

SUPREME COURT OF NIGERIA
27TH FEBRUARY, 1996. SC. 54/1995
CORAM:- M. L. UWAIS CJN, M. E. OGUNDARE,
E. O. OGWUEGBU, U. MOHAMMED, A. I. IGUH, JJSC.

HON. JUSTICE T.A.A. AYORINDE APPELLANT

AND

A-G AND COMMISSIONER FOR JUSTICE

OYO STATE & 3 OTHERS

..... RESPONDENTS

APPEALS - Error of lower court - When appellant is not entitled to succeed - In spite of such error.

COURTS - Discretion - To grant or refuse application for interlocutory injunction - Whether exercised judiciously.

INTERLOCUTORY INJUNCTIONS - Balance of convenience - Whether plaintiff can be adequately compensated in damages - Would affect court decision one way or the others

INTERLOCUTORY INJUNCTIONS - Triable issue Substantive action must disclose serious issue to be determined - Before the application can be considered.

FACTS

The plaintiff/appellant who is the Chief Judge of Oyo State, received a letter sometime in November, 1993, from the office of the Oyo State Governor asking him to proceed on immediate leave as a result of some allegations of misconduct which were to be investigated. Several other copies of the letter were endorsed to some of the defendants. Plaintiff's first action before the Federal High Court, Ibadan, was discontinued upon reaching settlement with the Governor. However, plaintiff took out an other writ of summons before the High Court of Oyo State Ibadan claiming inter alia, a declaration that the letter purporting to suspend him from office as the Chief Judge of Oyo State is ultra vires, and of no effect whatsoever.

Plaintiff filed a motion seeking an interlocutory injunction restraining the respondents from interfering with the performance of his duties pending the determination of the suit. The trial court refused the application. Plaintiffs appeal to the Court of Appeal was dismissed. Being dissatisfied, he has further appealed to the Supreme Court raising six issues.

ISSUES FOR DETERMINATION

“(i) Whether the court below was correct in law in regarding the two questions argued before them as properly embraced in the following single question, namely -

Whether in the special circumstances of this case the learned trial judge exercised his discretion judiciously and properly when he refused to grant the interlocutory injunction against the Defendants (Respondents)

(ii) Whether it was open to the court below at this stage of the proceedings to hold that the decision conveyed by the civilian Governor to the Plaintiff in the letter dated 15:11:93 (p. 46 of the Record) only had the effect of directing the plaintiff to proceed on leave and definitely not a decision suspending the plaintiff from office. Etc, see p. 434

HELD (Unanimously dismissing the appeal per lead judgment of **UWAIS CJN**)

Triable issue

1. Now in an application for interlocutory injunction the first issue to be determined is whether there is a question of law or legal right or serious issue to be determined in the substantive action. Once this is found to be so, the court shall then proceed to consider where the balance of convenience rests. Although the trial court held that there was a triable issue to be determined between the parties to this case, the Court of Appeal, as quoted above, held that there was no triable issues between the parties. However, before us, Mr. Boade, learned counsel for the Respondents has conceded that the trial court was right and that the Court of Appeal was wrong in holding the contrary. There is, therefore, no dispute before us on the existence of a triable issue before the trial court. (p. 435 E)

Balance of convenience

2. There is no doubt that the determination by a court of where the balance of convenience rests in a case is a question of fact and not law. The court is obliged to rely on the facts presented to it by the affidavit evidence available in the case. It is to consider whether if the plaintiff were to succeed, at the trial, in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. Where damages will be adequate remedy and the defendant would be in a financial position to pay the damages, interlocutory injunction will not be granted even if the plaintiffs claim is shown to be strong at the stage

of making the application for the grant for the interlocutory injunction. On the other hand, where damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether should the defendant succeed at the trial he would be sufficiently compensated under an undertaking to be given by the plaintiff as to damages for the loss the defendant would have sustained by reason of the granting of the application for interlocutory injunction. As a matter of practice and principle interlocutory injunctions are not granted as a matter of course. (p. 436 C)

