THE SIGNIFICANCE OF INJUNCTIONS IN THE DISPENSATION OF JUSTICE IN NIGERIA

BY

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Declaration

I declare that this dissertation has been written by me in the Department of Public Law, Faculty of Law, Ahmadu Bello University, Zaria, under the supervision of Prof. Abubakar Isa Bappah and Dr. Kabir Muhammad Danladi. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation is, to my knowledge, previously presented for another degree at any University.

_____ _____

SABITU USMAN BALARABE DATE

Certification

This dissertation entitled THE SIGNIFICANCE OF INJUNCTIONS IN THE DISPENSATION OF JUSTICE IN NIGERIA meets the regulations governing the award of the degree of Master of Laws (LL.M.) of Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation

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Dedication

This work is dedicated to my brother in person of Mal. Suleiman Balarabe of English Department, Federal College of Education, Zaria and his entire family.

Acknowledgements

I must first of all acknowledge the will of Almighty Allah who has made this dream of mine a reality. Thanks are unto Him.

I must also express my special gratitude to my supervisors (Prof. A. I. Bappah and Dr. K. M. Danladi) who despite their commitments spared their time to go through the work thoroughly and made the necessary and intelligent corrections and also for their patience with me throughout the process of this work. To this, I wish both of them and their entire families, long life, happiness and prosperity. May God increase them in knowledge, health, wealth, wisdom and faith (*Iman*).

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Abstract

The topic of this research is 'THE SINIFICANCE OF INJUNCTIONS IN THE DISPENSATIN OF JUSTICE IN NIGERIA'. Injunctions are court orders prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. Injunctions are ordinarily and properly elicited from proceedings in courts. The main feature of injunction is the maintenance of the *res* or *status quo* that is the subject matter of the dispute or litigation. The problem treated in this research work arose from the literatures reviewed and the practical experience of the writer in the area of the research. The legal requirements and procedure for applying for the grant of the equitable remedy of injunction are so difficult to be met by an applicant for the injunctive order, requirements such as the need that an applicant must prove that he has a legal right to be protected over the subject matter he is seeking injunction for. This research work critically looked at this problem with the view to proffering solutions to them. This research work aimed at identifying the significance of the equitable remedies of *interim* and *interlocutory* injunctions in justice dispensation in Nigeria. Furthermore, the objectives this research work set out to achieve includes; critical discussion and analysis of *interim* and interlocutory injunctions. The methodology employed in this research work is mainly doctrinal. It has been conducted mostly in the library through the use of both primary and secondary sources of law. It has been observed that there exist a fundamental contradiction or legal conflict between the constitutional doctrine of *Audi altera patem* rule for the fair hearing of all the parties before the court decide on a matter on the one part and the rules of courts and the various High court Rules which specifically provide and empower the courts to hear one party, consider and grant or refuse the application where the court is faced with an application for *interim* injunction. It is recommended that the two legal principles be allowed to subsist as each one is important for the determination of the case.

List of Abbreviations

NWLR	-	-	Nigerian Weekly Law Report
Op. Cit.	-	-	Opera Citator
Ibid	-	-	Ibidem
Infra	-	-	As cited below
A.C.	-	-	Appeal Cases
L. F. N.	-	-	Laws of the Federation of Nigeria
ALL ER	-	-	All England Law Report
ALL FWLR	-	-	All Federation Weekly Report
F. R. N.	-	-	Federal Republic of Nigeria
S. C.	-	-	Supreme Court

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CHAPTER ONE; GENERAL INTRODUCTION

1.1 Background of the study

The process of instituting an action in court in order to redress a wrong takes considerable time. Owing to the peculiar state of affairs in Nigeria, calling the court into action to determine the respective rights of parties consumes considerable time with possible harm to the subject matter of the suit. The subject matter in law is commonly referred to as the *"res"*. The *res*, in deserving circumstances would need to be preserved from waste, destruction or dissipation by any of the parties.

The history of injunction could be traced to the later part of the 16th century when quarrel between common and Chancery over the power of the Chancery to issue injunction in the cases before it became manifest[1]. Justice Coke was the Chief Judge of the Common Law Counts while Lord Ellesmere was the Lord Chancellor in Chancery. Chancery's jurisdiction was challenged by Justice Coke, notably its power to grant common injunction restraining the enforcement of judgment decided by the Common law courts. Justice Coke threatened to issue a writ of prohibition against Chancery's interference with judgments/decisions of the Common law courts by its issuance of common injunction[2].

Nevertheless, Lord Ellesmere of the Chancery division pronounced that Chancery had the power to grant common injunction against the judgments of the Common law courts that were oppressive or without conscience. The conflict was settled in the case of Earl of Oxford which was decided in favour of the Chancery that it can give an injunction against the judgments of the Common law courts.

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1 Koddinye, G. An Introduction to Equity in Nigeria. Spectrums Books Limited, Ibadan (2008)P. 3

2 Usman A. K., the Law and Practice of Equity and Trust, Faith International Printers, Zaria (2012) P. 12.

The ruling in the case Earl of Oxford was also to the effect that equity should prevail whenever there is a conflict between it and common law. However, after series of deliberations to gain autonomy for the Chancery by Lords Ellesmere and others, Common Law Procedure Acts of 1854 and 1860 also empowered the Common Law Counts to apply the rules of equity to cases before them, regardless of those rules being in disagreement with the established common law rules. This was done to solve the incidence of double litigation in respect of the same cause of action[3]. This is in order to save litigants time and expenses in the cause of litigation. In another vain, Chancery courts were empowered to decide all actions of common law without making any reference to the Common Law court. By Chancery Amendment Act of 1852, limited power was also given to Chancery in some cases such as awarding damages in addition or in lieu of injunction and breach of contract.

