

SUPREME COURT OF NIGERIA
13TH FEBRUARY, 1996. SC. 312/89
CORAM:- M. L. UWAI, E. O. OGWUEGBU,
U. MOHAMMED, S. U. ONU, A. I. IGUH, JJSC.

JOSEPH OGUNDELE AJEWOLE 3RD DEFENDANT/
APPELLANT

AND

OBA E.A. ADETIMO & 2 OTHERS PLAINTIFFS/
RESPONDENTS

APPEALS - *Concurrent findings - Where no new thing is advanced - Interference will not be granted*

INTERIM INJUNCTIONS - *Balance of convenience - Failure to establish the injury applicant would suffer - Coupled with undue delay in the application - Whether injunction should be granted.*

INTERIM INJUNCTIONS - *Breach of the peace - Whether refusal of application - Would result in any breach of the peace.*

FACTS

Before the Oyo State High Court Ilesha, the respondents filed action against the appellant and others seeking some reliefs over a chieftaincy dispute. 1st respondent has already been installed as the Chief by Kingmakers. 3rd defendant/appellant filed an application for interim injunction to restrain the 1st respondent from holding out himself as amongst other prayers, after the period of one year.

The trial Court refused the application for interim injunction Appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court raising five issues.

ISSUES FOR DETERMINATION

(4) Whether it is not the duty of the court to order the grant of an Interim Injunction in respect of a violated right causing irreparable damage, which cannot be compensated for in terms of monetary award pending final determination of the substantive action? Etc, see p. 290

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

Interim injunctions - Balance of convenience

1. The Court of Appeal looked at the decision of the trial court on the issues of balance of convenience of the parties and the nature of injury

which the appellant would suffer if the injunction is refused and, quite rightly, in my view, agreed with the learned trial judge that the appellant had failed to establish the injury he would suffer if the injunction was granted. I think it is too late for the appellant to talk about balance of convenience when it is considered that he did not apply for injunction until after almost one year of installation of the 1st respondent. (p. 293 F)

Concurrent findings

2. The learned counsel for the appellant has not advanced anything new which would warrant my interference with the concurrent findings of the two lower Courts in respect of issues 1, 2, 3 and 4. They are accordingly resolved in favour of the respondent. (p. 293 H)

Interim injunctions - Breach of the peace

3. The weakest argument in this appeal is the issue of breach of peace. The Court of Appeal answered this argument thus: *"I find no merit in any of the attacks leveled against the ruling of the trial court by Mr. Aribisala. For example, if the 1st plaintiff/respondent had been on the throne for the past one year and to the knowledge of the appellant and his supporters (if any) has been no breach of the peace all that time, it was unlikely that refusal by the court to grant appellant's application herein would result in any breach of the peace."* I entirely agree with the above finding and resolve issue 5 in favour of the respondents. (p. 294 A)

NOTABLE POINTS OF INTEREST

MOHAMMED JSC

1. Resolution of conflict in affidavits by oral evidence

It is trite and a matter of practice that when a court is faced with affidavits which are irreconcilably in conflict, the judge hearing the case should first hear oral evidence from the deponents or such other witnesses as the parties may call so that the oral evidence would enable him test the affidavit evidence and thereby resolve such conflicts arising from the affidavit evidence. (p. 289)

ONU JSC

2. When interim injunction would be refused

In the first place, as interlocutory injunctions are normally granted in cases of urgency and no urgency has been disclosed on the facts disclosed in the appellant's affidavit evidence, the application must fail. Secondly, as there

in the appellant's affidavit in support of his application for interim injunction disclosing that an irreparable loss would be occasioned the grant would also be refused. (p. 298 B)

IGUH JSC

3. Delay defeats application for interim injunction

An interlocutory or interim relief by way of injunction is generally granted only in matters of urgency, so that an applicant who is guilty of thereby demonstrates the absence of any urgency requiring prompt relief. Indeed less than a month's delay between the assertion of right and the issue of a writ had debarred an applicant from obtaining an order of interlocutory injunction where, in the mean time, the respondent had contracted to let the subject matter to third parties. See *Selbit v. Goldwyn Ltd.* (1923) 58 L. J. News 305. It is not in dispute that the 1st respondent was enthroned on the 17th October, 1986. The application to restrain him from holding himself out as the said Oba Ajaaregbe of Ijaaregbe was not filed until the 25th September, 1987. In my view the delay of nearly one full year between his enthronement and the filing of the present application for an interim injunction to restrain him from holding himself out as the Oba of Ijaaregbe is entirely unreasonable and bound to defeat the application. On this ground alone, the decision of the Court below which affirmed the dismissal of the appellant's application for the interim injunction claimed must be and hereby further affirmed. (p. 299 B)