Courts - Discretion

3. Furthermore the decision whether or not to grant the application for interlocutory injunction involves the exercise of discretion by the learned trial judge. This he has done and the Court of Appeal found that the exercise had been carried out both judicially and judiciously. I am satisfied that the Court of Appeal was right in so holding. (p. 437 D)

Error of Lower court

4. Notwithstanding the error by the Court below in failing to properly consider the issues formulated by the Appellant and in reversing the finding made by the trial court that there was a triable issue between the parties to this case, I am satisfied that this appeal has no merit. The Court of Appeal was right in upholding the decision of the trial court not to grant the application by the Appellant. (p. 437 E)

NOTABLE POINT OF INTEREST

IGUH JSC

1. Interlocutory injunction is entirely discretionary

No doubt, an interlocutory injunction may be granted in all cases in which it appears to the court to be just and convenient to do so. But they are not normally granted as a matter of course. The applicant has a duty to satisfy the court that in the special circumstances of his case, he is entitled, on the facts presented by him, to a relief. The remedy is entirely discretionary and the governing principles, depending on the facts but the issues in a given case, admit some elements of flexibility. (p. 438 C)

REPRESENTATION

Chief F.R.A. Williams, SAN with T.E. Williams and A. O. Jagun (Miss) for the Appellant.

O.A. Boade, Ag. Deputy Director Legal Adviser and Services, Oyo State

CASES REFERRED TO

Montgomery v. Montgomery (1965) P. 46
Egbe v. Onogun (1972) 1 All N.L.R. (Part 1) 95 at p. 99
Ojukwu v. Governor of Lagos State (1989) 3 N.W.L.R. (Part 26) 39
Koteye v. Central Bank of Nigeria (1989) 1 N.W.L.R. (Part 98) 419
Obeya Memorial Hospital v. A-G of the Federation (1987) 3 N.W.L.R. (Part 60) 325
Cynamid v. Ethicon Ltd. (1975) 1 All E.R. 504 at p. 510
Holt Nigeria Ltd. v. Holts African Workers Union of Nigeria and Cameroons (1963) 1 ALL N.L.R. 379 at p. 383
Missini v. Balogun (1968) 1 ALL N.L.R. 318
Nwanga v. Military Governor of Imo State (1987) 3 N.W.L.R. (Part 59) 185 at p. 194E
Governor of Imo State v. Anosike (1987) 4 N.W.L.R. (Part 66) 663 at p. 670B
Chukwueke v. Nwankwo (1985) 2 N.W.L.R. (Part 6) 195
Ajuwa v. Odili (1985) 2 N.W.L.R. (Part 9) 710
Agbase v. Oriareghan (1985) 2 N.W.L. R. (Part 10) 884
Kimdey v. Military Governor of Gongola State (1988) 2 N.W.L.R. (Part 77) 445
Fellowes & Sons v. Fisher (1975) 3 W.L.R. 184 at 198

LEAD JUDGMENT BY UWAIS CJN

The Appellant, who was and still is the Chief Judge of Oyo State, I received a letter on the 22nd day of November, 1993 dated the 15th day of November, 1993. The letter bore reference No. G.515/T/4 and was signed by the 2nd Respondent. It reads as follows:-

"G/516/T/4

15th November, 93

Hon. Justice T.A.A. Ayorinde
Chief Judge of Oyo State
High Court,
Ibadan.

Investigation for Misconduct

I have the directive of His Excellency the Governor of Oyo State to refer to an endorsement of a letter to your goodself by the Honourable Speaker of the Oyo State House of Assembly dated the 8th November, 1993 informing you that a panel of investigation had been set up and sworn-in to investigate allegations of misconduct against you.

2. In the circumstances of your being under investigation for misconduct your Lordship is hereby requested to proceed on leave with immediate effect.

Signed

(I. A. Osunbunmi)

B *Director General*

for Secretary to the State Government."

This letter was endorsed to the Chief Registrar (4th Respondent) and the 3rd Respondent. The endorsement to the latter reads:

"Our Ref. No. 516T/5A

Office of the Governor,

Secretariat,

Ibadan.

