INTERIM ORDERS AND GUIDING PRINCIPLES

A PAPER

PRESENTED BY:

HON. JUSTICE NKEREUWEM MARTIN OBOT

OF

AKWA IBOM STATE JUDICIARY

AT THE INDUCTION COURSE FOR NEWLY APPOINTED JUDGES OF THE LOWER COURTS(MAGISTRATES, JUDGES OF THE SHARIA, AREA AND CUSTOMARY COURTS) HELD FROM 20TH. – 24TH. MAY, 2024.

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NATIONAL JUDICIAL INSTITUTE (NJI)

ABUJA.

PROTOCOL:

May I commence this paper presentation by paying homage to God Almighty for making this august event a reality. On this note I must not fail to register my gratitude to the indefatigable Administrator of this great Institute Hon. Justice Salisu Garba Abdulahi for considering me fit to make this presentation before this revered audience. I must confess I was pleasantly surprised when I received the two letters requesting My Hon Chief Judge Hon. Justice Ekaette F.F. Obot for my release and the approval to serve as a resource person to perform this assignment of paper presentation. Finally in this regard I also wish to appreciate the Board of Governors of the National Judicial Institute under the distinguished Chairmanship of the

Hon. Chief Justice of Nigeria, the Hon. Justice Olukayode Ariwoola, GCON. To my Lords I say a very big thank you for giving me this opportunity to work with you. I am very delighted and humbled by this nomination.

It is important to commend the choice of this topic: **"INTERIM ORDERS AND GUIDING PRINCIPLES"**, which is very apt most especially in relation to the theme of this induction course, "**Repositioning the Courts for Better Justice Delivery".** The reason for saying so is that apparently the course is organized for newly appointed Judicial officers in their own right and therefore wields enormous powers as provided under Section 6 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) in the determination of the affairs of their fellow

citizens in the course of their duties. Our jurisprudence demands that in the course exercising of judicial powers, it is trite that such powers must be carried out judicially and judiciously and in the overall interest of justice equity and of good conscience.

I will therefore make attempt to consider the various types of Interim Orders that you may be called upon to exercise or grant in the course of your work. You would agree with me that Court is the last hope of the common man and that the lower courts are very close to the citizens amongst the hierarchy of Courts and therefore lawyers and litigants alike are likely to besiege your Courts seeking the grant of some of these Interim Orders. However, I need to warn you beforehand that excessive grant or abuse of the exercise of some of these powers can make or mar your carrier.

Having said that permit me to examine the topic: Interim Orders and the guiding principles in as I have been directed to write on.

WHAT IS THE NATURE OF INTERIM ORDER?

An interim order in law is a temporary order made or given by a court while the substantive or main case is still going on before that court. This order is usually made or given out to maintain the state or existing condition. The usual parlance is that an interim order is issued by the court to give a temporary relief or to maintain the status quo, pending when the court enters final judgement in that particular case which is already pending before him. Conventionally, this order is made in order to prevent irreparable damage from taking place. On the other hand, an interim order is usually issued to ensure a just

resolution of a dispute. As the word interim implies these orders are subject to review or modification as it is usually meant to last for few days pending when the other party will be heard. This is because this order in most cases come out from an ex-parte order due to the urgency involved so that the subject matter will not be dissipated or irreparable damage occurs.

In the case of **CINCA (NIG) LTD.& ORS VS. AMCON & ANOR (2023) LPELR – 60668 C.A.** the Court of Appeal succinctly held thus:

"However, the law also recognizes that there are situations where, as a matter of urgency, a decision may have to be reached on an interim basis, before the party who may be affected thereby is formally notified. The Courts have

identified such situations as one that calls for extreme urgency. It is for a situation of a real emergency to preserve and protect the rights of the parties, before the Court from destruction by either of the parties. These orders are typically issued in situations where there is a risk of irreparable harm or damage if the party is allowed to continue with their actions. Interim orders merely leave matters in status quo and the Court does not, at that stage, have to decide any contentious issues before granting it. Akapo v Hakeem-Habeeb (1992) LPELR-325(SC), Provisional Liquidator of Tapp Ind. Ltd & Anor v. Tapp Industries Ltd & Ors (1995) LPELR-2928(SC), Kotoye v CBN (supra); Ladunni v Kukoyi & Ors (1972) LPELR-1739(SC); Buhari v Obasanjo (2003) LPELR-813(SC), (2003) 17 NWLR (PT. 850) 587. Thus, the settled purpose of an interim injunction is to preserve the status quo

until the Court can hear all the evidence and make a final decision based on the merits of the case. It is a temporary order made to hold the parties and the res in the existing conditions in a particular situation, without any changes or modifications, until a set period or until the Court can determine the rights and obligations of the parties on the evidence in a legal dispute. His Lordship, Peter Odili, JSC was quite graphic in explaining the nature of an interim injunction in Brittania-U (Nig) Ltd v. Seplat Petroleum Development Co. Ltd & Ors (2016) LPELR-40007(SC) at pages 94-95, thus:

"It is to be noted that an interim injunction is not an open-ended restriction order but one for a short period of time, preservatory in nature at the early stage in the proceedings. It is like first aid, an emergency intervention which is made before a patient gets into hospital and can be administered

even by non-medical personnel pending the patient's getting to hospital. In like manner an ex parte order of injunction is not intended to be a temporary victory to be used against the adverse party indefinitely rather an interim order of injunction is to last for a short period pending the determination of motion on notice and not to hang on the opposing party or to overstay. See Alhaji Aminu Ahmed & Co. Nig. Ltd v. ACB Ltd (2001) 10 NWLR (pt.721) 391, General Oil Ltd v Oduntan (1990) 7 NWLR (pt. 163) 423 at 441."

