

SUPREME COURT OF NIGERIA
FRIDAY 22ND FEBRUARY, 2013. SC. 132/2004
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER-
ODILI, O. ARIWOOLA, K. B. AKA'AH, JJSC**

1. OBA JAMES ADELEKE
(The Ologi of Ogi, Head of
Ogi Community)

2. RUFUS ONI OLADIMEJI
(Head of Ojudo Village
Community in Ogi)

..... APPELLANTS

3. SAMUEL ODESOLA

4. MESHACK ADERINSOYE
(Representing Ojudo
Community, Ogi)

AND

1. NAFIU ADEWALE LAWAL

2. TIJANI ADEJINMI
(Alias Egunnla)

3. MUSTAPHA ADISA

4. IBRAHIM SANNI

..... RESPONDENTS

5. MUFUTAU OLADUNJOYE
(Alias Olowolagba Ilu)

6. BAMGBOYE WAHAB

7. MUSHUDI TIAMIYU

8. YISAHU IBRAHIM

INJUNCTIONS - Grant - Purpose - Being an equitable remedy -
Injunction is granted discretionarily - To preserve the subject matter
in dispute - Or to maintain the status quo (H1)

INJUNCTIONS - Definition - It is a court order prohibiting the doing
of some specified act - Or commanding to undo some wrong (H2)

INJUNCTIONS - Grant - Preconditions - Applicant must inter alia
show in his affidavit - That there is existence of legal right - Substan-
tial issue to be tried - And a balance of convenience (H3)

ACTIONS - Hearing - Interlocutory injunction - Since parties in suit no. HOS/134/64 differ from those in HRE/4/97 - Granting of the injunction will prejudice trial in the substantive suit (H4)

FACTS

Plaintiffs/appellants instituted this action against defendants/respondents at the Osun State High Court sitting at Ikire, claiming damages for trespass and perpetual injunction restraining respondents from appellants' boundary land. Thereafter, appellants filed an application for interlocutory injunction to restrain respondents and their privies from crossing the boundaries between appellants and respondents, pending the final determination of the substantive suit.

The trial court granted the order of interlocutory injunction against respondents which led to their filing appeal in the Court of Appeal. The court allowed the appeal and set aside the order of injunction on the grounds that the injunction was not tied to any plan since no plan has been filed in the substantive suit and as such, the boundaries between the parties was not certain. Being dissatisfied, appellants have appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court was right when it held that the order of interlocutory injunction made by the trial court is not tied to any identifiable area of land.

2. Whether the lower court was right when it set aside the order of interlocutory injunction granted by the trial court for failure to comply with established rules and conditions.

HELD (Unanimously dismissing the appeal per

AKA'AH S JSC)

INJUNCTIONS - Grant - Purpose

1. The granting of an injunction is an equitable remedy and therefore discretionary. Breach of an injunction is a contempt of court. The preservation of the subject matter 'res' in dispute or the maintenance of the 'status quo' is achieved through the judicial process of the equitable order of injunction.

(p. 632 E)

INJUNCTIONS - Definition

2. According to Black's Law Dictionary 6th Edition Page 714: "injunction is 'a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury' In Adenuga vs Odunewu (2001) 2 NWLR (Part 696) 184, this Court per Karibi - Whyte JSC defined injunction at page 185 thus:

"...an equitable order restraining the person to whom it is directed from doing the things specified in the order or requiring in exceptional situations the performance of a specified act". Since injunction is an equitable remedy, it is usually granted at the discretion of the court which must be exercised judicially and judiciously. (p. 632 F)

INJUNCTIONS - Grant - Preconditions

3. For the court to exercise its discretion in favour of an applicant, certain conditions must exist and this must be evidenced in the affidavit accompanying the motion on notice. The conditions for grant of interim and interlocutory injunctions are basically the same except for the element of urgency in interim injunction which is not pronounced in interlocutory injunction.

The conditions include:

- (a) Existence of a legal right**
- (b) Substantial issue to be tried**
- (c) Balance of convenience**
- (d) Irreparable damage or injury**
- (e) Conduct of the parties**
- (f) Undertaking as to damages. (p. 633 A)**

ACTIONS - Hearing - Interlocutory injunction

4. If Suit No.HOS/134/64 settled the boundary between the parties, there would be no need to initiate a fresh action in Suit HRE/4/97 since the appellants in the present suit can execute the judgment already obtained in Suit HOS/134/64 by initiating committal proceedings against the respondents. It is to be noted that the contempt proceedings were struck

out because the parties against whom the contempt proceedings were initiated were not parties to the suit but were described as privies of the defendants for which leave of court was needed before the judgment in HOS/134/64 could be enforced against them.

B *Since the parties in Suit HOS/134/64 are different from the parties in Suit No. HRE/4/97 any pronouncement made to grant the interlocutory injunction in HRE/4/97 will prejudice the trial in the substantive suit. It is safer to order an accelerated hearing of the substantive action. The affidavit and counter - affidavits filed would require calling oral evidence to resolve the conflicts.* (p. 637 B)

NOTABLE POINTS OF INTEREST

D **AKA’AHS JSC**

1. Brief of argument should indicate the grounds to which an issue is tied to

The issues raised in the respondents’ brief succinctly bring out the complaints the appellants are making in this appeal. Learned counsel who prepared the appellants’ brief did not state from which ground or grounds he distilled each of the three issues he formulated. All he did was to tie the issues to all the grounds and argue the issues together. Although it is permissible to argue the issues together, a good brief should indicate the grounds to which a particular issue is tied. This is to ensure that the issues formulated in the brief are related to the said grounds and to forestall the possibility of raising more issues than the grounds. (p. 630 B)