15th November 1993.

C

The Hon. Justice O. Lajide,

High Court of Justice,

D *Ring Road,*

Ibadan.

Overleaf and above for your information, please.

2. I am pleased to convey the approval of His Excellency the Executive

E *Governor of Oyo State, Chief Kolapo Olawuyi Ishola to you of your appointment as the Acting Chief Judge of Oyo State with immediate effect.*

3. The acting appointment will be with full 100% acting allowance.

4. Congratulations.

Signed

F *(I. A. Osunbunmi)*

Director-General

for Secretary to the State Government "

The Appellant further received two letters dated the 31st August 1993 and 15th September, 1993. Both letters were written by the Executive Governor

G of Oyo State, Chief Kolapo Olawuyi Ishola. The paragraph of the letter states:

"The Government of Oyo State is looking into allegations of corruption and abuse of office against you concerning, among others, the part you played in the transfer and allocation for trial to other judges and hastily allocation to yourself and grant of bail in Suit No. HOY/MISC/5/93,

H *Commissioner of Police v. A. Faseyitan and 13 others."*

and paragraph 3 thereof reads:-

"3. In this connection, there are numerous petitions against you including one from the Islamic Propagation Centre, P. O. Box 464, Oyo

State dated 3/7/93, alleging that you took a bribe of N500,000.00 from Oba Lamidi Olayiwola Adeyemi III Alafin of Oyo. There was another petition from the Lagos Branch of Oyo Indigenes Patriots, Lagos, dated 9/4/93, in which you were alleged to have been requested to secure the bail of the suspects on the 29th April, 1993. There are many similar allegations in this vein of which you have copies and you should comment on them.

While the second paragraph of the former letter states thus:

"2. Please be informed that in the course of your 1992 and 1993 annual leave and as a result of a large number of petitions and accusations of misconduct and abuse of office against you, you will be required to put up your defence before a panel to investigate your conduct concerning inter alia:

(a) The part you played in the transfer and allocation for trial to other judges and hasty reallocation to yourself and grant of bail in Suit No. HOY/MISC/5/93 Commissioner of Police v. V.A. Faseyitan and 3 others;

(b) Falsification of the decision of the Judicial Service Commission in the application for transfer of Mr. Justice E. O. Olukole of the Rivers State High Court.

(c) Perceived collusion in the granting of garnishee orders on Government money without putting the Government on notice; and

(d) Many others to be put forward when the investigation starts."

Consequent upon these letters the Appellant instituted an action in the Federal High Court, Ibadan, Suit No. FHC/1B/23/93 against the Governor and others. A settlement was reached between the Appellant and the Governor. As a result of the settlement the suit was discontinued. However, the Appellant took out another Writ of summons at the High Court of Oyo State, Ibadan. This was on the 21st day of December, 1993. The present Respondents as well as the former Governor of Oyo State, Chief K. O. Ishola, were made defendants to the action. The Writ of Summons was later amended by the Appellant. The claims indorsed thereon are as follows:-

"(1) A declaration that letter reference No. G/516/T/4 of 15th November, 1993 signed by the 2nd Defendant purporting to suspend the plaintiff from office as the Chief Judge of Oyo State is ultra vires, illegal, unconstitutional, null and void and of no effect whatsoever.

(2) A declaration that letter referred to in paragraph 1 supra purporting to appoint the 3rd Defendant as the acting Chief Judge of Oyo State is ultra vires, illegal, unconstitutional, null and void and of no effect whatsoever.

(3) A declaration that the Plaintiff remains and is entitled to con-

tinue to act as the Chief Judge of Oyo State.

(4) An order that the Plaintiff should continue in office as the Chief Judge of Oyo State until he vacates the said office in accordance with the applicable law.