REPRESENTATION

Chief Taiwo Aribisala for the appellant

F E. Adeyeye Adelekun for the respondent

CASES REFERRED TO

Government of Ashanti v. Adjuah Korkor and others 4 W.A.C.A. 83

Uku v. Okumagba (1974) 3 S.C. 35

Military Governor of Lagos State & 2 ors. v. Chief Ojukwu (1986) 2 S.C

Agbor v. Metropolitan Police Commissioner (1969) 1 W.L.R. page 703

Ada v. Chairman of Ifelodun Local Government Chieftaincy Committee

John Holt Nigeria Limited & Anor. v. Holts African Workers Union

Nigeria and Cameroons (1963) 1 All N.L.R. 385 at 390

Kufaji v. Kogbe (1961) 1 All N.L.R. 133 at 114

Ladunni v. Kukoyi (1972) A.N.L.R. 136 at 138

Egbe v. Peter C.A. Onogun (1972) 1 A.N.L.R. 99

Ebba v. Ogodo (1984) 4 S.C. 84 at 98

Maja v. Stocco (1968) N.M.L.R. 372

Chukwuemeke v. Nwankwo (1985) 2 NWLR 195

STATUTE & RULES REFERRED TO

High Court (Civil Procedure) Rules of Oyo State 1978 O.20 r. 11, O.21 r. Chief Law of Oyo State Cap. 21 s. 22(4)

LEAD JUDGMENT BY MOHAMMED JSC

This is an appeal from the judgment of the Court of Appeal, Ibadan Division, in which it affirmed the ruling of Adekola J of Oyo State High Court, wherein the learned trial judge dismissed an application filed before him by Mr. Joseph Ogundele Ajewole, hereinafter called the appellant, for an order of interim injunction based on the following prayers:-

“(i) Restraining the 1st Plaintiff (Edward Adebayo Adetimo) from holding himself out and/or parading himself as the OBA Ajaaregbe of Ijaaregbe;

(ii) Restraining the 1st Plaintiff from collecting to himself the customary Rents (Ishakole) from the customary farmers/Tenants on Ijaaregbe stool land;

(iii) Restraining the 1st Plaintiff from celebrating his alleged 1st Anniversary on the throne of Ijaaregbe scheduled for 17th October, 1987 as indicated on the Invitation cards from the 1st Plaintiff;

(iv) Restraining the 2nd and 3rd Plaintiffs from assisting in the performance of the proposed celebration;

(v) Restraining the 1st Plaintiff from doing any other Act or Acts that may lead to a breach of the peace at Ijaaregbe pending the final determination of the present case in Suit NO. HIL/48/87, and (B) for such further Order or Orders as this Honourable Court may deem fit to make in the circumstances”.

In support of the application, the appellant filed an affidavit and a further affidavit disclosing facts on which the grounds for application were based. The respondents filed a counter affidavit deposed to by Oba Edward Adedayo Adetimo, the 1st Plaintiff respondent, in opposition to the application. It is plain from the affidavits that the conflict must be resolved. It is trite and a matter of practice that when a court is faced with affidavits which are irreconcilably in conflict, the judge hearing the case should first hear oral evidence from the deponents or such other witnesses as the parties may call so that the oral evidence would enable him test the affidavit evidence and thereby resolve such conflicts arising from the affidavit evidence. See *Government of Ashanti v. Adjua Korkor and others* 4 WACA

83 and Uku v. Okumagba (1974) 3 S.C. 35.

In this regard the learned trial judge directed the parties to adduce evidence in order to resolve the conflict. At the end of the hearing the learned trial judge, in a well considered ruling, found no merit in the application for the interim injunction filed by the appellant and dismissed all the prayers sought for in the motion.

Dissatisfied with that ruling, the appellant filed an appeal in the Court of Appeal, Ibadan. The Court of Appeal considered all the issues raised in support of the appeal and in a carefully considered judgment it dismissed the appeal.