G **2. Substantive matter must not be determined in interlocutory application**

In the determination of any interlocutory application pending the trial of the substantive case, care should be taken not to make pronouncement which may prejudice the trial of the claims filed and still pending before the Court. To do otherwise is to prejudge the matter in respect of which evidence is yet to be led. (p. 636 E)

FABIYI JSC

3. Identity of disputed land must be known to both parties

In a land matter, the identity of the piece of land must be clearly put in place and known to both parties. It should be clearly ascertained for an order of injunction to be tied to it. (p. 638 H)

B

REPRESENTATION

Z. O. Alayinde, for the Appellants

Seni Adio, for the Respondents

C

CASES REFERRED TO

Adeleke vs Aserifa (1987) 1 NWLR (Pt. 49) 284

Nwokoro vs Onuma (1990) 3 NWLR (Pt. 136) 22

Din vs African Newspapers (Nig.) Ltd (1990) 3 NWLR (pt. 139) 392

Imam vs Sheriff (2005) 4 NWLR (Pt. 914) 80

D

Kufaji vs. Kogbe (1961) ALL NLR (Pt. 1) 113.

Akinsele vs Akindulire (1966) 1 ANLR 147;

Olu-Ibukun v. Olu-Ibukun (1974) 2 SC 41.

Dabup vs Kalo (1993) 9 NWLR (Pt. 317) 254

A.C.B. LTD vs Awosboro (1996) 3 NWLR (Pt. 434) 20

E

Odutola vs Lawal (2002) 1 NWLR (Pt. 749) 633

Globe Fishing Industry Ltd. vs Coker (1990) 7 NWLR (Pt. 162) 265

Adenuga vs Odunewu (2001) 2 NWLR (Pt. 696) 184

Buhari vs Obasanjo (2003) 17 NWLR (Pt. 850) 587

F

Kotoye vs CBN (1989) 1 NWLR (Pt. 98) 419

Woluchem v. Wokoma (1974) 3 SC 153

BOOKS REFERRED TO

Black's Law Dictionary 6th Ed. p. 714, 9th Ed. p. 855

G

Modern Civil Procedure Law p. 198

LEAD JUDGMENT BY AKA'AHs JSC

This is an appeal against the judgment of the Court of Appeal Ibadan Division delivered on 5th day of May, 2004. The appellants are the plaintiffs in the substantive action while the respondents are the defendants in Suit No.HRE/4/97 instituted and still pending before the Osun State High Court sitting at Ikire. The plaintiffs' claims before the High Court as contained in paragraph 33 of the Amended

H

Statement of Claim are as follows:-

“33 Whereof the Plaintiffs’ claim against the Defendants jointly and severally are as follows:-

1. *N2,000,000.00 (Two Million Naira) general and aggravated damages for trespass, unlawful reaping and carrying away of the Plaintiffs’ palm fruits since March, 1996 up to the date of the action without the consent and authority of the plaintiffs, harassment and humiliation by unnecessary causing the arrest of members of Buberu village Community at Suberu otherwise known as Ojudo Village Ogi town in Aiyedaade Local Government Council.*

2. *Perpetual Injunction restraining the defendants jointly and severally, agents, servants or any member of Babasanya family of Ede Community from crossing the boundary and reaping the plaintiffs’ palm trees without the consent and authority of the plaintiff”*

The Statement of Claim is dated the 19th day of September, 1997 (See pages 3-6 of the record). After filing the statement of claim the plaintiffs also filed an application dated 3rd October, 1997 seeking an order of -

“Interlocutory injunction restraining the defendants jointly and severally, their agents privies and servants from crossing the boundaries between the applicants and respondents and enter the farmland in dispute and reap the plaintiffs (sic) pending the final determination of the above named civil suit, Or

In the alternative an order ordering the defendants, agents servants and privies to comply with the judgment of Oshogbo High court in suit No.HOS/134/64 between Josiah Akinfende vs. Bello Adedoja & 3 ors attached herewith and marked Exhibit ‘A’ from further crossing the boundaries between them and reaping the applicants’ palm fruits.

2. *To stop harassing members of Ojudo Community of Ojudo Ogi farming at Ojudo on the land in dispute with Ede policemen and prosecuting them on frame up charges before the Ede lay Magistrate sitting at Ede and stay all the criminal proceedings pending against the applicants’ Community until the final determination of this case.”*

The plaintiffs relied on survey plan No. GB101A which was attached as 'Exhibit D' to the application showing the area of the land as well as other features of the land in dispute. They filed a further affidavit on 7/10/97 while the defendants filed a counter affidavit on

10/11/97. The learned trial Judge took arguments from the parties and after reviewing the said arguments delivered a ruling on 21st day of May, 2003 granting the order of interlocutory injunction against the defendants. Being dissatisfied with the ruling, the defendants appealed to the Court of Appeal Ibadan. The Court of Appeal delivered its judgment on 5/5/2004 allowing the appeal and setting aside the order of injunction granted by the Osun State High court sitting at Ikire. The plaintiffs felt aggrieved and have appealed to this court. The plaintiffs shall be referred to as the appellants while the defendants are now the respondents in this appeal. The Notice of Appeal is dated 10th May, 2004 and it contains two grounds of appeal. An amended Notice of Appeal containing 8 grounds dated 24/6/2004 was filed on 25/6/2004. The appellants formulated the following three issues for determination. They are:-

1. Whether or not the lower courts approach to the resolution or correctness of the trial court's order of interlocutory injunction in favour of the Appellant was properly made before setting aside the order.

2. Whether the lower court was right to set aside the trial court's order when the Appellants have satisfied all the conditions necessary for the granting of such an order and was so found before the order restraining the respondents from further crossing the boundary was made by the trial court.