B *(5) An order of perpetual injunction restraining the Defendant, each and everyone of them, their servants, agents, and privies including anyone acting for or on behalf of all or any of them from suspending, disturbing and interfering howsoever with the Plaintiff in the performance of his duties and in the enjoyment of the emoluments, perquisites, benefit and entitlements of his office as the Chief Judge of Oyo State.*

C *(6) An order of perpetual injunction restraining the 3rd Defendant from acting as or holding out himself howsoever as the Chief Judge of Oyo State.*

D *(7) N100 million as damages for unlawful interference with the performance by the Plaintiff of the duties of his office and with the enjoyment of the perquisites and entitlements of his office as the Chief Judge Oyo State and for mental agony, embarrassment, shock, degradation.*

‘By a motion on notice, dated the 4th day of January, 1994, which was brought by the Appellant, the following prayers were made:-

E *“(1) An order of interlocutory injunction restraining the defendants, each and everyone of them, their servants, agents, and privies including anyone acting for or on behalf of all or any of them from suspending, disturbing and interfering howsoever with the Plaintiff in the performance of his duties and in the enjoyment of the emoluments, perquisites benefits and entitlement, of his office as the Chief Judge of Oyo State pending the*
F *determination of the suit herein.*

(2) An order of interlocutory injunction restraining the 3rd defendant from acting as or holding out himself howsoever as the Chief Judge Oyo State pending the determination of the suit herein.

AND

G *(3) For such further or other order or orders as this Honourable Court may deem fit to make in the circumstances.’*

H In his ruling, the learned trial judge (Aderemi, J) held that affidavit evidence before him there was an issue for trial in the case by the Appellant. He then considered the principle of law applicable to the application. He made the following observations:-

“It seems to me clear that it is the overall interest of the larger society that determines the way this application goes. I am equally conscious of the time - honoured principle of law that if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction and

if he could be adequately compensated by an award of damages for the loss he would have sustained, as a result of the defendant's continuing in the violation of that right, between the time of the application and the time of the trial, but it is clear that the defendant can pay damages, then intercessory injunction should not be granted. Converse to that principle is that if damages will provide adequate remedy for the defendant in event of his succeeding on the trial, to establish his right to do that which was sought to be enjoined and if he could be adequately compensated under the plaintiff's understanding (sic) as to damages for the loss then there would be no reason for refusing an interlocutory injunction."

and concluded the ruling by holding thus:-

"Can I on the face of the printed evidence say, with any confidence, that the balance of convenience tilts in favour of the plaintiff/applicant? Why (sic) my answer is definitely in the negative..... I have said that from the printed evidence before me, the plaintiff is not disturbed in the enjoyment of the emoluments, perquisites, benefits and entitlements of his office It is for this reason that I stoutly refuse to accede to the first prayer..... I have earlier cautioned myself that it is not the duty of this court, at this stage to determine the legality or otherwise of the appointment of the 3rd defendant as Acting Chief Judge; judicial authorities vindicate my stand here. It only remains for me to say that the act of appointing the 3rd defendant as Acting Chief Judge having been done, the present application is not a remedy for that act that is already done. That is trite law.

Having regard to all I have discussed above, I do not find this application to be meritorious. It is accordingly dismissed."

The Appellant appealed from the ruling to the Court of Appeal the Court below (Mukhar, Salami and Nsofor JJCA.) in dismissing the appeal held as follows, as per Mukhtar, J.C.A. (with whom Salami and Nsofor JJ.C.A. agreed):-

"Given all the facts of this case and the documents before this court I am not convinced that there is a triable issue, and find that it is unnecessary to go into detailed analysis of the Decree and law that gave or did not give the then Governor of Oyo State the power to direct the Appellant to proceed on leave. Moreover the substratum of this application is the same as in the substantive suit. In addition, I cannot with all certainty say that a cause of action exists... Against the background and the circumstances that led to the litigation, it will be inconveniences that led to the litigation, it will be inconceivable to say that the balance of convenience does weigh on the side of the Appellant....."

I am guided by the above proposition of the law. In view of my finding on

balance of convenience, I believe the status quo that shall be maintained is the one existing at the time of the institution of this action. Moreover, the act which the Appellant was seeking remedy had already been done i.e. the appointment of the 3rd Respondent to act as the Chief Judge of Oyo State.