The appellant has now come before this court on three grounds of appeal. His counsel the learned Chief Taiwo Aribisala formulated the following five issues for the determination of the appeal.

“(1) Whether in an application for interim injunction the judicial precedent that, “once an act has been carried out”, an Order for Interim Injunction is not available to undo the act pending the final determination of the substantive action especially against the background that not all cases are on all fours.

(2) Whether adherence to Technicalities of Law should be allowed to stand in the way of the duty of the Court doing substantial justice, having regard to the circumstances of the case in hand.

(3) Whether it is not duty of the Court to maintain Even Balance between two disputants claiming the same right, instead of considering the Balance of Convenience of just one of the Parties?

(4) Whether it is not the duty of the court to order the grant of an Interim Injunction in respect of a violated right causing irreparable damage and which cannot be compensated for in terms of monetary award pending the final determination of the substantive action?

(5) Whether it is not the duty of the court to see that there is no breach to peace in respect of matters brought before it by timeously granting an Order for Interim Injunction pending the final determination of the substantive action having regard to the volatile and peculiar circumstances of the case in hand”.

Three issues were formulated by the respondents counsel for the determination of the appeal. The points raised in those issues could be subsumed in the issues raised by the appellant’s counsel and I do not find it necessary to reproduce those points separately.

Before considering the arguments in this appeal, it is pertinent to refer to the short history of the dispute between the parties. The first point to consider is that this is an interlocutory decision. The substantive case is

yet to be heard. The dispute between the parties arose following the demise of Oba Daniel Fatogun of Ajaaregbe on 18th April, 1984. In paragraph 8 of the affidavit deposed to by the appellant, and which the respondents did not deny, the native law and custom followed in appointing a new Oba of Ijaaregbe is as follows:

"That before any Oba of Ijaaregbe is enthroned or installed the proper customary procedure must be followed: That is -

(a) Nominations from the next Ruling House;

(b) Selection of a candidate by the King-Makers - The Afobajes;

(c) Presentation of the selected candidate to the Ogboni/Oba of Ijebujsa in the Obokun Local Government for endorsement and final onward presentation to the

(d) Owa Obokun of Ijesa land for approval;

(e) And the Iwuye Ceremony thereafter".

In May, 1986, the 1st respondent, Oba Edward Adedayo Adetimo, was selected the Ajaaregbe of Ijaaregbe and on the 11th October, 1986 he was installed by the Kingmakers. After the installation he performed all the rituals and other formalities which the new Oba had to go through. The appellant opposed the selection and the installation of the 1st respondent, in order to obtain a Court's declaration in this Chieftaincy dispute the 1st respondent and two others filed Suit No. HIL/48/87 in Ilesa High Court against Oba Adekunle Aromolaran, the Owa Obokun of Ijesa land; the secretary, Obokun Local Government and the appellant.

In the suit the plaintiffs claim for the following declarations:

(i) A declaration that the 2nd and 3rd plaintiffs as the two surviving Kingmakers are entitled by customary law to appoint the 1st Plaintiff as the new Ajaaregbe of Ijaaregbe.

(ii) A declaration that the 1st Plaintiff has been duly appointed and installed under the customary law as the new Ajaaregbe of Ijaaregbe in or about the month of October, 1987.

(iii) An injunction restraining the 3rd Defendant from holding himself out or permitting himself to be held out as the new Ajaaregbe of Ijaaregbe.

(iv) An injunction restraining the 1st and 2nd Defendants either by themselves or their agents; servants and privies from taking any action whatsoever which is inconsistent with the appointment of the 1st Plaintiff as the new Ajaaregbe of Ijaaregbe.

Before the hearing of the above suit, the appellant, on the 28th of October, 1987 applied for an interim injunction as I have reproduced above. I have earlier disclosed in this judgment that the trial High Court had dismissed the application of the appellant and that on appeal to the Court of

Appeal the decision of the High Court was affirmed.

Now, I come back to the appeal filed against the decision of the Court of Appeal. Learned counsel for the appellant argued issues, 1, 2, 3, and 4 together. The gist of the argument of learned counsel for the appellant is anchored on the submission that the paramount ruler of Ijesha land, the Owa, and head of Obokun Local Government Chieftaincy Committee, in cooperation with the Obokun Local Government, set up a Chieftaincy Committee of Enquiry to look into the dispute. The Committee has prepared a report but no final decision has yet been taken. Whilst the inquiry was still on the 1st respondent got himself unlawfully installed in complete disregard of the procedure under Ijaaregbe native law and custom and the Oyo state Chiefs Law.