3. Whether or not the lower court findings quoted below states the true position of the law as to when to apply for an interlocutory injunction after a previous judgment in a case.

"The other issue to be considered in this application is the delay of the Applicant/Respondent to file for an order of injunction since 1964 when HOS/134/64 was determined. The records show that the respondents made no efforts to secure an injunctive order against the respondents over the land complained of, the basis of the exercise of a discretionary discretion to restrain the appellant would appear to be non-existing in the application consequently an injunctive order made in 2001 in the suit below would seem to me to be unnecessary and 'incompetent' and whether the findings constitutes true statement of the law involving when an interlocutory injunction was to be applied for (Page 5 of the judgment on page 110 of the records of appeal)".

The respondents framed the following two issues for determination:-

1. Whether the lower court was right when it held that the order of interlocutory injunction made by the trial court is not tied to any identifiable area of land.

B 2. Whether the lower court was right when it set aside the order of interlocutory injunction granted by the trial court for failure to comply with established rules and conditions.

C The issues raised in the respondents' brief succinctly bring out the complaints the appellants are making in this appeal. Learned counsel who prepared the appellants' brief did not state from which ground or grounds he distilled each of the three issues he formulated. All he did was to tie the issues to all the grounds and argue the issues together. Although it is permissible to argue the issues together, D a good brief should indicate the grounds to which a particular issue is tied. This is to ensure that the issues formulated in the brief are related to the said grounds and to forestall the possibility of raising more issues than the grounds. See: *Adeleke vs Aserifa* (1987) 1 NWLR (Part 49) 284; *Nwokoro vs Onuma* (1990) 3 NWLR (Part 136) 22; E *Din vs African Newspapers (Nig.) Ltd* (1990) 3 NWLR (part 139) 392 and *Imam vs Sheriff* (2005) 4 NWLR (Part 914) 80.

It was argued on the appellants' behalf that in an application for interlocutory injunction, the law does not require that the applicant should make out a case as it should be made on the merits but F it will be sufficient to show that there is a substantive issue to be tried and cited the case of *Kufeji vs. Kogbe* (1961) ALL NLR (Part 1) 113. Learned counsel submitted that the appellants were able to show that there had been an age - long dispute of boundary between the G appellants and the respondents which was settled by series of judgments the latest being Suit No. HOS/134/64 to which the survey plan No. GB101A admitted as Exhibit 'D' was tied when they were declared the owners of the land in dispute and granted the injunction. He said both the judgment and the survey plan were attached to the H affidavit evidence in support of the application for Interlocutory Injunction. He contended that the appellants identified four guiding principles to be established before granting such an application which the trial court applied in its ruling but the lower court did not advert its mind to these issues. It is the contention of learned counsel that

the respondents are not disputing having a common boundary with the appellants between their respective farmlands or that the survey plan GB101A did not show the boundary which is the subject of the dispute or was irrelevant to the application for interlocutory injunction. He said the contention of the respondents is that the description of the farmland in dispute as given by the appellants was inadequate and that the area trespassed upon was not shown on the survey plan. He submitted that the lower court ignored the description of the land in dispute deposed to in the affidavit in support of the application while what is required in an application of this nature is only to make a 'prima facie' case as the lower court is not called upon to decide or delve into the substantive claim. He submitted that the lower court was wrong in rejecting the survey plan attached to the affidavit in support of the application and that the court applied the wrong approach in resolving whether the learned trial Judge order of injunction was right or wrong before it set aside the order. He submitted that the lower court was in error when it held that the survey plan No.GB101A on which the judgment in Suit No. HOS/134/64 was based could not be used in the instant case because it was not made for the substantive suit HRE/4/97.

In reply learned counsel referred to paragraphs 9 and 11 of the affidavit in support of the application for injunction as well as paragraphs 5 and 9 of the counter - affidavit and submitted that from the above depositions the exact boundary of the land in dispute is strongly contested by the parties and the conflict can only be resolved through oral evidence placing reliance on *Akinsele vs Akindulire* (1966) 1 ANLR 147; *Olu-Ibukun v. Olu-Ibukun* (1974) 2 SC 41. He said the trial court ignored this and so the lower court was right when it upheld the respondents' argument that the identity of the land in respect of which the trial court granted the order of interlocutory injunction was uncertain and unidentifiable. He said plan GB101A which was made in respect of suit No.HOS/134/64 has no relevance nor direct reference to suit No.HRE/4/97 and there is no area of land where the injunctive order made by the trial court can be tied to. He argued that the order of interlocutory injunction made by the trial court in the pending suit HRE/4/97 cannot be tied to plan No.GB101A tendered as Exhibit 'D' in suit HOS/134/64.

He also pointed out that the parties are not the same and Suit

No. HOS/134/64 was instituted by the plaintiff in his personal capacity while in suit HRE/4/97, the plaintiff sued in a representative capacity. While agreeing that the filing of a survey plan is not necessary, he argued that where the boundaries are disputed and the description of the land is inadequate as in this case where an ambiguous plan Exhibit D' used in 1964 in HOS/134/64 was relied on by the trial court in another suit HRE/4/97 held 33 years after, a clear survey plan becomes a necessity. Heavy reliance was placed on *Dabup vs Kalo* (1993) 9 NWLR (Part 317) 254 and *A.C.B. LTD vs Awosboro* (1996) 3 NWLR (Part 434) 20 for this submission.