- B *See John Holt Nigeria Ltd. & Anor v. Holts African Workers Union, (1963) 1 All N.L.R. 379 and Commissioner for Works Benue State v. Deycom Ltd. (sic) I also believe that whatever damage the Appellant would have suffered can at the end of the day be adequately compensated by payment of damages..... I am satisfied that the learned trial Judge exercised his discretion judicially and judiciously The end result is that the*
 C *appeal fails in its entirety”.*

The Appellant, aggrieved by this decision, appealed from it to Court. 7 questions were postulated in the Appellants’ brief of our consideration. The questions state thus:

- D (i) *Whether the court below was correct in law in regard the two questions argued before them as properly embraced in the single question, namely -*

Whether in the special circumstances of this case the learned Judge exercised his discretion judiciously and properly when he granted the interlocutory injunction against the Defendants (Respondent)

- E (ii) *Whether it was open to the court below at this stage of the proceedings to hold that the decision conveyed by the civilian the Plaintiff in the letter dated 15:11:93 (p. 46 of the Record) only had the effect of directing the plaintiff to proceed on leave and definitely not a decision suspending the plaintiff from office.*

- F (iii) *Even if (which is not admitted) the answer to Question (ii) is in the affirmative, whether it necessarily follows that the application for interlocutory injunction in favour of the Plaintiff to restrain the Oyo*
 G *Statement from interfering with him in the exercise of the functions of his office as the State Chief Judge or to restrain the 3rd defendant from acting in the said office must necessarily fail.*

- H (iv) *Whether matters pertaining to the reasons or justification why it is necessary or expedient for the civilian Governor of Oyo State to take the actions which he took in writing the letter of 15:11:93 are relevant in determining the Plaintiff’s application for interlocutory injunction to restrain the Defendants from interfering with him in the exercise of his functions as the State Chief Judge.*

(v) *Whether the court below was correct in upholding the decision of the High Court that “If balance of convenience is in favour of is (the) larger society, the ultimate beneficiary of the duties discharged by*

the Plaintiff and the defendants put together.”

(vi) Whether the court below was correct in holding that “the status quo that shall be maintained is the one existing at the time of the institution of this action.”

In their joint brief of argument, the Respondents adopt questions (i) and (ii) in the Appellant’s brief of argument and added the following questions for our determination –

“(iii) Whether the reasons for the action taken by the Governor is relevant in considering the application for interlocutory injunction.

(iv) Whether in the circumstances of this case the balance of convenience should be in favour of the Appellant.”

At the time of our hearing this case on the 5th day of December 1995 it was reported to us by learned counsel for the Respondent that the 3rd Respondent died sometime last year after the judgment of the Court of Appeal was delivered. Consequently, the second prayer for an interlocutory injunction to restrain the 3rd Respondent from acting as or holding out himself as the Chief Judge of Oyo State becomes otiose. This is common ground as between the parties. Therefore, all the considerations that will follow hereafter will relate only to the first prayer of the application before the trial court.

Now in an application for interlocutory injunction the first issue to be determined is whether there is a question of law or legal right or serious issue to be determined in the substantive action - See Montgomery v. Montgomery, (1965) P. 46; Egbe v. Onogun, (1972) 1 All N.L.R. (Part 1) 95 at p.99; Ojukwu v. Governor of Lagos State, (1986) 3 N.W.L.R. (part 26) 39; Kotoye v. Central Bank of Nigeria, (1989) 1 N.W.L.R. (Part 98) 419 and Obeya Memorial Hospital v. A-G of the Federation & Anor, (1987) 3 N.W.L.R. (Part 60) 325. Once this is found to be so, the court shall then proceed to consider where the balance of convenience rests.