Learned counsel referred to cases of *The Military Governor of Lagos State & 2 ors. v. Chief Ojukwu* (1986) 2 S.C. 277 and *Agbor v. Metropolitan Police Commissioner* (1969) 1 WLR page 703 at 707 and argued that the two lower courts were wrong to say that they were helpless and unable to grant the interim injunction because the act had already been carried out. Counsel further argued that the Supreme Court has held that a Mandatory (Prohibitive) Injunction is available to reverse a step already taken by a party to a litigation and can be granted on an interlocutory application.

I have to pause here and explain that the two cases referred to by Chief Aribisala in support of the above submission were not decided on similar circumstances and their ratio could not help the appellant in this case. In *Agbor's* case Nigerian High Commission London used the British Police to evict Mrs. Agbor from a premises in London owned by the Government of Nigeria and the Court of Appeal, per Denning MR. (as he then was) held-

"No one is entitled to take possession of premises by a strong hand or with a multitude of people. That has been forbidden ever since the statute of Richard II against forcible entry. This applies to the police as much as to anyone else. It applies to the government departments also. And to the Nigerian High Commission. If they are entitled to possession, they must regain it by due process of law. They must not take the law into their hands".

In Chief Ojukwu's case, the respondent (Chief Ojukwu) was forcefully evicted from the property in dispute while the matter was pending in Court and that the Lagos State Government openly flouted the order of the Court of Appeal. In this case in hand, the trial High Court found that rightly or wrongly the 1st plaintiff/respondent had been installed as the Oba Ajaaregbe of Ijaaregbe as far back as 17-10-86. Whether the installation

was properly or improperly done was one of the issues to be determined by the court in the substantive action. The 1st plaintiff/respondent having been installed as Ajaaregbe of Ijaaregbe cannot be restrained from being installed. And the appellant had not been able to establish the type of irreparable injury which he would suffer if the 1st anniversary of 1st respondent's ascension to the throne should be celebrated by him. The court then referred to an unreported decision of the Court of Appeal, in Appeal No. FCA/C/M6/82, David Dada and Anor, for themselves and other members of Malaoye (Adeitan) and Olugbogbo Ruling Houses of Ada v. Chairman of Ifelodun Local Government Chieftaincy Committee and others where it was held:

"When a Court is asked to restrain a party from doing an act pending the decision in a matter before it, but the act has been done no order to restrain will be made. The reason is as simple as it is clear. What is sought to be prevented has in fact happened."

The above Court of Appeal decision agrees wholly with the decision of this court in John Holt Nigeria and Cameroons v. Holts African Workers Union of Nigeria and Cameroons (1963) 1 All N.L.R. 385 at 390 where it was held that an interlocutory injunction is not a remedy for an act which has already been carried out. I have looked at the case of Chief Godfrey K.J Amachree v. International Cigarette Company Limited & Anor. (1989) 4 NWLR (Pt 118) 686 which is a Court of Appeal decision and I fail to find the help such a decision may render to this appeal. What the learned justices of the Court of Appeal said therein is that the applicant for an interlocutory injunction need not show a probability or a prima facie case or a strong prima facie case but that the claim is not frivolous or vexatious. Once the court has satisfied itself one way or the other on that primary question, the question of balance of convenience and other related matters can come in.

The Court of Appeal looked at the decision of the trial court on the issue of balance of convenience of the parties and the nature of injury which the appellant would suffer if the injunction is refused and, quite rightly, in my view, agreed with the learned trial judge that the appellant had failed to establish the injury he would suffer if the injunction was granted. I think it is too late for the appellant to talk about balance of convenience when it is considered that he did not apply for injunction until after almost one year of the installation of the 1st respondent. See Cesare Missini and ors. v. Micheal Balogun & Anor. (1968) 1 All NLR 318 at 324.

The learned counsel for the appellant has not advanced anything new which would warrant my interference with the concurrent findings of

the two lower Courts in respect of issues 1, 2, 3 and 4. They are accord-

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ingly resolved in favour of the respondent, I agree that under Order 20 Rule II and Order 21 Rule 1 of Oyo State High Court (Civil Procedure) Rules 1978 the appellant could file an application for interim injunction as he had done in this case.