Regarding the urgency of granting the interlocutory injunction learned counsel reasoned that there was no such urgency since the application which was filed in 1997 was not moved until 2001. Referring to *Odutola vs Lawal* (2002) 1 NWLR (Part 749) 633 and *Globe Fishing Industry Ltd. vs Coker* (1990) 7 NWLR (Part 162) 265. Learned counsel submitted that an applicant for an injunctive order must clearly show that there is need to preserve the subject matter over which he seeks an injunction. He submitted that the trial court did not properly consider all the conditions that must be fulfilled before granting the injunctive order. He said the judgment exhibited HOS/134/64 as representing the legal right over the land in dispute cannot assist the appellants.

The granting of an injunction is an equitable remedy and therefore discretionary. Breach of an injunction is a contempt of court. The preservation of the subject matter 'res' in dispute or the maintenance of the 'status quo' is achieved through the judicial process of the equitable order of injunction. According to Black's Law Dictionary 6th Edition Page 714: "injunction is 'a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury' In *Adenuga vs Odunewu* (2001) 2 NWLR (Part 696) 184, this Court per Karibi - Whyte JSC defined injunction at page 185 thus:

"...an equitable order restraining the person to whom it is directed from doing the things specified in the order or requiring in exceptional situations the performance of a specified act". Since injunction is an equitable remedy, it is usually granted at the discretion of the court which must be exercised

judicially and judiciously. For the court to exercise its discretion in favour of an applicant, certain conditions must exist and this must be evidenced in the affidavit accompanying the motion on notice. The conditions for grant of interim and interlocutory injunctions are basically the same except for the element of urgency in interim injunction which is not pronounced in interlocutory injunction. See: Modern Civil Procedure Law by A. F Afolayan and P.C Okorie published by Dee Sage Nigeria Limited 2007 at page 198.

The conditions include:

- (a) Existence of a legal right**
- (b) Substantial issue to be tried**
- (c) Balance of convenience**
- (d) Irreparable damage or injury**
- (e) Conduct of the parties**
- (f) Undertaking as to damages.**

In Buhari vs Obasanjo (2003) 17 NWLR (Part 850) 587, this Court per Tobi JSC spelt out the principles guiding the application of interlocutory injunction at pages 648 - 649 as follows:-

“Some of the principles or factors to be considered in an application for interlocutory injunctions are:

1. *There must be a subsisting action. See: The praying B and of C and S vs Udokwu (1991) 3 NWLR (part 182) 716*

2. *The subsisting action must clearly donate a legal right which the applicant must protect See: Kotoye vs CBN (1989) 1 NWLR (Part 98) 419; Woluchem v. Wokoma (1974) 3 SC 153; Obeya Memorial Hospital vs Attorney - General of the Federation (1987) 3 NWLR (part 60) 325*

3. *The applicant must show that there is a serious question or substantial issue to be tried. See: Kotoye vs CBN (supra); Nigerian Civil Service Union vs. Essien (1985) 3 NWLR (Part 12) 306; Nwosu v. Mbaekwe (1973) 3 ECSLR 136*

4. *And because of 3 above, the ‘status quo’ should be maintained pending the determination of the substantive action. See: Kotoye v. CBN (supra); Fellowes v. Fisher (1975) 2 ALL ER 829; American Cyanamid Co. v. Ethicon Ltd. (1975) AC 396.*

5. *The applicant must show that the balance of convenience is in favour of granting the application. See: Kotoye v. CBN (supra);*

Obeya Memorial Hospital v. Attorney-General of the Federation (supra); *Akinlose v. A.I.T. Ltd. (1961) WNLR 116*.

6. *The applicant must show there was no delay on his part in bringing the application. See: Kotoye vs CBN supra.*

B 7. *The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect. See: Kotoye vs CBN (supra); Obeya Memorial Hospital vs Attorney General of Federation (supra)*

C 8. *The applicant must make an undertaking to pay damages in the event of a wrongful exercise of the court's discretion in granting the injunction. See: Kotoye vs CBN (supra); Itama vs Osaro - Lai (2000) 6 NWLR (Part 661) 515".*

D The injunction granted by the trial court was set aside by the lower court on the grounds that the injunction was not tied to any plan since no plan has been filed in suit No.HRE/4/97 and there is no declaration of title being claimed in the said suit. The court reasoned that the plan in the judgment in suit No.HOS/134/64 will certainly not avail the respondent in Suit No.HRE/4/97.

E It is to be noted that Suit No.HRE/4/97 was originally filed as suit HIW/9/97 when it was before the Osun State High court sitting at Iwo. It was later transferred to Ikire and it was registered as HRE/4/97. The motion for interlocutory injunction was filed when the suit was still bearing suit No.HIW/9/97. In paragraphs 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the affidavit in support of the motion for inter-
F locutory injunction deposed to by Rufus Oni Oladimeji, 2nd Plaintiff/Applicant, he averred as follows:-

"9. *That the farmland in dispute form (sic) boundary with the defendants on Ede Community land.*

G 10. *That the defendants farms (sic) on the other side of the boundary between Ede and Ogi territories, in other words both the Plaintiffs/Applicants and Respondents shared common boundary.*

H 11. *That the boundary marks between the plaintiffs and the defendants were Erugbe stream, Odam tree, Oniyangi stream, Peregun trees and Olodo Kekeleke stream which were shown in a survey plan No.101A of 1964 drawn by G. E. Gilbert tendered in Suit No. HOS/134/64, a certified copy of which we have not been able to lay our hands.*

12. *That I have instructed our Solicitors to apply for a copy*

of the Survey Plan from the High Court Oshogbo but our Solicitor told me which I believed that the case file in Suit No. HOS/134/64 could not yet be found in the High Court Registry Oshogbo but we have a copy of the Survey Plan which my solicitor told me and which I believed will be used at the hearing of this motion.