See also Military Governor of Lagos State & Ors v. Ojukwu & Anor (1986) LPELR-3186(SC), Kotoye v. CBN & Ors (1989) LPELR-1707(SC), Unibiz (Nig) Ltd v. Commercial Bank Credit Lyonnais Ltd (2003) LPELR-3380(SC), Enekwe v. Int'l Merchant Bank of Nig Ltd. & Ors (2006)

LPELR-1140(SC)." Per OTISI ,J.C.A in cinca (nig.) ltd & ors v. amcon & anor (Pp. 33-36 paras. E

Furthermore, the word “INTERIM” was given a definition in the case of **RAJI VS. WEMA BANK PLC (2015) LPELR-41699 C.A.** thus:

"By the Merriam-Webster Dictionary, the term "Interim" means "a period of time between events". By the Black's Law Dictionary (8th Ed.) at p.832 it means something "done, made, or occurring for an intervening time; temporary or provisional". The term "Interim" therefore means an act done or an event which occurs between the substantive or main act or event."

Per TSAMMANI, JCA (P. 29, paras. D-F)

In 2021, the same word was given attention in the case of **AL-USABS VENTURES LTD & ANOR. VS. GT BANK & ANOR (2021) LPELR – 55789 C.A.** when the Court of Appeal stated thus:

*"The word "interim" means something done, made, or occurring for an intervening time, temporary or provisional. It is not final or complete – **Raji Vs Wema Bank Plc (2015) LPELR 41699(CA)."***

Per ABIRU, JCA (P. 62, paras. A-B)

Therefore, one most notable feature of an interim order is that it is preservative in nature and is not intended to last for a long date. It must carry a return date. I shall refer to the following cases: **ANIMASHAUN & ORS VS. BAKARE (2010) LPELR-9029 C.A.** and the case of **EFCC VS ABUBAKAR & ORS (2023) LPELR –**

60611 C.A. where the Court of Appeal held that *"It is to be noted that an interim order is not an open restriction order but one for a short period of time and preservatory in nature and it is not intended to be a temporary victory to be used against the adverse party indefinitely and as in this case, when the Appellant refused to comply with the interim order of Court to take action within 14 (fourteen) days of making the order, the interim order cannot be extended indefinitely as it is good*

as vacated, after the 14 (fourteen) days of the lifespan in the opinion of this Court."

Per IDRIS, JCA.

To further illustrate the on the nature of interim order of injunction it is important to note the interim order would abate as soon as the subsequent order has been entered in respect of the application. This was the position of the Court of Appeal in the case of **CHRISTLIEB PLC & ORS.**

VS. MAJEKODUNMI & 3 ORS (2008) LPELR – 8453 C.A. where it was held thus:

- "In A.G. Fed. V. Fagunwar Onikoyi (2006) 18 NWLR (pt. 1010) CA Court held: "When an interim order of injunction is made pending the determination of all applications before the court once all the applications before the Court are determined or if an interlocutory order of injunction is made the interim order of injunction would cease, lapse or end on the

date the applications are determined or subsequent order is made. An order of injunction is not made by a Court to last forever or ad infinitum. It must last for a short period and an interim order will lapse once the party against whom it was made is served with the substantive application for interlocutory order or Motion on Notice. See **A.G. Fed v. Fafunwa V. Onikoyi supra; Leedo Presidential Motel Ltd. v. Bank of the North**

Ltd. (1998) 10 NWLR (Pt. 696) 364; Dogban v. Diwhre (2005) 16 NWLR (Pt. 951) 274."

Per NWODO, JCA (Pp. 27-28, paras. F-D)

INTERLOCUTORY APPLICATIOS:

Since my audience consists of Judges of the Lower

I will use the Magistrates' Courts Rules of Akwa Ibom State,2022 during my presentation. **Order 3 of the Magistrates 'Courts Rule of Akwa Ibom State** empowers the Magistrate to entertain an interlocutory application. The said **Order 3(1)** states as follows:

“Interlocutory applications may be made orally to the Magistrate in whose Court a cause or matter is pending.

(2) “The Magistrate shall have power to –

(a) direct the application to be reduced to writng.

(b) direct notice thereof to be given to any person affected thereby.

(c) direct in what manner evidence relating to the application which shall be given by the applicant or any person affected thereby.

(3) where an application is not summarily disposed of, the Magistrate or Registrar shall appoint a day for the hearing thereof, and where notice of the application is to be given to another person, such notice shall specify the date on which the application will be heard and the

manner in which evidence relating thereto shall be given by the applicant or any other person affected thereby.

(4) Any Order made ex-parte on an interlocutory application may be discharged or varied by the Magistrate at any time on application made by any person aggrieved thereby, after notice is given to the party who obtained the order".

Generally speaking, interlocutory application has its crucial role in all the hierarchy of our courts. From the provisions of the **Magistrates' Courts Rules of Akwa Ibom State, 2022,** it could be discerned that the Magistrates are also empowered to exercise authority over some interlocutory applications which involves the procedural steps to be taken in the course of trial when seeking interim relief or order, most especially if the preservation of the subject is in issue which may likely go into

extinction before final judgement is entered in that particular cause or matter. In other word, it implies the means upon which specific issue that may arise before final judgement may be addressed. Interlocutory application follows the cause or event in the proceedings, meaning that where during trial it becomes expedient that certain relief should be sought from the court, an aggrieved party would be entitled to so apply even in our lower courts.

At this juncture, it calls for a brief distinction between interlocutory application and interim application although these terms are often used interchangeably. An interlocutory application is obtained before final judgement and it will remain in force until trial is over , that is to last until final judgement. On the other hand, an interim injunction is obtained ex parte for a very short period, between 5 – 7 days,

to enable the adverse party to be available in court to defend the real issue in the interlocutory injunction. I shall deal more on this hereinafter.

Permit me again to highlight on another provision of the Magistrates' Court Rules of Akwa Ibom State 2022, which talks about injunctions in general term.