The weakest argument in this appeal is the issue of breach of peace. The Court of Appeal answered this argument thus:

B *"I find no merit in any of the attacks levelled against the ruling of the trial court by Mr. Aribisala. For example, if the 1st plaintiff/respondent had been on the throne for the past one year and to the knowledge of the appellant and his supporters (if any), and if there has been no breach of the peace all that time, it was unlikely that refusal by the court to grant*
C *appellant's application herein would result in any breach of the peace."*

I entirely agree with the above finding and resolve issue 5 in favour of the respondents.

In conclusion I declare this appeal unmeritorious and it is dismissed. The concurrent findings of the High Court and the Court of Appeal are
D hereby affirmed. The respondents are entitled to the costs of this appeal which I assess at N1,000.00.

UWAIS CJN

E I have had the opportunity of reading in draft the judgment read by my learned brother Mohammed, J.S.C. I entirely agree that this appeal has no merit. Accordingly, I too hereby dismiss it with N1,000.00 costs to the respondents.

OGWUEGBU JSC

F I had the advantage of reading in draft the judgment just delivered by my learned brother Mohammed, J.S.C. I agree with his reasoning and conclusion.

The Courts below were right in refusing the application. If the injunction was granted, it was the 1st plaintiff/respondent who would suffer
G having been on the throne for over one year before the application was brought.

I too would dismiss the appeal, I endorse the order as to cost made in the lead judgment.

ONU JSC

H I had the privilege of a preview of the judgment of my learned brother Mohammed, J.S.C. just read. I entirely agree with him that this appeal lacks merit and ought to fail.

I wish to add by way of expatiation how this interlocutory appeal originated, how it had neither a chance of success in the two lower courts and thus culminated in concurrent findings of facts by those two courts.

The appellant was the third defendant in this Chieftaincy matter instituted by the plaintiffs, now respondents, against the appellant and two others in the Ilesa High Court. In what amounts to an ironic situation, the appellant brought an application for interim injunction against the 1st plaintiff/respondent under the Inherent powers of the High Court and order 20 Rule 11 and Order 21 Rule 1 of Oyo State High Court (Civil Procedure) Rules, 1978. The appellant filed a counter affidavit in the trial court Oral evidence was recorded from both parties and their witnesses, at the end of which, the learned trial judge in a considered ruling refused the appellant's prayer. The appellant's appeal to the Court of Appeal was dismissed.

Being dissatisfied, the appellant has further appealed to this court premised on a Notice of Appeal containing three grounds. In the exchange of briefs of argument that followed, in an unprecedented move, appellant submitted five issues for our determination, to wit:

(1) Whether in an application for Interim injunction the judicial precedent that, "Once an act has been carried out" an Order for Interim Injunction is not available to undo the act pending the final determination of the Substantive Action - especially against the background that not all cases are on all Four (sic)?

(2) Whether adherence to Technicalities of Law should be allowed to stand in the way of the Duty of the Court doing substantial justice, having regard to the circumstances of the case in hand.

(3) Whether it is not the Duty of the Court to maintain Even Balance between Two Disputants claiming the same right, instead of Considering the Balance of Convenience of just one of the parties?

(4) Whether it is not the Duty of the Court to order the grant of an Interim Injunction in respect of a violated Right causing irreparable damage and which cannot be compensated for in terms of monetary award pending the final determination of the substantive Action?

(5) Whether it is not the duty of the Court to see that there is no Breach To Peace in respect of matters brought before it by timeously granting an Order for Interim Injunction pending the final determination of the Substantive Action having regard to the volatile and peculiar circumstances of the case in hand.

The facts of the case have been so lucidly summarized by my learned brother Mohammed, J.S.C. that I do not consider it necessary to repeat them here. Rather, I wish to delve straight into the consideration of the

issues as canvassed by learned counsel for the appellant who elaborating orally on the Brief and Reply Brief (learned counsel for the respondent on having been shown to have been served with the hearing notice, the respondent's appeal was treated as having been heard on his Brief hitherto filed vide Order 6 Rules 8(6) Supreme Court Rules) argued issues 1, 2, 3 B and 4 together and issue No. 5 separately.