13. That the defendants family (including the first defendant^B in the instant case) agents, privies and servants had once forcibly entered the farmland in dispute and when they refused to abide by our Community head's warnings an action was taken against the defendants family in Suit No. 47/50 and judgment was in our favour.

14. That again the defendants led by the first defendant^C violated the Customary Court's order in Suit No.47/50, claimed that the judgment was a waste paper document and therefore not enforceable and thereby was no more honoured; we were forced to take another action in Oshogbo High Court in Suit No.HOS/134/64 between Josiah Akinfende representing the Ogi Community and Bello Adedoya & 3 Ors. The first defendant in the instant suit was the ring leader.

15. That judgment was also given in our favour. Ogi Community were declared the owner of the farmland in dispute, damages was awarded against the defendants' family for trespass and were equally restrained not to cross the boundary and enter the farm land in dispute as shown in Survey Plan 101A/64. A copy of the judgment is attached herewith and marked Exhibit 'A'

16. That notwithstanding the judgment in Suit No. HOS/134/^F64 of which there was no appeal the defendants had since 1996 been crossing the boundary again and continued to reap our palm fruits on the farmland in dispute and refuse to leave our farmland despite our warnings and we were disallowed from reaping our palm^G fruits.

17. That by reaping the palm fruits the defendants have deprived us the means of our source of income from which we maintain our family and livelihood".

A further affidavit was deposed to by Rufus Oni Oladimeji on^H 17th December, 1997 and, he stated in paragraph 3 thereof:-

"3. That a copy of the Survey Plan No. 101A referred to in paragraphs 11 and 12 of the affidavit which clearly showed the boundaries of the land between the plaintiffs and the defendants which

formed the basis of judgment in Suit No.HOS/134/64 and the clear copy of the said judgment are attached herewith and marked Exhibit 'D' and 'D1'”

In the counter - affidavit of Mustapha Adisa, 3rd respondent in the application he deposed to the following facts in paragraphs 5, 6, 7, 8, 9, and 12 thereof:-

“5. That I do not know the identity of the land in dispute

6. With further reference to paragraphs 3 to 8 of the applicant’s affidavit I say that the land in dispute forms part of a large tract acquired by conquest by Timi Ajenju more than three hundred years ago.

7. The said Timi Ajenju settled the ancestors of the defendants on the said land in dispute as customary tenants.

8. Both the ancestors of the defendants and their successors have been in possession of the said land paying Ishakole to reigning Timi of Ede annually

9. That with further reference to paragraphs 9, 10 and 11 of the applicants’ affidavit I say that the land in dispute does not form boundary with the applicants’ land but it is a continuous tract of land acquired by Timi Ajenju by conquest.

12. That with further reference to paragraph 17 of the applicants’ affidavit and (sic) say that we have been reaping the palm fruits as of right”.

In the determination of any interlocutory application pending the trial of the substantive case, care should be taken not to make pronouncement which may prejudice the trial of the claims filed and still pending before the Court. To do otherwise is to prejudge the matter in respect of which evidence is yet to be led. See: A. M. F. Agbaje vs Ibru Sea Food Ltd. (1972) 5 SC 50; Globe Fishing Industries Ltd vs Chief Folarin Coker (1990) 7 NWLR (part 162) 265.

In paragraph 39 of the statement of claim the plaintiffs’ claim against the Defendants jointly and severally are as follows:-

“1. N2,000,000.00 (Two Million Naira) for general and aggravated damages for disobeying the judgment of the High Court in Suit No, HOS/134/64. Josiah Akinfende vs Bello Adedoja & ors delivered on 31st May, 1967 by deliberately crossing the boundary between the plaintiffs’ land and Ede Community as represented by the Defendants, the subject matter of the suit in HOS/134/64 and

reaped the Plaintiffs' palm trees, thereby suffered an untold hardship and injury.

2. Perpetual Injunction restraining the defendants jointly and severally, agents, servants of the defendant or any member of Babasanya family or members of Ede Community from further crossing the boundary as demarcated in the survey plan No.GB101A and entering Ogi land, subject matter of the judgment in Suit No.HOS/134/64 and reaping their palm trees”.

If Suit No.HOS/134/64 settled the boundary between the parties, there would be no need to initiate a fresh action in Suit HRE/4/97 since the appellants in the present suit can execute the judgment already obtained in Suit HOS/134/64 by initiating committal proceedings against the respondents. It is to be noted that the contempt proceedings were struck out because the parties against whom the contempt proceedings were initiated were not parties to the suit but were described as privies of the defendants for which leave of court was needed before the judgment in HOS/134/64 could be enforced against them. Furthermore the Plaintiff in Suit HOS/134/64 did not sue in a representative capacity. In Suit No.HOS/134/64, the Plaintiff, Josiah Akinfende did not describe himself as representing Ogi Community. Although the learned trial Judge observed in his judgment that the land in dispute was between Ede town and Ogi village, the claim by the plaintiff was that the defendants crossed the boundary between the plaintiff and defendants and reaped crops unlawfully in plaintiff's farm.

Since the parties in Suit HOS/134/64 are different from the parties in Suit No. HRE/4/97 any pronouncement made to grant the interlocutory injunction in HRE/4/97 will prejudice the trial in the substantive suit. It is safer to order an accelerated hearing of the substantive action. The affidavit and counter - affidavits filed would require calling oral evidence to resolve the conflicts. The lower court was right in allowing the appeal.

I find that the appeal lacks merit and it is accordingly dismissed. The order setting aside the interlocutory injunction in suit HRE/4/97 is hereby affirmed. In its place an accelerated hearing of the suit is hereby ordered. No order on costs is made.