Order 4 of the Magistrates' Court Rules of Akwa Ibom state provides for Injunctions generally. It spells out the circumstances under which the reliefs of injunction may be granted or the conditions which these reliefs may be issued. For a better comprehension permit me reproduce the entire provisions of the said **Order 4 :**

(1) "In all cases in which it may appear necessary, the Court may appoint a receiver or manager of any

property in dispute in a suit, and if need be commit the same to his possession or or custody and grant him power to manage or presser and improve the same and collect the rents and profits thereof and apply or dispose of them as may seem fit with power to sell perishable goods.

(2) The Court may authorise any person to enter upon or into any land or building in the possession of any party for the purposes of any appointment or Order made as aforesaid.

(3) In making an injunction or Order under **Section 14 (1)(e) of the Law**, the Court may grant the same on such terms as to its duration, keeping the account, the giving of security or otherwise as may be just.

(4) Where an application is made for an interlocutory injunction or Order under **Section 14 (1)(e) of the Law**, the Court may direct Notice thereof to be given to any person affected thereby.

(5) Any such interlocutory application or Order made ex parte shall be only for a limited stated there and be served on the affected person thereby, but the Court may extend the time if service has not been possible within such time.

(6) Where an interlocutory injunction or Order is made ex parte, the same may be discharged or varied by the Court at any time on application made by any person aggrieved thereby, after giving notice to the party who obtained the injunction or Order.

From the above provisions particularly **Rules 4, 5 and 6 , of Order 4**, it is obvious that in this instance interlocutory injunction and Interim Order are placed on the same pedestal and can therefore be applied interchangeably. In other words, no distinction can be drawn here. Wherever such distinction is intended the law has clearly provided for that.

For purposes of clarity permit me to reproduce the said **Section 14(1)(e) of the Magistrates' Courts Law of Akwa Ibom State to which this Order 4 Rules 3 and 4** may apply. This Section provides thus:

(1) " Subject to the provisions of this Law, and to any other written law, a Chief Magistrate Grade One or Chief Magistrate Grade Two shall have

and exercise jurisdiction in civil causes or matters –

(e) "to grant in any suit instituted in the Court, injunctions or Orders to stay waste or alienation or for detention or preservation of any property the subject of such suit or to restrain breaches of contract, torts, and

(f) In an appeal from a decision of an Assessment Committee constituted under a written law."

This provision has cleared the way for proper guidance of the Magistrates when dealing with the issue or grant of Interim Orders in matters relating to stay of waste, alienation or preservation of property and to restrain breaches in contracts,

torts and including appeal from the decision of an Assessment Committee established under a written law.

The above circumstances notwithstanding permit me to list out the various types of Injunctions namely:

1.Quia Timet Injunction

2.Mareva Injunction

3. Anton Piller order of injunction

4. Perpetual Injunction

5. Interim Injunction

6. Mandatory Injunction

7. Interlocutory Injunction.

I am not concerned with the other types of injunctions such as Quia timet , mareva, anton piller, mandatory and perpetual injunctions as these Orders are usually within the jurisdiction of the Federal or State High Courts. **See Order 38 of the High**

Court (civil Procedure) Rules of Akwa Ibom State, 2009, and Order 26 of the Federal High Court (Civil Procedure) Rules 2019. Magistrates have limited jurisdictions and can only grant interim and interlocutory injunctions in certain circumstances. Only the Federal High Court has the jurisdiction to grant a mandatory injunction. It is pertinent to mention also that the specific rules and laws governs the grant of injunctions and vary from jurisdiction to jurisdiction depending on the specific circumstances as illustrated by **Orders 3 and 4 of the Magistrates Court Rules of Akwa Ibom State ,2022.**

However, for purpose of this presentation I will focus specifically on interim and interlocutory injunctions which forms the fulcrum of interim orders issued by the Court with

the sole aim of preserving the subject matter from dissipation as applicable in the lower courts also.

I can say that Interim Order is a wider range of term that refers to a Court Order meant to last for a short time in order to afford the party that obtained it a temporary relief. This is usually granted in a case still pending before the Court. It can cover a wide range of issues and can include various types of relief or directions from the Court. It quite obvious to point out at this juncture that Lower Court Judges are not concerned with most of the injunctions indicated above due to its limited jurisdiction over the subject matter.

None the less let us consider very briefly some examples of situations in which Judges of the lower Courts may invoke interim orders as follows:

a. They may invoke interim injunction to stall a party from doing certain things, such as to dispose of assets or causing injury, until a final decision is entered in the suit.
b. A Lower court judge may order stay of proceedings of the district or customary courts especially where appeal is pending. That is applicable only in some jurisdictions where Magistrates still sits on appeal over matters from customary or district courts.
c. Magistrates may attach properties by issuing an attachment order to freeze assets or prevent the transfer of money or property until a final decision is reached or pending the termination of investigation. This order is mostly sought by law enforcement agents such as the Police. See **Section 81 of the Administration of Criminal Justice Act, 2015,Laws of the Federation of Nigeria**. Also

in tenancy matters the Magistrates can issue interim eviction order against a tenant at will or illegal occupant of a premises. See **Recovery of Premises Act, Cap R5, Laws of the Federation of Nigeria, 2004**. This law empowers a Magistrate to order the recovery of premises from a tenant who has failed to pay rent or is in unlawful occupation of the premises, it may order the tenant to vacate the premises within a specified time, usually 7days.

INTERIM AND INTERLOCUTORY INJUNCTIONS: DISTINCTION THEREOF.

Having highlighted on interlocutory applications generally and the nature of interim injunction, let us take a wholistic view on the distinction between the two terms interim and interlocutory injunction. Permit me to commence with the term

"interlocutory injunction", by referring to the locus classicus in the case of **KOTOYE VS. CENTRAL BANK OF NIGERIA (1989) 1 NWLR (PT.) 419 @ 441-442** where the Supreme Court held inter-alia:

"... Even though the word "interlocutory" comes from the two Latin words "inter" (meaning between or among) and "locutus" meaning spoken) and strictly means an injunction granted after due contest inter parties, yet when used in contradistinction to "interim" in relation to injunctions, it means an injunction not only ordered after a full contest between the parties but also ordered to last until the determination of the main suit.