In relation to issues 1, 2, 3, and 4 argued together, the learned counsel submitted briefly how the paramount ruler of Ijesha, the Owa, and head of Obokun Local Government Chieftaincy Committee, in collaboration with the Obokun Local Government, set up a Chieftaincy Committee C of Inquiry to look into the dispute between appellant and the respondents. It is then pointed out that while the Committee had prepared a report and no final decision was taken thereon, the 1st respondent after 4th June, 1987 and during the pendency of its release, got himself installed as the Ajaaregbe of Ijaaregbe in complete disregard of the procedure under Ijaaregbe native law and custom and the Oyo State Chiefs Law. Learned D counsel referred to pages 37-64 of the Record which contains the Report of that Committee and adverted our attention to section 22(3) of the Chiefs Law of Oyo State, Cap, 21 which provides that:-

"(3) Where there is a dispute whether a person has been appointed in accordance with customary law to a minor Chieftaincy the prescribed E authority may determine the dispute." a provision to which the Court of Appeal was oblivious when it held inter alia that:

"The Respondent has been on the throne for almost one year before the application was filed. This was also not the case of maintaining any F status quo because the respondent had been installed. It would be putting the hands of the clock "backwards." And the learned trial judge made it clear when he said that an interlocutory injunction is no remedy for an act which had already been carried out."

Learned counsel thereupon relied on the cases of *The Military Governor of Lagos State & anor v. Ojukwu* (1986) 2 S.C. 277 (1986) 2 NWLR G (Pt 18) 621; *Agbor v. Metropolitan Police Commissioner* (1969) 1 WLR 703 at 707 and *Basil Ezegbu & anor v. First African Trust Bank Ltd.* (1992) 1 NWLR (Pt 216) 197 adding, that this is a case in which the court below ought to have used its discretion to grant the interim injunction asked for.

H The three cases referred to by learned counsel for the appellant, Chief Aribisala, are in my respectful view, irrelevant to the determination of the case in hand. In the *Ojukwu* case (*supra*) for instance, this Court described the acts of the Executive, to wit: the Lagos State Government

which by its agents forcefully evicted from the property in dispute the appellant and a time the matter was pending before the Court of Appeal. Obaseki, J.S.C. said inter alia at 638

"I will be doing injustice to the cause of the rule of law if I grant this application and allow the eviction of the respondent to stand. The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that every thing must be done according to law."

And in the Agbor v. Metropolitan Police Commissioner case (supra) where Denning L.J. as he then was in allowing the appellant's appeal made an interim order for the appellant to repossess premises from which she was earlier evicted, having restated the English law that everyone is entitled to possession and repossession of premises by due process of the law. They must not take the law into their hands and they must apply to the courts of possession and act on the authority of the court. The Basil Ezegbu Case (supra) is a decision of the Court of Appeal for an order staying further proceedings in the Federal High Court pending the determination of the applicant's appeal, to the Court of Appeal.

In the instant case in which pleadings had not yet been ordered, before appellant, who was 3rd defendant brought the application giving rise to this appeal, he had not been able, in my opinion, to establish the type of irreparable injury which he would suffer if the 1st anniversary of 1st respondent's ascension to the throne of Ajaaregbe of Ijaaregbe should be celebrated by him. This is because even though in an application for interlocutory injunction it is not necessary that the plaintiff or applicant should make out a case as he would do on the merits, it being, sufficient that he should establish that there is a substantial issue to be tried, the fact that in this case the act whose remedy is sought has already been carried out F hinders its grant. See Kufeji v. Kogbe (1961) 1 NLR 113 at 114 and John Holt Nigeria Limited & anor v. Holts African Workers Union of Nigeria and Cameroon (1963) 1 All NLR 385 at 390. See also Amachree v. International Cigarette Company Ltd. & anor. (1994) 4 NWLR (Pt 118) 686. Once the act sought to be prevented has been carried out as in the instant case one of principles of law considered in the case of Adiate Ladunni v. Kukoyi and ors. (1972) ANLR (Pt.1) 133 at 138 (per Coker, J.S.C.) to the effect that:

"The principle on which the court will act in an application for an order of interlocutory injunction is well settled and it is that the court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that the plaintiff is entitled to relief."

cannot, in my opinion, be prayed in aid of the appellant for the grant of an

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interim injunction. This is because the situation savours of the English saying "*of closing the stable door after the horse has bolted.*" If after one year of the installation of the 1st respondent as the Ajaaregbe it is now that the appellant is waking up to ask for an interim injunction, he must be taken to have slept on his rights to bring the application when he is defending an action instituted by the 1st respondent and other co-plaintiffs and not on his own initiative. The call for the application of Section 22(4) of the Chiefs Law, Oyo State Cap. 21 by the appellant being premature is unavailing to him.