MUHAMMAD JSC

I read the judgment just delivered by my learned brother, Aka’ahs, JSC. I agree with him that an order of accelerated hearing is best suited for the matter. The matter has unnecessarily dragged for too long. I think there should be end to litigation. I dismiss the appeal. I make an order to accelerate the hearing of the appeal expeditiously.

The genesis of the matter, from the records, stated since 1964 or thereabout. It is now almost 50 years. Time is not a respecter of place or persons. No one can tell who will reap the benefit of this procrastinated litigation. A stitch in time will certainly save nine. I adopt all consequential orders made in the lead judgment including the one on costs.

D

FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Ibadan Division delivered on 5th May, 2004. Therein, the order of interlocutory injunction granted in favour of the appellants by the learned trial judge was set aside.

In short, the trial court granted an order of interlocutory injunction on a disputed piece of land over which the parties are not at one in respect of their boundary. Same is yet to be ascertained. There are affidavit and counter-affidavit evidence on both sides of the divide which must be resolved by viva voce evidence at the substantive hearing. This, in my opinion, is a matter wherein the interlocutory injunction should not be dished out in a manner in which it will put an end to the substantive issue for hearing.

An order of interlocutory injunction can be made at any time during the pendency of the litigation for a short-term purpose of preventing irreparable injury to the petitioner prior to the time that the court will be in a position to either grant or deny permanent relief on the merit. (Black’s Law Dictionary, 5th Edition, page 705).

In a land matter, the identity of the piece of land must be clearly put in place and known to both parties. It should be clearly ascertained for an order of injunction to be tied to it. See the cases of Oladejo v. Adeyemi (2000) 3 NWLR (Pt.674) 25 and Assam v. Okposin (2000) 10 NWLR (Pt.676) 659.

An order of interlocutory injunction is not granted as a matter of course. Balance of convenience must be considered. The target of the order is to preserve the res. See the case of *Missini & Ors. v. Balogun & Anr* (1968) 1 All NLR 318.

The Court of Appeal, rightly in my opinion, found that since the boundary of the land is in dispute and same is not yet ascertained, an order of injunction is not ripe. Apart from that, the res is land which is always there. The court below was right in setting aside the injunctive order dished out in favour of the appellant in the prevailing circumstance of this matter.

For the above reasons and the fuller ones ably adumbrated in the lead judgment of my learned brother - Aka'ahs, JSC, I too, feel that the appeal lacks merit and should be dismissed. I order accordingly and abide by all consequential orders made by my learned brother.

PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal Ibadan delivered on the 5th day of May 2004. The Appellants are the Plaintiffs in the substantive action while the respondents are the Defendants in the suit instituted and still pending before the Ikire High Court of Osun State.

The Plaintiffs/Appellants claim before the trial court as follows:-

(a) N2,000,000.00 (Two Million Naira) general and aggravated damages for trespass, unlawful reaping and carrying away of the plaintiffs palm fruits since March 1996 up to the date of this action without the consent and authority of the plaintiff, harassment and humiliation by unnecessarily causing the arrest of members of Suberu Village Community as Suberu otherwise known as Ojudo Village Ogi Town in Aiyedaade Local Government Council.

(b) Perpetual injunction restraining the defendants jointly and severally, agents, servants or any member of Babasanya Family of Ede Community from crossing the boundary and reaping the plaintiffs' palm trees without the consent and authority of the plaintiffs.

The Plaintiffs/Appellants filed their Statement of Claim and the Defendants/Respondents filed their Statement of Defence. On the

3rd day of October, 1997 the plaintiffs filed an application for an order of injunction and the Defendants filed a counter affidavit. The appellant filed a further affidavit.

The plaintiffs/appellants also initiated committal proceedings against the defendants/respondents and a Motion on Notice dated 17th day of February 1998. The court after hearing arguments from both counsel struck out the contempt application of the appellants. The trial court also entertained arguments from both counsel in respect of the application for interlocutory injunction filed by the Appellants.

BACKGROUND FACTS:

The Plaintiffs claimed that the land in dispute forms part of Ogi Community land settled upon by their ancestor known as Orisatalabi while the Defendants denied this and contended that the land in dispute was acquired by conquest over two hundred years before by Timi their grantor. The Plaintiffs also claimed to have obtained judgment in respect of the land in Suit No. HOS/134/64. The Defendants denied this and had joined issue with the Plaintiffs on this matter of a judgment. The Plaintiffs filed committal proceedings against the Defendants which the trial court struck out.

The Plaintiffs in the application for interlocutory injunction relied on Survey Plan NO, GB101A, which was exhibited as Exhibit 'D1' with their application to show the area of the land as well as other features of the land in dispute. The learned trial Judge, F. O. Olawoyin J granted the interlocutory injunction. The defendants being dissatisfied appealed to the Court of Appeal and after hearing from counsel on either side in line with their Briefs of Arguments the Court below allowed the appeal and set aside the interlocutory injunction of the trial court hence this appeal.

At the hearing of 4th December 2012, learned counsel for the Appellants, adopted their Brief settled by Chief A. O. Fadugba. The Brief of Argument was filed on 27/8/2004 and in it were framed three issues for determination, viz

1. Whether or not the Lower court's approach to the resolution or correctness of the trial court's order of interlocutory injunction in favour of the Appellants was properly made before setting aside the order.

2. Whether the Lower court was right to set aside the trial

court's order when the appellants have satisfied all the conditions necessary for the granting of such an order and was so found before the order restraining the Respondents from further crossing the boundary was made by the trial court.