Applications for interlocutory injunctions are properly made on notice to the other side to keep matters in status quo until the determination of the suit ... they are such that they

cannot, and ought not, be decided without hearing both sides to the contest.

Interim injunctions, on the other hand, while often showing the trammels of orders of injunction made ex parte are not necessarily coterminous with them. The main feature which distinguishes them from interlocutory injunctions is that they are made to preserve the status quo until a named date or until further order or until an application on notice can be heard. They are also for case of real urgency. But unlike ex parte orders for injunction, they can be made during the hearing of a motion on notice for interlocutory injunction, when because of the length of the hearing, it is shown that irretrievable mischief or damage may be occasioned before the completion of hearing.

Also it can be made to avoid such irretrievable mischief or damage when due to pressure of business of the court or through no fault of the applicant, it becomes impossible to hear and determine the application for the interlocutory injunction. See the case of BEESE VS. WOODHOUSE (1970)1 WLR 586@ P.590.

It must, however be emphasized that what the Court does in such a case is not to hear the application for interlocutory injunction ex parte, behind the back of the Respondent but to make an order which has the effect of preserving the status quo until the application for interlocutory injunction can be heard and determined".

Another situation in which the distinction between interim injunction and interlocutory injunction was considered was in the case of **NIGERIAN INDUSTRIAL DEVELOPMENT BANK VS.**

OLALUMY INDUSTRIES LTD. (1995) 9 NWLR (PT. 419) 338 where the learned Jurist **ABDULLAHI, JCA,** said:

> **" be that as it may, it appears to me that there is an indiscriminate use of these words "interim Injunction" and "interlocutory injunction" even though they are not synonymous, in the sense that an interim injunction is really interim in nature in that it is more appropriately and generally applied for and granted on ex parte application in an emergency situation, while on the other hand an interlocutory injunction is applied for pending the determination of a substantive suit or on appeal. I think a number of legal practitioners and some of the Courts are tempted to make a general assumption that since both expressions "interim" and "interlocutory" share a common feature in the sense that a particular**

action or thing is suspended until some future date, then the expressions can be interchangeable. I think this is a wrong assumption. Each of the two expressions should be given effect to what it stands for. Interim to be interim and serve the emergency situation for which it has been designated and interlocutory should be understood in the context for which it is designated".

Summarily, interim and interlocutory injunctions have a certain common trait in that both terms connote temporary and provisional reliefs and not final orders issued by the Courts to preserve the status quo or prevent irreparable damage or harm being occasioned pending the determination of the substantive suit. Nonetheless, some key differences still exist between these terms:

1. As already indicated above, while these terms involves temporary reliefs, when they are contrasted with perpetual injunction which is a final order made after conclusion of trial; on this ground alone lies the distinction.
2. Interim injunction is issued to the applicant upon an application made ex parte without notice to the adverse party often intended to take care of urgent situation or extreme urgency.
3. Interlocutory injunction is intended to maintain a balance of convenience between the parties until final judgement is rendered.
4. Interlocutory injunction is made on notice after the adverse party is properly put on notice and the order is usually granted after both parties have contested the

issues or reliefs sought for by the applicant. See the case of **ONYESOH VS. NNEBEDUN (1992) 3 NWLR (PT. 229) 315 @338 Paragraph B-C.**

5. The standard of proof required to sustain an interim injunction in favour of the applicant is lower than thast required for an order of interlocutory injunction.
6. Interim injunction as indicated above usually last for few days, unlike interlocutory injunction that may last throughout the life span of a suit pending the determination of the main suit before the Court.

I shall refer you to the following case law authorities on issues pertaining to guidelines and conditions for grant of injunctive orders:

1. **OJUKWU VS. GOVERNOR OF LAGOS STATE (1986) 3 NWLR (PT.26) 39.**

2. **GLOBAL MEDICAL CARE (UK) LTD. VS. MEDICAL (WEST AFRICA) LTD (1998) 2 NWLR (PT. 536) 86.**
3. **OBEYA MEMORIAL SPECIALISTS HOSPITAL VS. A.G. FEDERATION (1987) 3 NWLR (PT,60) 325.**
4. **ASOGWA VS. RT.HON. CHUKWU (2003) 4 NWLR (PT. 811) 540.**

At this juncture, permit me to say a few words of admonitions regarding the grant or issuance of interim injunctions ex parte as they are liable for abuse. Recall my earlier warning that such grant can make or mar your career. I have taken pains to bring out the relevant Orders of the Magistrates' Court Rules of Akwa Ibom state that empowers these judicial officers to grant these interim orders. The steps to be followed are clearly provided there. I believe similar statutory enactments exists in other

jurisdictions and I will enjoin you to adhere to what the Rules requires you to do in any specific circumstances.

GUIDING PRINCIPLES FOR THE GRANT OF INTERIM ORDERS:

In view of above, it is obvious that interim orders generally speaking are the orders made in the course of proceedings not intended to last long. With these views in mind, it is possible to distinguish between the various forms of interlocutory applications that are often presented before the Court in the course of the proceedings in respect of the pending cause or matter before the court. Being a remedial tool in the hands of the Court to preserve the subject matter from dissipation or irreparable damage being done to the substantial matter, they are some guiding principles for the grant of these applications in order to ensure that justice is done in any given situation.

On this note, we are going to examine them under two main planks being interim and interlocutory injunctions.

1. Under interim injunctions, the court in granting this type of application should ensure that the order does not last more than seven (7) days period, which could be extended in the interest of justice even before the expiration of the previous order earlier granted by the court or vacated or discharge as the case may be. This kind of application may be brought by motion ex parte as provided in **Order 3 rule 4 of the Magistrates' Court Rules of Akwa Ibom State, 2022,** orally or reduced into writing as the Magistrate may order. Although this rule does not provide the number of days the interim order is supposed to last, but it is provided that the order (if sought by ex parte application} may be discharged or varied by the Magistrate at any time

on application made by any person aggrieved thereby, after notice is given to the party who obtained the order.