Nonetheless, the entire reform was represented by the Judicature Acts of 1873 to 1875 and the Administration of Justice Act of 1880. All existing superior courts were abolished by the above mentioned Acts and in their place Supreme Court of Judicature consisting of High Court of Justice made up of Queen's Bench, Chancery Division and Family Division consisting private division and admiralty were created.

Moreover, so many legislations were made both in England and Nigeria to support the application of the principles of equity. In Nigeria for instance, various states of the Federation have High Court Laws that provide for the application of equity in the states of the nation. A clear example of these laws is section 28 High Court Law of Kaduna State[4], which is of the effect that, the doctrines of equity shall in so far as they relate to any matter in respect of which the state is for the time being,

[3] Ibid at P. 19

[4] LFN, 2004, p. 771 at 779

competent to make laws, be enforced within the jurisdiction of the court. More so, section 17 (a), (b) and (c) of the Supreme Court Act[5], empowered courts to grant in every matter brought or pending before it, either absolutely or in such terms and conditions as the court deems just, all such remedies whatsoever as any of the parties thereto may appear to be entitled in *res*pect of any legal or equitable claim properly brought forward. The exercise of this discretion must however be consistent with what is reasonable and just in the circumstance[6]. Order 6 Rule 6[7] also gives the Court of Appeal the power to grant injunctions. This means that the court ought to be satisfied that the injunction which is to be granted is, as to its terms and circumstances, affecting both parties are reasonable and just[8].

The equitable remedy of injunction is a discretionary process of preventive and remedial justice, in which a person is required to refrain from doing a specified meditated wrong not amounting to a crime. In ***Salami v. Yahyah***[9], the court stated that "the award of an injunctive order is discretionary. Thus in all exercise of judicial discretion, unless it is shown that the lower court exercised its discretion wrongly and arbitrarily, it shall not be interfered with by an Appeal Court". An injunction is a preservative relief designed to maintain the *status quo* between parties pending the final determination of the suit or pending a certain date. It is an equitable remedy by which the court orders a person to refrain from a particular activity or conduct.

An injunction is ordinarily and properly elicited from proceedings in courts. The main feature of injunction is the maintenance of the *res* or *status quo* that is the

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5 Cap. S 15 LFN, 2004, vol. 14 p. 6

6 Usman A. K., (2012) *The Law and Practice of Equity and Trust,* Faith International Printers, Zaria p. 20

7 court of Appeal Rules, 2011

8 Usman A. K op. cit p. 20

9 (2010) 7 WRN 85 at 89

subject matter of the dispute or litigation. Injunctions are traditionally granted when a wrong cannot be effectively remedied by an award of money damages. It is intended to make whole again someone whose right has been violated.

The equitable remedy of injunction has been moulded to fit various purposes and as a result diverse classifications have been developed according to the nature of the order given by the court. They can prohibit future violations of the law, such as trespass to real property, infringement of a patent, or the violation of a constitutional right or they can require the defendant to repair past violations of the law or applicant's right.

There are different types of injunctions that may be applied for by an applicant depending on the circumstances of the case. An injunction could be *interim*, interlocutory or perpetual. An interlocutory injunction is granted to maintain the *status quo* between the parties pending the final determination of the dispute. It lasts till the end of the case to give way to perpetual injunction which is granted at the end of the trial. It settles once and for all the interest of the parties in relation to the subject matter of the dispute. However, other specialised forms of injunctions are: *Anton piller* orders, *Mareva* injunctions and *Quia timet* and they are in the form of *interim* orders. It should be noted here that this work, only cantered on *interim* and interlocutory injunctions.

Be that as it may, generally today in Nigeria every order of the court which commands or forbids the doing of an action may be taken as an injunction. However, in its accepted legal sense, an injunction is a court order prohibiting someone from doing some specified act or commanding someone to undo some wrong or injury. In other words, it is 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[10]. An injunction is a judicial process or mandate operatively in personum by which upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. It is also a writ formed according to the circumstances of the case, commanding an act which the court regards as essential for justice or restraining an act which it deems contrary to equity and good conscience[11].

1.2 Statement of the research problem

The problem to be treated in this research work arose from the literatures reviewed and the practical experience of the writer in the area of the research. The legal requirements and procedure for applying for the grant of the equitable remedy of injunction are so difficult to be met by an applicant for the injunctive order, requirements such as the need that an applicant must prove that he has a legal right to be protected over the subject matter he is seeking injunction for and the applicant has to prove other conditions such as balance of convenience in his favour, damages not being sufficient remedy and other conditions and the procedure of the like which often make it cumbersome for an applicant to obtain the order despite its significant in the attainment of justice. This research work intends to critically look at this problem with the view to proffering solutions to them

1.3 Aim and objectives

This research work aims at identifying the significant significance of the equitable remedies of *interim* and interlocutory injunctions in justice dispensation in

[10] *Adeleke v, Lawal* (2014) 3 NWLR (Pt. 1393) p. 4 S. C

[11] *Ohakin v. Agbaso* (2010)19 NWLR (Pt. 1226) p. 172 S. C.

Nigeria. Furthermore, the objectives this research work sets out to achieve includes among others:

1. Critically discuss and analyze the *interim* and interlocutory injunctions.
2. Examine the problems associated with some of the conditions and procedure for the grant of the *interim* and interlocutory injunctive orders.
3. Determine the significance of *interim* and interlocutory injunctions towards attainment of justice in Nigeria.
4. Assess the attitudes of courts and Counsel in handling the matters for *interim* and interlocutory injunctions.