In the first place, as interlocutory injunctions are normally granted in cases of urgency and no urgency has been disclosed on the facts disclosed in the appellant's affidavit evidence, the application must fail. Secondly, as there is no paragraph in the appellant's affidavit in support of his application for interim injunction disclosing that an irreparable loss would be occasioned, the grant would also be refused, see *Webber Egbe v. Peter C.A. Onogun* (1972) 1 ANLR 99.

And this, at least, not after the passage of over one year upon the 1st respondent's ascension to the Chieftaincy stool being disputed, in which appellant is but one of the defendants. It is for these reasons that there cannot be a talk of balance of convenience where the nature of the injury which the appellant would suffer should the injunction be refused, becomes hypothetical, and in the face of the substantive or main cause yet to be fought or embarked upon the merits after issues would have been joined on the pleadings. The first four issues canvassed above are accordingly resolved against the appellant.

My answer to issue No.5 on the likelihood of a breach of the peace should the application for interim injunction be refused, is in the negative. This answer stems from the fact, as rightly found by the court below, that if there was no breach of the peace for over a year of the installation of the 1st of respondent, there is no likelihood of one now sequel to the refusal of the application herein. A mere allegation of the threat to peace is not enough to ground the application. The two decisions of the two lower courts not having been shown to be palpably wrong, or perverse or that the findings are not supported by the evidence or the judgment is shown to be unreasonable or that an obvious miscarriage of justice has occurred, will I disturb the decision. See *Ebba v. Ogodo* (1984) 4 SC. 84 at 98; *Oladipo Maja v. Learndro Stocco* (1968) NMLR 372 and *Chukwueke v. Nwankwo* (1985) 2 NWLR 195.

For the reasons given and the fuller ones contained in the judgment of my learned brother Mohammed, J.S.C. I too will dismiss this appeal. I abide by the consequential orders made therein.

IGUH JSC

I have had the privilege of reading in advance, the lead judgment just delivered by my learned brother, Mohammed, J.S.C. and I agree entirely with him that this appeal lacks substance and should be dismissed.

The point I desire to make is that the main prayer before the trial High Court seeks to restrain the 1st respondent from holding himself out and/or parading himself as the Oba Ajaaregbe of Ijaaregbe. The other prayers^B are clearly ancillary to and dependent on the aforesaid main prayer which I will now briefly dispose of.

An Interlocutory or interim relief by way of injunction is generally granted only in matters of urgency, so that an applicant who is guilty of delay thereby demonstrates the absence of any urgency requiring prompt^C relief. Indeed less than a month's delay between the assertion of right and the issue of a writ had debarred an applicant from obtaining an order of interlocutory injunction where, in the mean time, the respondent had contracted to let the subject matter to third parties. See *Selbit v. Goldwyn Ltd.* (1923) 58 L.J. News 305. See too *Casare Missini and others v. Michaelp Balogun & Another* (1968) All N.L.R. 310.

In the present case, the application for an interim injunction was not brought until almost one full year after the installation of the 1st respondent as the Oba Ajaaregbe of Ijaaregbe. It is not in dispute that the 1st respondent was enthroned on the 17th October 1986. The application to^E restrain him from holding himself out as the said Oba Ajaaregbe of Ijaaregbe was not filed until the 25th September, 1986. In my view the delay of nearly one full year between his enthronement and the filing of the present application for an interim injunction to restrain him from holding himself out as the Oba of Ijaaregbe is entirely unreasonable and bound to defeat^F the application. On this ground alone, the decision of the Court below which affirmed the dismissal of the appellant's application for the interim injunction claimed must be and is hereby further affirmed.

There is additionally the issue of balance of convenience which on the facts of the present case does not favour the appellant. No irreparable damage was also established by the appellant against which the order prayed^G may be considered. This appeal is devoid of merit and it is for the above and the more elaborate reasons contained in the lead judgment that I, too, dismiss it, I abide by the order for cost therein contained.