Although the trial court held that there was a triable issue to be determined between the parties to this case, the Court of Appeal, as quoted above, held that there were no triable issues between the parties. However, before us, Mr. Boade, learned counsel for the Respondents has conceded that the trial court was right and that the Court of Appeal was wrong in holding the contrary. There is, therefore, no dispute before us on the existence of a triable issue before the trial court. What remains to be determined is where the balance of convenience as between the parties vis-a-vis the grant of interlocutory injunction rests. Both the trial court and the Court of Appeal found that the balance of convenience rested with the Respondents. Chief Williams, learned Senior Advocate for the Appellant has argued in the

Appellant's brief of argument that the expression "balance of convenience" was not given its true meaning by the Court of Appeal since it held that it (the balance of convenience) was in favour of the larger society. He argued that it is only where there is a doubt as to the adequacy of the respective remedies in damages available to either party or to both that the question of balance of convenience arises. Mr. Boade replied in the Respondents' brief of argument that the Court below was right in holding that the balance of convenience was in favour of the larger society. He submitted that whatever damage the Appellant would suffer from refusal of trial court to grant his application for interlocutory injunction could adequately be compensated by the award of damages at the conclusion of hearing of the case.

There is no doubt that the determination by a court of where balance of convenience rests in a case is a question of fact and not law. The court is obliged to rely on the facts presented to it by the affidavit evidence available in the case. It is to consider whether if the plaintiff were to succeed, at the trial, in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. Where damages will be adequate remedy and the defendant would be in a financial position to pay the damages, interlocutory injunction will not be granted even if the plaintiff's claim is shown to be strong at the stage of making the application for the grant for the interlocutory injunction.

On the other hand, where damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether should the defendant succeed at the trial he would be sufficiently compensated under an undertaking to be given by the plaintiff as to damages for the loss the defendant would have sustained by reason of the granting of the application for interlocutory injunction.

As a matter of practice and principle interlocutory injunctions are not granted as a matter of course.

For authorities in support of the foregoing statements - see American Cyanamid v. Ethicon Ltd (1975) 1 All E.R. 504 at p. 510; John Holt Nigeria Ltd. v. Holts African Workers Union of Nigeria and Carerrooms (1963) 1, All N.L.R. 379 at p. 383; Missini & Ors. v. Balogun & Anor (1968) 1 All N.L.R. 318; Nwanga v. Military Governor of Imo State, (1987) 3 N.W.L.R. (Part 59) 185 at p. 194E, and Governor of Imo State v. Anosike (1987) 4 N.W.L.R. (part 66) 663 at p. 670B.

The Court of Appeal agreed with the reasoning of the learned trial judge when he said-

“I have said that from the printed evidence before me, the plaintiff is not disturbed in the enjoyment of the emoluments, perquisites, benefits and entitlements of his office. If balance of convenience is in favour of any side it is the larger society, the ultimate beneficiary of the duties discharged by the plaintiff and the defendants put together.”

This statement of fact has not been faulted. Therefore, faced with the concurrent findings of fact by the lower courts, which have not been shown to be perverse, it is settled law that this Court being Appellate Court cannot depart from or interfere with the findings - see Chukwueke v. Nwankwo. (1985) 2 N.W.L.R. (Part 6) 195; Ajuwa v. Odili (1985) 2 N.W.L.R. (Part 9) 710, Egbase v. Oriareghan. (1985) 2 N.W.L.R. (Part 10) 884 and Kimdey v. Military Governor of Gongola State. (1988) 2 N.W.L.R. (Part 77) 445.

Furthermore the decision whether or not to grant the application for interlocutory injunction involves the exercise of discretion by the learned trial judge. This he has done and the Court of Appeal found that the exercise had been carried out both judicially and judiciously. I am satisfied that the Court of Appeal was right in so holding.

Notwithstanding the error by the Court below in failing to properly consider the issues formulated by the Appellant and in reversing the finding made by the trial court that there was a triable issue between the parties to this case. I am satisfied that this appeal has no merit. The Court of Appeal was right in upholding the decision of the trial court not to grant the application by the Appellant. Accordingly, the appeal fails and it is hereby dismissed with N1,000.00 costs to the Respondents.

In view of the constitutional nature of the case before the trial Court, the learned trial judge is hereby directed to expedite the hearing of the case.

OGUNDARE JSC

I agree.

OGWUEGBU JSC

I have had the advantage of reading in advance, the judgment just delivered by my learned brother Uwais, C.J.N. with which I fully agree.