1.4 Justification

What attracted the researcher to embark on a research in this area is what is observed in the impact of the injunctive orders in the administration of justice in Nigeria *vis-à-vis* the present trends of courts of granting or refusing such orders of injunction without any concrete legal reasoning as to why such orders are granted or refused. Conducting a research into courts wrongful granting or refusal of the order of injunction would assist in the development of the equitable remedies of injunction. The study will help in identifying a simpler and more acceptable means or procedure for the application and grant of the orders of injunction and will assist in general education to legal practitioners, scholars, members of the bench, law students and the public at large.

1.5 Scope of the research

The scope of this research work deals substantially with equitable remedy of injunction to wit *interim* and interlocutory injunctions, their application and how they help in the dispensation of justice in Nigeria. The scope also includes the likely

problems identifiable with the process of seeking for and the grant of injunction and some remedies that are postulated as solutions to the problems observed. Furthermore, reference is made to the superior courts of record Civil Procedure Rules notably High Court of Kaduna State (Civil Procedure Rules) 2007, High Court of Lagos State (Civil Procedure Rules) 2012, High Court of Kano State (Civil Procedure Rules) 2014 and the High Court of the Federal Capital Territory Abuja (Civil Procedure Rules) 2004. Be that as it may, decided cases and statutes relevant to the subject matter of this research are referred to. Also, this research work is geographically limited to Nigeria as can be seen from the topic of this research work.

1.6 Research methodology

The methodology employed in this research work is mainly doctrinal. It has been conducted mostly in the library through the use of both primary and secondary sources of law in the nature of statutes, case laws, textbooks, works on cases and materials, law reviews, journals, newspapers, articles and some other materials relevant to this work. In addition, materials sourced from the internet, classroom lectures on the subject matter of this research work would all be used.

1.7 Literature review

There are obviously many authors who have written on the area of this research work but the topic is not often treated comprehensively to enable the researchers and other interested persons in the area, grab substantial aspect of it with little or no difficulties. There are in some cases, works that were produced over a decade ago and now these types of works would not certainly cover or reflect the new developments in the relevant area.

With profound humility and respect, the researcher acknowledges the works of the learned authors in the area of this research some of which are: the work of Babalola[12], who wrote extensively on injunctions, their nature, doctrinal basis, though, did not point out clearly their significance in the dispensation of justice in Nigeria. Furthermore, Nwadialo[13] in his work highlighted the requirements for the grant of injunctions, the powers of the courts to grant injunction and some other important things. These works were published in the year 2000, more than a decade now. Also, a part from the fact of chances of some developments having taken place in the area, the works did not well reflect the significance of injunction in the Nigerian Judicial System.

Furthermore, Afolayan and Okorie[14] have written on the area discussing the various types of injunctions their features and instances of application, even though, they did not bother to show their significance in the attainment of justice in Nigeria. Ojukwu and Ojokwu[15] have also written on the area and it is noted that their work just like that of Efevwerham[16] despite not discussing injunctions in details also failed to figure out their significance towards justice attainment in this country which is the main objective of this research work.

Another work is that of Honourable Justice Tobi[17] (retired). This work discussed *interim* injunction in details without discussing other types of injunctions such as interlocutory injunction, which this work would discuss justly. Oniekoro[18]

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12 Babalola, A. (2000) *injunctions and Enforcement of orders, (2nd Edition),* O. A. U., University Press, Ife, p. 121

13 Nwadiola, F. (2000) *Civil Procedure in Nigeria, (2nd Edition),* University of Lagos State, Lagos, p. 76

14 Afolayan, A. F. and Okirie, P. C. (2007) *Modern Civil Procedure Law,* The Sage Nigeria Limited, Lagos, p. 111

15 Ojukwu, E. and Ojukwu C. N. (2005) *Introduction to Civil Procedure, (2nd Edition),* Helen Roberts, Abuja p. 88

16 Efevweren D. I. (2013) *Principles of Civil Procedure in Nigeria, (Revised Edition),* Snaap Press Limited, Enugu, p. 234

17 Tobi, N. (2006) *The Law of Interim injunction in Nigeria,* St. Pauls Publishing House, Ibadan, p.

18 Oniekoro , F. J. (2009) *Civil Litigation in Nigeria, Practice Notes and Precedents,* Chenglo Limited, Enugu

Oyewo[19] this work would discuss and bridge the gabs in such works. Kodilinye[20] only focused on the history, equitable maxims, their application and some other equitable remedies but not mainly the injunctions which this work aims at taking care of. However, Oniekoro[21] again did not discuss injunctions in details rather gives a highlight of all the types of injunctions without bringing out their importance in the justice dispensation in Nigeria, therefore suffer the same fate with the other work. There are other authorities who have written on this area such as Dobbyn[22], Spry[23], Owen[24], Hanbury[25] and Maudsley as these works have long been written, could not discuss recent cases on the topic this research is going to look at the recent situations.

Another rich and most recent literature on the area of the research is the work of Usman[26]. The learned author has done justice to some areas such as definition and history of equity, history and evolution of trust, types of trust the requirement for its creation appointment of trustees, duties and discretion of trustees, administration of estate, injunctions their types, instances of application and the principles for the grant. However, he did not discuss in details the role of injunction in the dispensation of justice in Nigeria which is the aim of this research. However, the work of Ogundayisi[27] even though recent but it did not discuss injunction and its importance in the dispensation of justice in Nigeria in details.

