appealed to the Court of Appeal (hereinafter called the court below) sitting in Lagos. The court below dismissed appellant's appeal in its entirety. The further appeal by the appellant to this Court is against this decision.

Now, the principles for the grant or refusal of interlocutory injunction were succinctly restated and adequately re-emphasised in *Kotoye v. CBN*. D (1989) 1 NWLR (Pt. 98) 419 following this court's earlier decisions in *Obeya Memorial Specialist Hospital v. A.G. of the Federation* (1987) 3 NWLR (Pt. 60) 325 and *Ojukwu v. Governor of Lagos State* (1986) 3 NWLR (Pt. 26) 39. They include the following factors:-

(a) That the applicant must show that there is a serious question to E be tried i.e. that the applicant has a real possibility, not a probability of success at the trial, notwithstanding the defendant's technical defence (if any).

(b) That the applicant must show that the balance of convenience is on his side; that is, that more justice will result in granting the application than in refusing it.

F (c) That the applicant must show that damages cannot be an adequate compensation for his injury, if he succeeds at the end of the day.

(d) That the applicant must show that his conduct is not reprehensible for example that he is not guilty of any delay.

G (e) No order for an interlocutory injunction should be made on notice unless the applicant gives a satisfactory undertaking as to damages save in recognised exceptions.

(f) Where a court of first instance fails to extract an undertaking as to damages, an appellate court ought normally to discharge the order of injunction on appeal.

H Now, an interlocutory injunction being one made pending the determination of a pending suit, translating or marrying the facts of the instant appeal to the factors set out above, I take the firm view that a real urgency existed for its grant of an interlocutory injunction. Right from the time the respondent applied for an interim injunction up till when it came by way of a

motion on notice for an interlocutory order, backed by affidavit evidence on both sides, for and against the grant, there existed and still exists, the overriding necessity that the balance of convenience demanded and still demands that parties maintain the status quo pending the determination of the case. The respondent clearly showed that its conduct has not been reprehensible. Nor was it guilty of delay in filing its suit, which it followed up with an application for interim injunction, and after its grant, it indeed lost no time in applying and securing the interlocutory injunction now the subject of the appeal herein. Although, an interlocutory injunction is not granted as of course, the respondent, in my view, clearly disclosed on affidavit evidence that the balance of convenience is on its side. See: *Missini v. Balogun* (1968) 1 All NLR 318. In the instant case, it is true that no undertaking as to damages was given by the respondent either before or at the hearing of the motion. Albeit, since it is the law that the application need only show there is a substantial issue to be tried at the hearing, subject to which the governing consideration is the maintenance of the status quo pending trial- an attribute which, in my respectful view, is present herein - it is only right to grant an interlocutory injunction here. See *Weber George Egbe v. CA. Onogun* (1972) 1 All NLR (Pt. 1) 95; *Ladunni v. Kukoyi & Ors* (1972) 3 S.C. 31 at 34 and *Kanno v. Kanno* (1986) 5 NWLR (Pt. 40) 138. As was pointed out in *American Cyanamid Co. v. Ethicon Ltd.* (1975) 2 WLR 316; (1975) 1 All ER 504 at 510.

“.....unless the material available to court at the hearing of the application for interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.”

Although, in the instant case, the learned trial Judge neither called for oral evidence to resolve the points, if any raised in the affidavits, nor did he extract an undertaking as to damages, as hereinbefore pointed out, in the case of the former, if to do so would entail the determination of the same issues which would arise in the substantive suit, such course of action should not be embarked upon. And in the case of the latter, it being clear that it is not in every case that an undertaking as to damages ought to be given and there being in this case no practical need for it, it was not compelling, moreso that the appellant, who unilaterally terminated the agreement between him and the respondent, is the owner of the land while the respondent is only a lessee whose goodwill and reputation in its business ought to be protected by the injunction.

In conclusion, it needs to be pointed out in passing that the court

below delved into some details or merits of the case, a thing this court has stressed times without number it ought not to do at that stage. See NN.S.C. Ltd. v. Alhaji Sabana & Co. Ltd. (1988) 2 NWLR (Pt. 74) 23.

My answer to the lone issue I have thus considered is accordingly
B rendered in the affirmative.

For these and fuller reasons given by my learned brother Ogwuegbu, J.S.C. in the lead judgment I too will dismiss the appeal. I subscribe to the consequential orders made inclusive of those as to costs.

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