I too will dismiss the appeal with costs as assessed in his judgment.

MOHAMMED JSC

I also agree to dismiss this appeal for the reasons given by my Lord Uwais, the Chief Justice of Nigeria. I abide by all the consequential orders made in the lead judgment.

IGUH JSC

I have had a preview of the judgment just delivered by my learned brother, the Honourable Chief Justice of Nigeria and I entirely agree with him that this appeal is devoid of merit and should be dismissed.

No doubt, an interlocutory injunction may be granted in all case in which it appears to the court to be just and convenient to do so. But they are not normally granted as a matter of course. The applicant has a duty to satisfy the court that in the special circumstances of his case, he is entitled, on the facts presented by him, to a relief. The remedy is entirely discretionary and the governing principles, depending on the facts, but the issues in given case, admit some elements of flexibility. See Fellowes and S Fisher (1975) 3 W.L.R. 184 at 198 and Hubbard and Another v. Vosper (1972) 2 O.B. 84. The discretion is, however, one that must be exercised judicially and judiciously. See Pride of Derby etc Ltd. v. British Celanese Ltd. (1953) 1 Ch. 149 at 181. The discretion may also be differently exercised depending on the nature of the injunction sought.

There is no rule requiring a plaintiff/applicant to establish a prima facie case before he can get an interlocutory injunction, so long as the court is satisfied that his case is not frivolous or vexatious and that there is serious question to be tried. Once that issue is established, then the governing consideration is the balance of convenience. See American Cyanamid Co. v. Ethicon Ltd. (1975) A.C 96. If the balance of convenience does not clearly favour either party, then the preservation of the status quo will be decisive. See American Cyanamid Co. v. Ethicon Ltd. ibid.

In the present case, learned counsel for the respondents did admit before us and quite rightly in my view, that there is a triable issue before the trial High Court. It seems to me that the court below was in error in its observation that it was not convinced that there was a triable issue before the trial court. That being so, the next question for consideration must be which of the parties the balance of convenience favours.

In this regard, the learned trial Judge resolved the issue as follows:-

“Can I on the fact of the printed evidence say, with any confidence that the balance of convenience tilts in favour of the Plaintiff/Applicant?”

My answer is definitely in the negative.....if balance of convenience is in favour of any side, it is the larger society, the ultimate beneficiary of the duties discharged by the, plaintiff and the defendants put together."

The court below, for its own part, concluded the matter thus-

"Against this background and the circumstances that led to the litigation, it will be inconceivable to say that the balance of convenience does weigh on the side of the Appellant. Besides he still enjoys his full emoluments, benefits and all entitlements of his office."

It appears to me plain on the above concurrent findings that the balance of convenience in the application cannot be said to favour the plaintiff/applicant. I have myself considered the issue and can find no reason to fault this stand of both courts below. I therefore agree with the Court of Appeal that the plaintiff/applicant in the present case would not be entitled to the relief of interlocutory injunction on the ground that the balance of convenience weighs in his favour.

On the question of the status quo that shall be maintained, there can be no doubt that in an appropriate case, such as the case of an established continuing wrong, it may be more accurate to say that the status quo means "the position prevailing when the defendant embarked upon the activity sought to be restrained." See Fellowes v. Fisher (1976) Q.B. 122 at 141B per Sir John Pennycuik. In the present action, however, it is yet to be established whether or not the act sought to be restrained is a case of wrongful act, never mind continuing wrongful act. In the peculiar circumstances of the present case, it seems to me that the maintenance of the status quo must mean maintaining the situation as it existed at the time of filing the action since an order of interlocutory injunction is not a remedy for an act that has been completed or carried out. See John Holt Nig. Ltd. & Another v. Holts African Workers Union (1963) All N.L.R. 379 at 384 and Commissioner for Works Benue State v. Devcom Ltd. (1988) 3 N.W.L.R. (Part 83) 407 at 419 - 422.

On the whole, I can find no reason to interfere with the conclusion of the court below in the appeal before it. Consequently I, too, dismiss this appeal and make the same consequential orders, inclusive of those as to costs made in the lead judgment.