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19 Oyewo, T. (1994) *The Law of Civil Litigation in Nigeria* Jefor Publishing Company, Ibadan

20 Kodilinye, G. (2005) *An Introduction to Equity in Nigeria* Spectrums Books Limited, Ibadan

21 Oniekoro , F. J. (2012)*, Practice Notes and Guides on Litigation, (civil Claims and Criminal Trials)* (3rd Edition) Chenglo Limited, Enugu. P. 223 - 232

22 Dobbyn, J. F. (1974) *injunction in a Nutshell*, St, Pauls Minn. West Publishing Company,

23 Spry, E. (1986) *Equitable Remedies; injunction and Specific Performance.* The Laws Books Company Limited, Sydney

24 Owen, (1972), *injunctions.* The Foundation Press. Mincola New York

25 Hanbury, H. G. and Maudsley, Rh. *Modern Equity International Students Edition*, Steven/Sweet and Maxwel.

26 Usman, A. K.,op. cit p. 72.

27 Ogundayisi, A. O. (2013), Practical Approach to Civil and Criminal Litigation, bosem publishers nig ltd, Ondo, p. 135

In the circumstance, it is revealed that the topic of this research work has not been comprehensively treated by the foregoing authors and therefore there is need for a research in this area to reflect current development in the area for better understanding of the *interim* and interlocutory remedies of injunctions notably in the dispensation of justice in Nigeria.

1.8 Organizational layout

This research work is divided into five chapters. The first chapter which is titled general introduction deals with the introductory matters such as historical background, problems of the research, aim and objectives, justification, scope of the research, research methodology, literature review and organizational layout.

Chapter two deals with nature and scope of *interim* injunction, it discusses *interim* injunction, its nature, scope, aim, objectives, conditions and procedure for its grant as well as its significance in the dispensation of justice in Nigeria.

Be that as it may, chapter three deals with nature and scope of interlocutory injunction. It discusses *interim* injunction, its nature, scope, aim, objectives, principles and procedure for its grant as well as its importance in the dispensation of justice in Nigeria. The chapter equally identifies some instances of application of injunction and certain situations where injunctive orders cannot apply.

However, chapter four is titled consequences of disobedience to *interim* and interlocutory injunctive orders**.** It deals with issues such as introduction, service of the orders of injunction, procedure for the enforcement of injunctive orders and the consequences of disobeying the orders or injunction.

Chapter five which is the final chapter is titled conclusion. It summarizes the entire work, brings out some findings and makes recommendations. This concludes the entire work.

CHAPTER TWO; NATURE AND SCOPE OF *INTERIM* INJUNCTION

2.1 Introduction

Injunction is a court order prohibiting someone from doing some specified acts or commanding someone to undo some wrong or injury. In other words, it is an equitable order restraining the person to whom it is directed from doing the thing specified in the order or requiring in exceptional situations the performance of a specified act.[1] In the researcher's view; injunction is any order granted by a court to restrain or prevent a particular action, conduct, misconduct or omission by the responding party. In other instance, an order of injunction is obtained or granted by the court to compel the performance of a duty, contractual or official required of the responding party or the defendant. An *interim* injunction is a short duration injunction. It typically arises in an urgent case, it is sought without time for a judge to really hear from both sides and make a decision.

However, '*interim*' means in the meantime, between, while[2]. This is simply an order sought by a party prior to the appearance of both parties before the court for the hearing and determination of motion on notice for interlocutory injunction. *Interim* injunction is usually granted *ex-parte* and in a situation of utmost urgency[3].the main objectives of this chapter are to analyze the *interim* injunction, evaluate its significance in the dispensation of justice in Nigeria, itemize and critically discuss the conditions and or principles for the grant of *interim* injunction, the courts with the powers and jurisdiction to grant or refuse the *interim* injunction. This is with the view to attempting proffering

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1 *Adeleke v. Lawal* (2014) 3 NWLR (Pt. 1393), p. 4 S. C

2 Basil, M. (2014) *court-Room Rapid Reference Handbook*, Overseas Publications Limited, Benin City, Vol. 1, p. 36

3 Statoil (Nig.) Ltd vs. N. N. P. C. (2013) 14 NWLR (Pt.1373) p. 1

solutions to the difficulties which applicants seeking for *interim* injunction often encounter. Now, a look at the word "injunction" and understand what it means before dwelling into the proper details of the subject matter of the research.

A court can grant an "*interim*" injunction to protect the applicant for a very limited time (usually 7 days). It can be granted on an *ex- parte* basis - meaning that it is granted in the absence of the respondent. An *interim* injunction is granted to last until a definite date or until further order is made or pending the hearing or determination of a motion on notice. The basic difference between an *interim* injunction and interlocutory injunction is that *interim* injunction is granted in cases of urgency and it is applied for by motion *ex-parte*. However, all injunctions have general conditions that are considered before they are granted. *Interim* and interlocutory injunctions which are the subject and scope of this research are not exception. These general conditions would be briefly considered below.

2.2 General conditions to be considered in the grant of injunctive orders

There are basically two conditions to be taken into consideration in granting whatever sort of injunctions being sought before any court. These general conditions are; the application must be brought bona fide and the applicant must not delay in seeking the injunction.

(i) The application must be brought bona fide

Justice and equity always demand that whoever requires any injunctive order from the court, he should make such an application bona fide. This made the equitable maxim of ''he who comes to equity must come with clean hands'' very paramount in an application for any equitable reliefs which injunction is inclusive. It is clear here that for an applicant to be entitled to whatever type of injunction he must go to equity with unsoiled hands that

is in good faith.[4] This implies that at whatever time the court realizes that the application for injunctive order is brought mala fide then it will not grant it.[5] This condition as earlier on stated is applicable to all sorts of injunction.