In practice argument always follows the grant of extension of an interim order as some people argues that the interim order already expired can not be extended while others argue otherwise. The condition precedent I wish to submit, is that the issue of extension of an interim order depends on the Rules of Court granting the court the power to so do. May I refer to **Order 4 rule 5 of the Magistrates' Courts Rules of Akwa Ibom State, 2022** where it states thus:

"any interlocutory injunction or Order made ex parte shall be only for a limited time stated there and be served on the person affected thereby, but the court may extend the time if service has not been possible within such time". However, the condition precedent before such extension lies in the fact that

service of the process on the affected party was not possible within the time stated in the order. This is subject to prove as the case may be. See also **Order 4 rule 6 of the said Magistrates' Court Rules** already reproduced above.

Suffice it to repeat my earlier admonition that, great care must be taken so that the exercise this power is not open to abuse as, it attracts punitive sanction as provided for in the code of conduct for Judicial Officers which all of us here are bound with. See Rule 2 of the said Code of Conduct for Judicial Officers. The disciplinary action against erring officer includes dismissal from service depending on the gravity of the circumstances. So be careful as to be forewarned is to forearmed.

My candid advice to you is that when confronted with such a situation it is more prudent and safer, except in real and

extreme urgency, to grant the order in favour of the applicant directing him to put the order party to be affected by the order on notice. **Order 3 Rule(2) of the said Magistrates' Rules** states that, **" The Magistrate shall have power to -**

(b) direct notice thereof to be given to any person affected thereby".

I shall also refer to the case of **SEPLAT PETROLEUM DEVELOPMENT VS. BRITTANIA – U NIGERIA LTD & ORS (2014) LPELR – 231126 C.A.**

2. We are all aware that the lower courts are not bound to accept formal interim applications. By **Order 3 rule (1) of the Magistrates' Court Rule of Akwa Ibom State, 2022, Interlocutory applications may be made orally to the Magistrate in whose court a cause or matter is pending**. In **subrule (2) (a) the Magistrate has the power to order such**

application to be reduced into writing and order the adverse party to be served with the notice of the application. This implies adjourning the matter to another date and make an order directing the Respondent to show why the order sought should not be made, thereby bringing the other party to court in order to be heard in the interest of fair hearing.

3. There must be real urgency when seeking an interim order of injunction through ex parte application. Some have contended that the grant of an interim application through ex parte order is an infringement of the constitutional rights of the adverse party. This argument may not be sustainable in view of the decision in the locus classicus in the case of **KOTOYE VS, C.B.N. (1989) SUPRA** per Nnaemeka – Agu JSC (as he then was) in his holding that, **"... the basis of granting an ex parte order of injunction, particularly in view of section 33(1) of the**

constitution of 1979, is the existence of special circumstances, invariably, all – pervading real urgency, which requires that the order must be made, otherwise an irretrievable harm or injury would be occasioned to the prejudiced of the Applicant. Put in another way, if the matter is not shown to be urgent, there is no reason why ex parte order should be made at all: the existence of real urgency and not self imposed urgency, is a sine qua non for a proper order of ex parte injunction."

It should be noted here that the terms ex parte order of injunction can be used interchangeably and means one and the same thing with interim order of injunction.This is what the Court of Appeal said in the case of **SEPLAT PETROLEUM DEVELOPMENT VS. BRITTANIA – U NIGERIA LTD. & ORS (2014) LPELR – 23126 C.A.,** thus:

“Also, the attempt to distinguish between interim order of injunction and ex-parte order of injunction is nothing but semantics. The question is which one did the Court then make on the 23rd December, 2013? Can there be an interim order of injunction not made on an ex-parte application? The attempt to distinguish the two amount to creating distinction without a difference. Interim injunction is a temporary injunction made pending the service of processes on the respondents to preserve rights or res. No interim or ex-parte order of injunction is made as of right to last beyond a period of time. It is a temporary relief given ex-parte and therefore none should be made to last beyond a short period as doing so would offend the right of parties to be

heard before any order is made against their interest, see the case of BOGBAN V. DIWHRE Supra where the Court held at page 294 - 295 as follows: "By that very name injunction granted on ex-parte application can only be properly interim in nature. They are made without notice to the other side to keep matters in status quo to a named date usually not more than a few days or until the respondent can be put on notice. The rationale of an order made on such application is that delay to be caused by, in the ordinary way of putting the other side on notice would or might cause an irreparable or serious mischief. Such injunctions are for cases of real urgency." The Court in the said judgment went on to

say: "An injunction is a serious matter and it must be treated seriously".

Per NIMPAR, JCA, (PP. 49 – 55, PARAS. C- F).

Besides what I am trying to relate above, interim injunction or an exparte order of injunction is a veritable tool in the hands of the Courts in an emergency situation where it turns out that there is difficulty in serving the other party with a court process or where to proceed in the ordinary course of serving the other party would result in an irreparable damage. Then interim order of injunction or ex parte order of inunction may be resorted to.

Again, when considering the grant of interim injunction, it is important for the court to look into the period the Applicant became aware or had notice of the act or conduct in which the

restraining order is being sought, so that the court is not lured into making an order over a self-induced urgency.

In the recent past because of its nature of being heard in the absence of the adverse party this interim order was subject to open abuse by some judicial officers and the apex court gave the situation serious attention in the locus classicus in the case of **KOTOYE VS. CENTRAL BANK OF NIGERIA (1989) SUPRA @ P.450 PARAS.F-H** where it stated as follows:

"Above all, this Court ought to take notice of the numerous abuses of ex parte injunctions that have come up in recent times.

The operation of the bank has been halted on an ex parte order of injunction granted on a person who has been removed as a director of a bank. Installation ceremonies of

chiefs have been halted in the same way even though the dispute had been dragging on for years. The convocation ceremony of a university has been halted on an ex parte application by two students who failed their examinations. As courts cannot prevent such applicants from exercising their constitutional rights by stopping such applications, they can, and ought, at least see that Justice is done to victims of such exparte applications and others by ensuring that the applicant fully undertakes to pay any damages that may be occasioned by such order which may turn out to be frivolous or improper in the end".