3. Whether or not the Lower court's findings quoted below states the true position of the law as to when to apply for an Interlocutory Injunction after a previous judgment in a case:-

"The other issue to be considered in this application is the delay of the Appellants/Respondents to file for an order for an injunction since 1954 when the HOS/134/54 was determined. The records show that the respondents made no efforts to secure an injunctive order against the respondents over the land complained of. The basis of the exercise of a discretionary discretion to restrain the Appellant would appear to be non-existing in the application, consequently an injunctive order made in 2001 in the suit below would seem to me to be unnecessary and incompetent and whether the findings constitute true statement of the law involving when an interlocutory injunction was to be applied for."

Learned counsel for the Respondents adopted their Brief of Argument filed on 10/11/04 and had been settled by Tunde Akande. In the Brief were couched two issues simply crafted and easy to use for determination as follows:-

1. Whether the Lower court was right when it held that the order of interlocutory injunction made by the trial court is not tied to any identifiable area of land.

2. Whether the Lower court was right when it set aside the order of interlocutory injunction granted by the trial court for failure to comply with established rules and conditions.

Learned counsel for the Appellants argued that it is settled law that in an application for interlocutory injunction it is not a requirement of the law that the applicant should make out a case as it should be made when the case is tried on the merits. That it is sufficient to show that there is a substantive issue to be tried. He cited *Kufeji v Kogbe* (1961) All NLR (Pt.1) 113. That the appellants were able to show that there had been an age-long dispute of boundary between them and the respondents which was settled by a series of judgments and the latest in time was in Suit No. HOS/134/64, Exhibit D based on Survey Plan NO. GB101A wherein the appellants

were declared the owner of the farmland - in - dispute and injunction granted tied to the survey plan No. GB101A Exhibit D (1).

Both the judgment and the survey plan were attached to the affidavit evidence in support of the application for interlocutory injunction now on appeal and referred to by the Court of trial in its judgment subject of this appeal. That the principles upon which an interlocutory injunction can be granted have been met. That an interlocutory injunction must be tied to a parcel of land which should be a well defined area over which the injunction is sought and not where the boundaries are not properly identified or known as *ABC Ltd v Awogboro* (1996) 3 NWLR (Pt.317) 254 (SC); *Dabup v Kalo* (1993) 9 NWLR (Pt.317) 254 SC; *Ladunni v. Kukoyi* (1972) 1 All NLR (Pt.1) 133.

For the appellants was contended in summary that the Court of Appeal improperly considered the Appellants case by applying wrong principles of law and treating the application as if the substantive case was on the table.

Learned counsel for the respondents said from the affidavit evidence it can be seen that the boundary of the land in dispute is strongly under contest by both parties which conflict can only be resolved through oral evidence. He cited *Atinsete v Akindulire* (1966) 1 All NLR 147, *Oluibukun v Oluibukun* (1974) 2 SC 45.

Also learned counsel for the respondents submitted that the parties are not the same and the respondents had already joined issues with the appellants on both the identity of the land in dispute as well as the legal status of the said judgment in HOS/134/64. That an interlocutory injunction application filed in 1997 was not moved till 2001 cannot be described as very urgent and cannot also be seen as showing a threat to the res, which is an urgent need to be preserved. He relied on *Odutola v Lawal* (2001) WRN; *Globe Fishing Ind. Ltd. V Coker* (1990) 7 NWLR (Pt.162) 265

It was further canvassed that where an affidavit evidence in this case is disputed then it will be unsafe to act upon it without oral evidence. He cited *Atkins Scientific Ltd v Aladetoyinbo* (1995) 7 SCNJ 233. That appellants having lost their bid for the committal proceedings against respondents are using the interlocutory injunction to get through the back door what they could not achieve within the committal process. That there is no basis for an order of interlocutory

injunction for alleged acts of trespass of over 35 years when accelerated hearing of the substantive suit would meet the justice of the case. He stated on that an interlocutory injunction is usually given not only to preserve the res but also to put parties in status quo ante bellum pending the determination of the suit which the trial court ignored and in this instance the status quo ante bellum is that before the institution of the pending suit. He cited *Kotoye v CBN* (1989) 1 NWLR (Pt. 98) 325; *Ladunni v Kukovi* (1972) 1 All NLR 113. B

The factors at play in this appeal are unique as well as interesting. This is so in the light of the affidavit evidence in the prosecution of the application for interlocutory injunction. In the supporting affidavit paragraphs 9 and 11, the Appellant/applicants averred that the farmland in dispute form boundary with the defendants on Ede Community land. That the boundary marks between the plaintiffs and defendants were Erugba Stream, Odan tree, Oniyangi Stream, Peregun trees and Olodo Kelekele Stream which were shown in a Survey Plan No. GB101A of 1964 drawn by G. A. Gilbert tendered in Suit No. HOS/134/64, a certified true copy of which the Applicants could not lay their hands on. C D

The Respondents in their reaction contend in paragraphs 5 and 9 of their counter affidavit that the situation is not as portrayed by the Applicants/Appellants. That the land in dispute does not form a boundary with the applicants' land but is a continuous tract of land acquired by Timi Ajenju by conquest and that the Respondents do not know the identity of the land in dispute. The plain implication of this conflict in affidavit evidence is that there must be oral evidence to resolve this disparate situations and that the identity of the disputed land is not clear each of the parties taking a very strong stance of their side of the divide. E F G

The position of things being what it is as above stated, the Court below cannot be faulted when it upheld the Respondents' argument that the order of interlocutory injunction cannot be granted in the circumstance where the land in dispute is uncertain and unidentifiable. A situation that can only be resolved by oral evidence which cannot be done in an interlocutory application. See *Akinsete v Akudulire* (1966) 1 All NLR 147; *Olubukun v. Olubukun* (1974) 2 SC 41; *Dabup v. Kalo* (1993) 9 NWLR (Pt.317) 254; *ACB Ltd v. Awogboro* (1995) 3 NWLR (Pt.317) 254 SC. H

The point has to be made however that the filing of a survey plan is not a necessity or a sine qua non to the motion that the description or identity of the land in dispute has been established. What is called for is the certainty or definite identity of the land in issue before an injunctive order can be made. Therefore, an application
 B for an interlocutory injunction in circumstances of uncertainty or a lack in the definiteness of the land is to say the least premature being a matter for the substantive hearing of merits of the case since the resolution of such a serious conflict cannot be effected without oral
 C evidence. I place reliance on *Kufeji v Kogbe* (1961) 1 All NLR 113.