(ii) The applicant must not delay in seeking the injunction

The principle or condition which is highly paramount in every application for an order of injunction is that, there must not be delay in the application and grant of the order.[6] This is because remedy of injunction is in the main intended to remove immediate risk of harm. Therefore, where an applicant for injunction unreasonably delays in bringing or moving the application, the injunction would not be granted.[7] These general conditions are very important particularly in granting *interim* injunction in which urgency is given more consideration by court than any other thing before the grant of the order to the applicant.

2.3 *Interim* injunction

Interim injunction simply put is an order sought by a party prior to the appearance of both parties before the court for the hearing and determination of motion on notice for interlocutory injunction. The purpose of *interim* orders of injunction is to prevent/restrain the doing of an act which is harmful to the applicant or command the performance of an act which is beneficial to him pending the hearing and determination of the substantive suit. *Interim* injunction is often granted via motion *ex-parte*. The word *ex-parte* means by or for one party[8] and without hearing the other party who is mostly the respondent. Thus, it is granted where the interest of the responding party will not be prejudiced, if he is not put on notice. This is highly important, because the interest or *res* in question will by the grant

4 Usman A. K. Op. Cit. p. 87
5 Ibid
6 Ibid
7 Ibid
8 Ojukwu E. and Ojukwu N, (2009), *Introduction to Civil Procedure, (3rd Edition),* Helen and Robert Ltd., Abuja, P. 225

of this order be protected, pending when the truth of the matter would be revealed. It is also used in seeking a very urgent relief.[9] The motion *ex-parte* for the grant of *interim* injunction is always accompanied by an affidavit, a written address and an affidavit of urgency. Where from the depositions in the affidavit in support of the motion *ex-parte*, it appears to the court that the respondent will be prejudiced by the grant of the order *ex-parte*; the court insists and directs that the adverse party be put on notice, so that justice would be done to both parties. It is worthy of noting that an applicant for a non-permanent injunction may bring the application *ex- parte* without notice to the other side or with notice to the other side as is appropriate[10]**.** This is a clear manifestation of the significance of equitable remedy of injunction in the dispensation of justice to the litigants and the society in general.

The power to grant an *interim* or interlocutory order of injunction is one of the inherent powers of a court of law for the enhancement of the administration of justice. The superior courts of record in Nigeria have the powers to grant all sorts of injunctions and the source of powers of courts to grant *interim* injunction and other types of injunctions is derived from the powers conferred on them by section 6(6) (a)[11], as such they have the power to grant an *ex parte* order of *interim* injunction upon the fulfilment of certain conditions. The grant of an order of *interim* injunction being an equitable remedy is within the discretionary powers of court. As with all exercise of discretion, the power must be exercised judicially and judiciously, taking all relevant circumstances into account.[12] In this case, the trial court did not exercise its discretion judicially and judiciously when it made the *interim* orders sought by the respondent**.**

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9 order 7 Rule (2) of the Abuja High court (Civil Procedure) Rules, 2004

10 Ozoemene v. Ozomee (2013) 30 WRN p.65

11 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

12 Pharma-Deko Plc v. F.D.C. Ltd. (2015)10 NWLR (Pt.1467) P. 225

However, it is a duty on the applicant applying for *interim* order of injunction to follow the laid down procedure for seeking same and the person who seeks an *interim* order ex parte while also, applying for an interlocutory injunction, files two motions simultaneously, one ex parte asking for the *interim* order and the other on notice asking for the interlocutory order pending the hearing and determination of the substantive suit. The court before which the applications are filed, entertains the *ex parte* motion first and if satisfied that it has merit *ex facie*, grants it and makes an order to last up to the date for the hearing of the motion on notice.[13] In this case, the trail court granted the *interim* orders of injunction *ex parte* pending the hearing and determination of the motion on notice for interlocutory injunction. The trial court granted the *interim* orders of injunction even though it was aware that the respondent did not file a motion on notice for the substantive suit. It is based on this that Per Kekere-Ekun, J.S.C. stated;

'It is said also that an application for an order of an injunction is usually granted pending the hearing and determination of the substantive suit. The reliefs sought in the ex-parte application should be predicated upon the reliefs set out in the writ of summons. Although the reliefs in the ex-parte applications are sought pending the determination of a motion on notice, there is no evidence that there was indeed a motion on notice filed simultaneously with the motion ex- parte. When the learned trial judge adjourned the proceeding after granting the ex- parte orders, he merely gave a return date without making reference to any pending application'.

However, for more emphasis; *interim* injunction by motion *ex-parte* has a very short life span. It is granted mostly to last for seven days as permitted in most rules of court.[14] Nonetheless, under Abuja Rules, a party affected by an order made *ex-parte*, may

[13]. Azuh vs Ubn Plc (2014) 11 NWLR (Pt 1419) P 580

[14] order15 r 1 (3) and (4) of the High court (Civil Procedure) Rules, Kaduna State, 2007

apply by motion on notice within 7 days, after the service of the order on him or within any further time that may be allowed by the court for the order to be vacated.[15] Where the application to vary or discharge the *ex-parte* order is not heard within 14 days of its being filed, the *ex-parte* order shall lapse automatically.[16]

Further, as it relates to an order of injunction made pursuant to an *ex-parte* application under the Lagos Rules, it shall lapse for 7 days but it can be extended for a further period of 7 days, when the application for extension is brought before the order abates.[17] The court also has inherent power to revoke (*suo motu*) any order made *ex-parte*, where for example, the court feels that it was granted under a misapprehension or upon new facts being drawn to its attention.[18] Elaborately, a judge can vacate his order at any time during the pendency of a suit before him. Although his vacation of an order of court during the pendency of a matter should not be seen as vacation of judicial discipline, sanity and an excuse to ridicule or make a mockery of the court and its proceedings. Where such is done, a judge is clothed with enormous powers to deal with the erring party and instil discipline in them and not to look the other way[19].