See the following cases:

1. **BOGBAN & ORS VS. DIWHIRE & ORS (2005) LPELR – 7643 C. A.**

2. **ITAMA & ORS. VS. OSARO – LAI & ORS (2000) LPELR – 6903 C.A.**
3. **RMM GLOBAL CO. LTD. & ANOR. VS. STANBIC IBTC BANK PLC. (2019) LPELR – 48092 C.A.**
4. **JOHN HOLT LTD. & ANOR VS. HOLT AFRICAN WORKERS UNION OF NIGERIA AND CAMAROONS (1963) LPELR – 25399 S.C.**

Having adumbrated on the guide lines to he considered in granting interim injunction or ex parte order injunction I shall now delve into considering some guidelines to be applied when granting or refusing an application for interlocutory injunction. I made some attempts to distinguish between the two interim/interlocutory orders amongst orders which are commonly experienced at this level of the lower courts due to its limited jurisdiction as the case may be in practical terms. It

may be necessary to make a recap that interlocutory injunction is issued principally for purpose of sustaining the status quo so that the ‘ res’ or the subject matteris not dissipated, in other words the order is often granted to protect the subject matter before the court so that it is not wasted or damage irreparably before the conclusion of the main matter before the court or on appeal depending on the circumstances of the case.

The guidelines are as follows:

First and foremost, one must bear in mind that interlocutory injunction is an equitable remedy used in preserving the subject matter from destruction, so that the judgement creditor would not be confronted with an empty judgement. Therefore, when an action sought to be restrained has already been completed interlocutory injunction would no longer be issued. It is often postulated that an interlocutory injunction is not issued against

a completed act. This trite principle of law formed the basis of the decision in the case of **TAYLOR WOODROW NIG. LTD. VS. AROMOIRE & ANOR.(2022) LPELR – 59241 C.A. (PP.13 PARAS.D)** where the learned Jurist Umar, JCA., stated thus:**"I wish at this juncture to state that the main purpose of an interlocutory injunction is to preserve the res or subject matter of the litigation from destruction pending the determination of the matter, so, where an action sought to restrained has already been completed, the equitable remedy of interlocutory injunction will no longer be available to an Applicant. See the case of FIRST BANK OF NIG PLC & ANOR VS NDARAKE & SONS (NIG) LTD (2008) LEGALPEDIA (CA) 57117."**

Another consideration is that the status quo is to be maintained by an order of interlocutory injunction, which is the existence of the state of affairs before the dispute arose.

The complicated issue that is often arising in the grant or refusal of interlocutory injunction is as to when hostility arose , and whether the action sought to be restrained is a completed act and where lies the balance of convenience. These are all important issues that must be at the mind of the court when action touching on grant or refusal of an interlocutory injunction. An authority that is apt here is the ratio in the case of **ADEWALE VS. GOVERNOR OF EKITI STATE,(2006)LPELR – 5991 C.A.** per OGUNWUMIJU, JCA,(as he then was)(**PP. 27 – 30 PARA. C)** and I quote**, "The appellant was the holder of a certificate of occupancy over a piece of land situate opposite the Government House, GRA in Ado-Ekiti. On 17/5/2004 the 1st respondent caused to be published a notice of revocation in respect of the said parcel of land and indicated the intention to enter and take possession of the land**

immediately. The appellant filed a suit at the High Court seeking a declaration that the revocation was illegal. He also sought perpetual injunction against the respondents.

Meanwhile, the appellant filed an interlocutory application seeking an interlocutory injunction against the respondents and the maintenance of the status quo ante. The learned trial judge refused the application on the ground that the revocation was a completed act, and ordered accelerated hearing of the substantive suit. This appeal is against that ruling. The learned trial Judge had in my humble opinion shut the door of relief against the appellant by his conclusion that he could not grant an injunction in respect of a completed act. What is the completed act in the circumstances of this case? My view is that the completed act would mean both the de jure revocation by the publication of the legal notice and the

de facto revocation by the repossession of the parcel of land by the respondents, The 2nd leg of the complete act of revocation had not taken place and could still be restrained by the Courts. The literal meaning of status quo ante bellum is the state of affairs before the beginning of hostilities. See Akapo v. Hakeem-Habeeb (1992) 6 NWLR (Pt. 247) p. 266. The status quo which the Court, by granting of interlocutory injunction, can maintain is the restoration of the parties to the position they were before the commencement of the dispute between them. Akapo v. Hakeem (1992) 7 SCNJ 11 at 140, (1992) 6 NWLR (Pt. 247) 266. The status quo means the position prevailing when the defendant embarked upon the activity sought to be restrained. Fellowes v. Fisher (1976) QB 122 at 141; Ayorinde v. A.-G., Oyo State (1996) 2 SCNJ 198 at 211, (1996) 3 NWLR (Pt. 434) 20. Where the act has been

completed and carried out, an interlocutory injunction cannot be a remedy for it because the status quo to be maintained is the situation as it existed at the time of filing the action Ayorinde v. A.-G., Oyo State supra; that is, at a stage when no further activity can be restrained. The position is therefore that where litigation immediately follows peaceable or peaceful state of affairs or status, the status quo to be maintained by an order of interlocutory injunction is that peaceable or peaceful state or status before the litigation. But where such a state of affairs has been disturbed or interfered with, resulting in a law suit, the status quo is not the unlawfully created one immediately preceding the suit, but the original peaceable or peaceful state or status before it was apparently "unlawfully" altered. Hostilities started on 17/5/2004 when the 1st respondent published the revocation

of the appellant's certificate of occupancy to the land and indicated intention to immediately repossess the land. At that time, the act of revocation had not in my opinion been completed to be considered a fait accompli that would tie the hands of the Court. The legal right of the appellant was supposedly threatened and was to be abused. The appellant has shown sufficient interest in the reliefs sought. There were before the learned trial Judge serious issues as to the legality of the action of the respondents and the balance of convenience was obviously on the side of the appellant who had before hostilities started being in possession and whose possession was being threatened. Ezebilo. v. Chiwuba (1997) 7 NWLR (Pt. 511) p.108 at 123-129, The learned trial Judge ought to have granted the application for interlocutory injunction."