I cannot conclude without touching on what could motivate the application under discourse if not urgent since the main suit is yet to be entered into. In that regard is to be tackled the fact that the application for interlocutory injunction was filed in 1997 and only
 D moved leisurely about four years later in 2001. What is thrown up is that there is no threat on the res or subject matter and no urgency had propelled the application. This is because a matter of urgency is an emergency situation and an emergency which the applicant was comfortable with for four years when the main event is to be gone
 E into does not crave the intervention in limine of the court and bringing into focus the possibility of deciding at the interlocutory stage what should be left at the substantive hearing. Indeed the Court of Appeal was correct to hold there was no justification for the injunctive order of the trial court in the prevailing circumstance and that
 F accelerated hearing of the main suit was the only route open. I place reliance on *Globe Fishing Ind. Ltd v Coker* (1990) 7 NWLR (Pt.162) 265; *Atkins Scientific Ltd v Aladetoyinbo* (1995) 7 SCNJ 233.

It is clear that from the foregoing and better articulated reasoning in the lead judgment of my learned brother, K. B. Aka'ahs,
 G JSC, this appeal is dismissed.

ARIWOOLA JSC

H I had the opportunity of reading in draft the lead judgment just delivered by my learned brother Aka'ahs, JSC.

This is an appeal against the judgment of the Court of Appeal, Ibadan Division delivered on 5th May, 2004. The plaintiffs had along with their claim sought an order of interlocutory injunction

restraining the defendants jointly and severally, their agents, privies and servants from crossing the boundaries between the applicants and respondents and enter the farm land in dispute and reap the plaintiffs, crops, pending the final determination of the suit. The trial court granted the order of interlocutory injunction against the defendants which led to the appeal to the court below. The court below allowed the appeal and set aside the order of injunction. B

Being dissatisfied led the plaintiffs/appellants to appeal to this court. Amongst the issues distilled for determination of the appeal is:

“Whether the lower court was right to set aside the trial court’s order when the appellants have satisfied all the conditions necessary for the granting of such an order and was so found before the order restraining the respondents from further crossing the boundary was made by the trial court.” C

Generally, an injunction is a court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate and complete remedy at law and that an irreparable injury will result unless the relief is granted. An interlocutory injunction therefore, otherwise called preliminary or temporary injunction is issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case. This type of injunction will be issued only after the defendant is confirmed to have had notice and an opportunity to be heard. See; Black’s Law Dictionary Ninth Edition page 855. D E

In *Akapo Vs Hakeem-Habeeb* (1992) NWLR (Pt.247) 266; (1992) 7 SCNJ 119, this court held as follows: F

“Indeed, the first principle of the law of interlocutory injunction is that a person does not prima facie obtain such an order to restrain actionable wrongs for which damages are a proper remedy... So, once an applicant for interlocutory injunction shows that there is a serious issue to be tried relating to the violation of his right and that the damages he may suffer before the final determination of the suit will be such that it cannot be compensated for in damages, the court as a guardian of the rule of law, will if all the other relevant considerations can be resolved in favour of the applicant grant him the relief of interlocutory injunction. Admittedly, mere inconvenience without a property right in the subject matter of the complaint is not enough to entitle an applicant to the order.” G H

It is trite law that the purpose of the application for interlocutory injunction is to keep the parties in an action in status quo, in which they were before the judgment or act complained of. See; *Globe Fishing Industries Ltd & Ors Vs. Chief Folarin Coker* (1990) NWLR (Pt.162) 265, (1990) 11-12 SC 80.

B However, it has been held that where any doubt exists as to the plaintiff's right or if his right is not disputed but its violation is denied, the court in determining whether an interlocutory injunction should be granted will take into consideration the balance of convenience to both parties and the nature of the injury which the defendant, on the other hand would suffer if the injunction was granted and he should ultimately turn out to be right, and which the plaintiff, on the other hand might sustain if the injunction was refused and he should turn out to be right. Therefore, the burden of proof that the
C inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff. See; *Donmar Productions Ltd Vs Bart & Ors* (1967) 2 All ER 338, *Egbe Vs. Onogun* (1972) 2 SC 90, (1972) All NLR 94.

E In this case as it usually happens at the hearing of the substantive application for interlocutory injunction there is bound to be conflicting affidavits. In other words, the respondents to the application will surely react to the facts deposed in the supporting affidavit by filing a counter affidavit to oppose. It is settled, that in such a situation, the trial court must call for oral evidence by parties calling witnesses to resolve the issue. See; *Group Danone Vs Voltic (Nig) Ltd* (2008) 7 NWLR (Pt.1087) 637 (2008) 34 NSCQR (Pt.1) at 40. I am therefore satisfied that the court below having found that with the
F conflicting affidavits filed by both parties, the need for oral evidence was indisputable and not contestable, rightly set aside the order of interlocutory injunction made in favour of appellants by the trial court.

For the above brief comments and the fuller reasoning of my learned brother in the lead judgment with which I am in total agreement I hold that the appeal lacks merit and substance. It is dismissed by me. I abide by the consequential orders contained in the said lead
H judgment.