However, the most important thing to understand at this juncture is that the motion/application *ex-parte* for the grant of *interim* injunction must be supported by an affidavit of urgency, indicating that the subject matter (*res*) is in imminent danger of being destroyed and that there is real need to prevent irreparable damage or lost to the applicant before the application can be granted.[20] It is because of the requirement of urgency before granting any application for *interim* injunction that courts always refuse to entertain this

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15 order 7 Rule 11 of the Abuja High court (Civil Procedure) Rules, (2004)

16 order 7 rule 12, ibid

17 order 39 rule 3 (3) and (4) of the High court (Civil Procedure) Rules, Lagos State (2012)

18 Basil M. *Op. cit.* p. 37

19 Bass & Matt. Ent. (Nig.) Ltd. v. Keystone Bank Ltd

20 Tobi, N. (2006) *The Law of Interim injunction in Nigeria* St. Paul Publishing House, Ibadan, p. 34

kind of application.[21] In this suit, the respondents commenced this suit against the appellant. Before the matter could be determined, the appellant went ahead to perform some of the functions that should have been done by the tradition (Eze's Council). The trial court granted the reliefs sought by the respondents in the substantive suit. The trial court also made an order setting aside the ceremony performed by the appellant during the pendency of the suit. The Court of Appeal held that it is the duty on parties to preserve the *res* pending the hearing and determination of application for injunction.

Another issue worthy of noting is that, upon an application for an order of injunction, all activities affecting the *res* are automatically terminated or put on hold as a mark of respect to the court before which the application is pending. Where an adverse party ignores a notice of the pending application for injunction and continues as if nothing has happened, he cannot use his illegal position to create a status quo pending the final determination of the substantive suit.[22] *Interim* order of injunction is sometimes abuse, because, once the order is granted the Counsel either abandoned the matter or continue dragging it for a longer time than necessary. Doing so always occasion miscarriage of justice on the respondent and that is not the aim of the order.

A simple question at this juncture is that, going by the procedural rules of hearing one party in an *ex-parte* application for the grant of injunction, can the respondents if present at the time of hearing the *ex-parte* application, insist that he must be heard? In an attempt to answer this question three issues come into play; that is the constitutional provision on fair hearing; the rules of court governing the grant of injunction and the decided cases on injunction.

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[21] Anyaoha vs. Abioha (2014) 6 NWLR (Pt. 1404) p. 445

[22] Ibid

Nevertheless, fair hearing is the right that entails not only hearing a party but ensuring that the hearing is fair and in accordance with the twin pillars of justice, namely: *Audi alteram partem and Nemo judex in causa sua.* The basic criterion and attribute of fair hearing includes: that the court or tribunal hears both side not only in the case before reaching a decision which may be prejudicial to any in the case but on all material issues in the case before the court. A hearing cannot be said if any of the parties is refused a hearing or denied the opportunity to be heard, present his case or defend same.[23] The basic criteria and attributes of fair hearing are; that the court must hear both sides not only in the case but also on all materials issues in the case before reaching a decision. That having regards to all the circumstances in every material decision in the case, justice must not only be done but must have been done.[24]

The right to fair hearing shall be exercised within a reasonable time: as such no court is allowed to wait for indefinite period for a litigant to make up his whether or not to present or defend himself. The principle of equity and fairness assist only the vigilant and not the indolent that deliberately leave things undone until irreversible damage has been occasioned.[25]

The fair hearing principle enshrined in section 36[26] is not for the weakling, the slumber, the indolent or the lazy litigant. It is for the party who is alive and kicking in the judicial process by taking advantage of the principle at the appropriate time. The principle is not available to a party who sets a trap in the litigation process against the court and accuses the court of assumed wrongdoing even such so called wrong doing is a matter of fact through his counsel. The duty of court is to create the environment for

[23] Dinqyadi v. INEC (2010) 18 NLR (pt.1224) p. 154
[24] Aggbiti v. Nigerian Navy (2011) 4NWLR (pt.1236) p. 175
[25] Dantata v. Mohammed (2012) 8 NWLR(Pt.1302) p.366
[26] Constitution of the Federal Republic of Nigeria, 1999 (as amended)

fair hearing in an egalitarian manner for the benefit of the parties. By granting motion *ex-parte* alone and adjourning the matter to a definite date to serve the respondent with the motion on notice for the substantive suit, the respondent cannot be heard to complain of denial of fair hearing. A court of law cannot force parties to take advantages of the principle. Once the court creates the environment, its duty stops and the parties to take advantages of the parties are at liberty to take advantages of the environment created by the court. If the parties fail to take advantages of the environment created by the court, they cannot be heard on appeal to complain that they were denied fair hearing. Such will be unfair to the judge who has placed the fair hearing principle at the door steps of the parties[27].