For fear of repetition, permit me to outline some of important considerations for granting an order of interlocutory injunction which the court must be guided as follows:

1. There must be the existence of a legal right. An applicant should be able to establish that he has a legal right which is threatened and ought to be protected. Once the applicant has done this, it is sufficient for the Court to consider and intervene by granting the order of interlocutory injunction.

   Moreover, let us take guidance from the holding of the apex court in the locus classicus in the case of **AKAPO HAKEEM – HABEEB & ORS (1992) LPELR – 325 S.C.** where it was held thus: **“ "The claim for an injunction is won and lost on**

   the basis of the existence of competing legal rights.

As I have already said above, where an applicant for an injunction has no legal right recognizable by the Courts, there is no power to grant him an injunction. Similarly where the respondent to the application relies on the illegality of his actions, there is no right in him to resist the claim of the applicant with a recognized legal right. Injunction being an equitable remedy he who comes to it must come with clean hands. I consider it not only curious but manifestly reprehensible and absurd for respondents to rely on their illegal acts in forcibly taking over the constitutional functions of the appellant, to contend that the Court should by refusing the injunction ratify such a conduct. This Court cannot accede to such a preposterous argument." Per KARIBI-WHYTE, J.S.C. (Pp. 30-31 paras. E)

2.The court should endeavour to find that there is substantial issue before the court for trial. Since it is trite that there should be placed before the court a writ of summons before the court upon which the interlocutory application is tied to, in most cases the Rules of court usually prescribe the manner upon which this order may be applied for. However, it does not forbid the defendant from seeking an interlocutory injunction based on its counterclaim. The applicant in practice must show in evidence before the court that there is serious issue to be tried.

It is therefore important at this juncture to mention the fact, it is only the court before whom an action is pending that can grant an interlocutory injunction in respect of the subject

matter of the action. See Order 3 Rule (1) of the magistratesi Court Rules of Akwa Ibom State,2022.

Having said that let me point out that from the advent of the case **AMERICAN CYNAMID VS. ETHICON LTD. (1975) AC.39E @ 407** which was adopted by our apex Court in the case of **OBEYA MEMORIAL HOSPITAL VS. ATTORNEY – GENERAL OF THE FEDERATION (1987) SUPRA** it is no longer required that the applicant must show a prima-facie case or strong case as a condition for the grant of order of interlocutory injunction. Rather it would be sufficient in the present dispensation to show that there is a serious and substantial issue to be tried. In other words, the court must be satisfied with the issue that the claim is not frivolous or vexatious. A good example is where the court lacks the jurisdiction to issue the order in the main suit, certainly his power would also be circumscribed when faced

with the request for the grant or refusal of interlocutory injunction. See the case of **AGBOMABGO VS. OKPOGO (2005) ALL FWLR(PT.291) 1606 – 1625**. Here the learned Jurist ABBA AJI, JCA, (as he then was) held to the effect that the Court could not have jurisdiction or power to grant an injunction when the relief of injunction sought is not in respect of the claim before it. The Court must have satisfied itself that it has the power or jurisdiction to make it at the conclusion of the hearing the same order it is asked to make upon the interlocutory injunction to be rightly ordered, it must have connection with the subject matter in litigation. It is much more prudent for the court to refrain from granting an interlocutory injunction which will affect non-parties to the action.

Another important fact to mention is that the court must guide itself not to delve into findings of facts at the interlocutory

stage which may prejudice the substantive case. This principle of law received attention in the case of **FIRST NATION AIRWAYS (SS) LTD.& ANOR. VS. POLARIS BANK LTD. (2022) LPELR – 58728 C.A.** where it was held thus:

"It is settled law that Courts are duty bound not to pronounce on substantive matters in the course of interlocutory proceedings. Reference is made to the decided case law authorities of AGWU & ORS VS. JULIUS BERGER (NIG) PLC (2019) LPELR-47625 (SC); ADEDOLAPO & ORS. VS. THE MILITARY ADMINISTRATOR OF ONDO STATE & ORS. (2005) LPELR-7538 (CA); BUREMOH VS. AKANDE (2017) LPELR-41565 (SC); A C B LTD & ANOR VS. AWOGBORO & ANOR (1996) LPELR-200 (SC)." Per BANJOKO ,J.C.A. (Pp. 21-22 paras. E)

3.It is the duty of the court to determine where the balance

of convenience lies, when contemplating or considering whether or not to grant an application for order of interlocutory injunction. Two questions are often resolved by the courts before deciding on where the balance of convenience is reposed. One of them is, who will suffer more inconvenience if the application is granted and the second one is like unto it, who will suffer more inconvenience if the application is refused? However, proved is always on the applicant to establish where the balance of convenience lies in his affidavit evidence. The court must not fail to advert its mind to this requirement when deciding to maintain the status quo. In tackling this issue, the Supreme Court had this to say in the case of **LADUNNI VS. KUKOYI & ORS (1972) LPELR – 1739 S.C.** per Coker, JSC, **(P.11, PARAS. B- G)** (of blessed memory) and I quote, **"...It must however be borne in mind that at all times**

the burden of establishing such a case as indeed a balance of convenience, rests always on an applicant for the order. In Dommar Productions Ltd. v. Bart and Ors [1967] 1 W. L. R 740 at p.742, Ungoed-Thomas J. observed with respect to this point as follows: So, in an application for an interlocutory injunction the applicant must establish a probability or a strong prima facie case that he is entitled to the right of whose violation he complains and, subject to this being established, the governing consideration is the maintenance of the status quo pending the trial. It is well established that in deciding whether the matter shall be maintained in status quo regard must be had to the balance of convenience and to the extent to which any damages to the plaintiffs can be cured by payment of damages rather than by the granting of an injunction. Of course, the burden of proof lies on the applicant

throughout. We think this is a correct proposition of the law and we propose to apply it in the case in hand. (See also observation of this Court in John Holt (Nigeria) Ltd. and Anor. v. Holts' African Workers' Union of Nigeria and Cameroon's [1963] 1 All N.L.R. 379)."