It is beyond fanciful argument that in law, in the observance of the right of fair hearing of the citizen under section 36(1) of the constitution of Federal Republic of Nigeria, 1999 as amended, while a court of law has the burden duty and indeed an obligation to afford all parties before any decision affecting their rights and obligations are reached, there is no duty on the court to coerce or force or compel an unwilling party, afforded the opportunity to be heard, who on his own refuses, ails or neglects to take advantages of the opportunity offered to him by the court to be heard, indeed, such a party who showed a clear unwillingness. At common parlance, it is said that one can only take a horse to the stream but cannot force it to drink the water.

A judge can vacate his order at any time during the pendency of a case; but his vacation of an order of court during the pendency of a matter should not be seen as vacation of judicial discipline, sanity and an excuse to ridicule or make a mockery of the court and its proceedings. Where such is done, a judge is clothed with enormous powers to deal with the erring party and instill discipline in them and not to look the other way.

[27] C.O.P. Adamawa State vs Saratu, (2015)3 NWLR (Pt. 1446)

Certain injunctions such as *interim* injunction are granted *ex-parte* and such is viewed as a serious breach of the principle of *Audi Alteram partem* principle of fair hearing. The crucial determinant of fair hearing is the necessity to afford the parties equal opportunities to put their case to the court before it does anything.[28] The Court of Appeal when interpreting the meaning of fair hearing as enshrine in the constitution;[29] stated that; the court or tribunal shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case; the court shall also give equal treatment, opportunity and consideration to all parties concerned; parties concerned shall have access to and be informed of the place of public hearing.[30] The right to fair hearing entails not only hearing a party on any issue but also ensuring that it is in accordance with the twin pillars of justice namely; *Audi alteram partem* and *Nemo judes in couse sua*.[31] This has shown that a respondent in an application *ex-parte* for the grant of injunction can claim being denied of fair hearing as his constitutional right.

Another issue is on the principle that a judge should not go into the merit of the case or the substantive matter in granting *interim* or interlocutory injunctions. One important item in the process for the determination of the condition for the grant or refusal of a motion for *interim* injunction is that a judge is precluded from dealing with the substantive matter or determining it at the *interim* stage ***Baa vs. Adamawa Emirate Counsel***,[32] in this suit the 1st respondent filed an action against the appellant and the 2nd and 3rd respondents at the High Court of Adamawa State claiming, among others, declarative and injunctive reliefs in respect of a farmland located at Mallam Madugu, Gire Local Government of

[28] Alechenu vs. University of Jos (2015) 1 NWLR (Pt. 1440) p. 333
[29] Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria, Cap C22, LFN, 2004
[30] Adeniji vs. Obamegwu (2010) 12 NWLR (Pt. 1208) p. 366
[31] Ezenwankwo vs. State (2015) 2 NWLR (Pt. 1443) p. 265
[32] (2014) 8 NWLR (Pt. 1410) p. 539

Adamawa State, which the 1st respondent claimed it entrusted the 3rd respondent in his former position as the former district head of Gire. The 1st respondent further claimed the 3rd respondent made a gift of land to the 2nd respondent who later sold same to the appellant.

The 1st respondent filed a motion *ex-parte* and simultaneously filed a motion on notice seeking *interim* and interlocutory orders of injunction respectively against the appellant and the 2nd and 3rd respondents. Both motions essentially sought injunctive orders restraining the appellant and the 2nd and 3rd respondents from entering the land in dispute and from dealing with it in any way whatsoever.

The trial court granted the motion *ex-parte* as prayed after hearing parties thereon. Subsequently, after arguments were heard on the motion on notice. The trial court also granted the application and ordered an accelerated hearing of the substantive suit. The sole reason advanced by the trial court for granting the motion for interlocutory injunction was that it would be better to proceed to hear the substantive suit instead of spending time hearing arguments on the motion.

Nonetheless**,** another legal principle as a condition for grant of *interim* injunction that the applicant must establish that he has a serious triable issue before the court as clearly stated in ***Adeleke v. Lawal.***[33] Now the problem is how a judge could determine that the substantive matter of an application for *interim* injunction discloses serious triable issue without going into the merit and the substance of the case. It is practically impossible for an applicant to satisfy the court that he has serious triable issue before it; without the judge going into the merit and substance of the case.

It is not simple for a judge to be able to determine whether the case discloses serious triable issue and as such satisfies the statutory condition that the applicant has a

[33] Op. Cit. Footnote No. 5 p. 2

basic serious triable issue in the substantive suit which qualifies his application to be favourably considered by a judge without going into the merit of the case. It must be noted that this is the legal contradiction impose by law which the judge most find from the substantive case and the substantive case alone not by simply stating it in the affidavit in support of the application. This notwithstanding, the law limits the judge not to go into the merit of the case at interlocutory stage of the case**,** this indeed is a problem. Now a look; at the laid down conditions and principles for the grant of *interim* order of injunction with their cons and pros.

2.4 Conditions that must be satisfied for the grant of *interim* injunction

In certain cases, due to the urgency of the matter, which requires speedy procedure, an order of injunction can be sought *ex-parte*. The court held in ***T& E (Nig.) Ltd v. Integrity Concepts Ltd***[34]**.** That an *ex-parte* order is usually made when the circumstances are urgent and compelling such as to leave the court with no other alternative in preventing an anticipated injury of a grave nature. The conditions that are considered very important for the grant of an order of *interim* injunction were clearly spelt out by the Supreme Court, in the case of, ***Adeleke v. Lawal***[35] and they are as follows;

a. The applicant must show that his case is one of extreme urgency. This is the only requirement that distinguished this order from the order of Interlocutory injunction**.**
b. That there are substantial/serious issues to be tried.
c. That irreparable loss or damage/injury will be done to the applicant if the order is not granted.
d. That the applicant has a legal right to be protected.