This principle was well settled by ORJI-ABADUA, JCA, one of our eminent jurists succinctly stated in very simple terms that, "The principle governing determination of balance of convenience is that if the position is such that the applicant will suffer inconvenience more than the respondent if the order for interlocutory injunction is refused then the Court will make the order. But if the applicant will not suffer any inconveniences or if the respondent to the application will suffer more inconvenience than the applicant if the order is made, then in such a case the order will not be made, See Peter V. Okoye

(2002) 3 NWLR Part 755 p.529." Per ORJI-ABADUA, ,J.C.A in **UDO V. INCORPORATED TRUSTEES OF CHRISTIAN METHODIST EPISCOPAL CHURCH (2008) LPELR-8548(CA) (PP. 21 PARAS. C)**

4.The Court must be satisfied by the applicant that he has proved by his affidavit evidence that he will suffer irreparable damage or harm if the acts of the defendant is not restrained by granting the application for interlocutory injunction. What is meant here is that the damage would be so monumental and that no remedy would be enough to atone for the damages not even compensation or cost would be sufficient remedy. The case in point is **SARAKI VS. KOTOYE (1990) 4 NWLR (PT.143) 144 @187.** It is left for the applicant to prove that no award would be sufficient compensation for him if the application is refused and he eventually succeeds in the substantive suit pending before the Court. Therefor where the defendant can

be sufficiently compensated with money and the defendant is capable of meeting with the financial involvement, then the application for the order would be refused. As a corollary, the courts are also enjoined to refrain from granting an interlocutory injunction if such would work more hardship on the Respondent than the good to the applicant. I shall refer to the following case

1. **ORJI VS. ZARIA INDUSTRIES LTD.(1992) INWLR (PT. 216)124 @ P.139** cited in the case of **OMOLE & ORS. VS. SONOIK (2017) LPELR=50095 C.A.**

5. The court in dealing with interlocutory injunction must be satisfied by the applicant that his conduct is not reprehensible, such as delaying in bringing the application or the urgency is self-induced or not willing, to abate the nuisance. The reason is that the order being sought for is equitable relief which the

court is required to consider the conduct of parties both before and at the time of the application. Delay defeats equity, as such the applicant must be seen to have been timeous in filing his application for the order. May I refer to the case of **FADINA VS. VEEPEE INDUSTRIES LTD. (2000) 5 WRN 131 @135-136.** See also the case of **PETER VS. OKOYE (2002) 3 NWLR (PT.755) 529 @552.**

6. the Court shall also ensure that an undertaking as to damages is extracted from the applicant. This is to ensure that peradventure the applicant who obtained the order to restrict the defendant fails at the end of the main suit the defendant who would have suffered dearly as a result of the order is sufficiently compensated, by the undertaking the plaintiffs bind himself to be liable for any damage which the defendant may have suffered following the order in the event that the plaintiff

loses the action. Where an undertaking is not entered into in the end of his affidavit evidence the court is not bound to grant the order. See the case the following cases:

1. **LEASING CO. (NIG) LTD. VS. TIGER INDUSTRIES LTD (2007) 14 NWLR (PT.1054)346**

2. ITA VS. NYANG (1994)1 NWLR (PT. 318) 56 @ 67

3. ONYESOH VS. NNEBEDUN (1992) 3 NWLR (PT.229) 315 @ 344-345

4.KOTOYE VS. CENTRAL BANK OF NIGERIA & ORS (1989) SUPRA.

Flowing from the decisions of our superior courts it is quite discernable that the courts must advert their minds to certain laid down guidelines in consideration of whether to grant or refuse the grant of this equitable remedy of interim/ interlocutory injunctions such as ascertaining the existence of

their legal rights, existence of triable and substantial issue of law, preservation of the subject matter and maintaining the status quo, establishing the balance of convenience, examining the conduct of parties, and extraction of undertaking as to payment of damages if the applicant loses the main suit. These and many more guidelines are available for the courts to adopt in order to ensure that the decision is taken judiciously and judicially. There may not be any hard and fast rule as to the exercise of this powers but it is advisable to adhere to above principles and strictly observe them, since it is also a trite principle of law that interlocutory injunction is not granted as a matter of course. I may also wish to add finally that, the grant or the refusal of this interim and interlocutory injunction is within the discretionary powers of the court. Moreover, it is very important to note also that it is quite permissible to order

for accelerated hearing where the Court finds itself in a situation that it cannot decide the interlocutory application without delving into the main suit. This is the what the Court of Appeal said in the case of **OKOYE VS INEC & ORS. (2009) LPELR – 4727 C.A.:**

"I am of the opinion that wherever a Court is faced with an application for an interlocutory relief pending the determination of the substantive case on its merits, but there exist factors which might appear that if the application is granted at that stage, the meat of the main case might be compromised as determined, the only option open to the Court is not to proceed further with interlocutory application, but to accelerate the hearing of the substantive case, so that full determination of the matters could be made." Per TSAMIYA ,J.C.A

Advisedly, and in my conclusion, I wish to enjoin all the participants in this course to strive to conform with the few guidelines highlighted for your guidance when dealing with interlocutory applications that may be presented to you for adjudication, as efforts are being harnessed by our great Institute, to reposition the Courts for better justice delivery.

I must end this presentation with a big thank you to the Chairman of this session and distinguish members of the High table and most especially to our noble participants for their attention. Thanks, and God bless you all.