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34 (2012)NWLR (Pt 1283) p. 1
35 Op. Cit. footnote No 20 p. 4

e. That the balance of convenience lies on the side of the applicant (i.e. he would suffer greater hardship if the application is refused by the court).

f. The applicant must give an undertaking to pay damages to the adverse party if the court is later of the opinion that the order ought not to have been made.

g. The applicant must satisfy the court that, his conduct is not reprehensible (i.e. he has not done anything wrong).

Taking a critical look at the above listed conditions for the grant of *Interim* injunction, it can be understood that only the conditions, (a) and (f) are important for the grant of the *interim* injunction, reason being that, right from the beginning, the order is granted *ex-parte* for the urgency involved in it and it is granted pending the hearing and or grant of the Interlocutory order and it has a very short lifespan. The order mostly lasts for only seven days or as directed by the court. Also, the undertaking for the payment of damages is equally very significant, for, when it applies, the applicant will be very meticulous in seeking for the order, knowing fully that, the respondent will benefit from the application, if it turns out to be frivolous. Therefore, there is wisdom in the courts including them as conditions to be abided by strictly before granting *interim* injunction to the applicant.

However, with profound *res*pect to the justices of the apex court, all the other conditions for the grant of this order of *interim* injunction only set hurdles to the process of obtaining the order. This is despite their importance in the dispensation of justice in Nigeria. For instance, the condition that the applicant must show that there are substantial/serious issues to be tried. This is ambiguous because serious issue is relative, what an applicant may see as serious issue another may not see it as such. Also, what a judge may consider as serious issue another judge may take it as trivial.

Nonetheless, it is not proper to hold a view that until irreparable loss or damage/injury will be done to an applicant if the order is not granted that the applicant's application

would be considered. Assuming the loss, damage or injury sought to be prevented is reparable, individuals should not allow damage to be done to them before going to court to seek for red*res*s. Hence the aim and purpose of orders of injunction are to prevent/*res*train or command the doing of an act which is harmful to the applicant. It is more just if the order is granted before the damage is occasioned and not until the wrong happened to the applicant.

More so, the issue of legal right to be protected, the balance of convenience on the side of the applicant and that his conduct is not reprehensible (i.e. he has not done anything wrong), have all been taken care of by the condition for undertaking for the payment of damages to the adverse party where the court realizes that the order should not have been granted. This requirement a lone will make the applicant to be very careful in seeking for an *interim* order of injunction. The next injunctive order usually sought for after the *Interim* injunction is an order for Interlocutory injunction.

CHAPTER THREE

NATURE AND SCOPE OF INTERLOCUTORY INJUNCTION

3.1 Introduction

This chapter aims at achieving certain objectives such as analyses of the Interlocutory injunction, Evaluation of its significance in the dispensation of justice in Nigeria. In this chapter the writer would also want to Itemize and critically discuss the conditions and or principles for the grant of Interlocutory injunction, the nature and scope of interlocutory injunction, the courts with the powers and jurisdiction to grant or refuse the Interlocutory injunction. This is with the view to proffering solutions to the problems the applicants seeking for Interlocutory injunction always encounter.

3.2 *Interlocutory* injunction

'*Interlocutory*' means provisional, *interim*, temporary and not final. This is a court order usually obtained after the expiration of the *interim* injunction and before the final determination of the suit and or application before the court.[36] Nevertheless, an Interlocutory injunction is issued during trial to prevent an irreparable injury from occurring before the court has a chance to decide a case on its merit. Adeleke v. Lawal (*Supra*). This type of injunction is issued only after the Defendant is confirmed to have had notice and opportunity to be heard.[37] The object of Interlocutory injunction is to keep the parties in an action to the *status quo ante* pending the hearing and determination of the substantive suit[38]

This Interlocutory injunction plays a significant role in the protection of litigants' rights, p*res*ervation of the subject matter, maintenance of *status quo ante* pending the hearing and determination of the substantive suit. The order usually *res*trains the

[36] Ojukwu E. and Ojukwu N, Op. Cit. p. 221
[37] ibid
[38] Basil M. Op. Cit, p. 40

respondent from continuing the action complained against him by the applicant or in some cases commanding him to do certain action or actions pending the hearing and determination of the substantive suit.[39] Normally, an application for an order of interlocutory injunction must be served upon the defendant, a notice of the motion; this is to avail the defendant opportunity of preparing his defence and being heard.

Nonetheless, an Interlocutory injunction is obtained by way of motion on notice, that is, by putting the respondent on notice of the suit of the applicant against him.[40] The life span of an Interlocutory injunction lapses at the determination of the motion on notice on its merit. It is required that the motion together with all the affidavits be served on the respondent.[41] However, the respondent has 7 days to file his counter affidavit, failure to do so, means the court should believe all the facts deposed to in the affidavit in support of the applicant's motion on notice and grant all the prayers therein.[42]

The service may be affected by any person, not withstanding that he is not an officer of the court and without the leave of the court.[43] More so, where a party is rep*res*ented by Counsel, service on the Counsel is deemed a proper service.[44] There should be at least two clear days between the service of the motion and its hearing, unless the court gives special leave to the contrary.[45] In Lagos Rules, it is mandatory that every motion should be served within five days of its filing.[46] Written address is also required.[47] A person may be served with a notice or put on notice of a motion even though he is not a party to the substantive suit, if his inte*res*t may be affected by the order sought. Where the

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39 Ojukwu E. and Ojukwu N, Op. Cit. p. 226

40 Oniekoro , F. J. (2009) *Civil Litigation in Nigeria, Practice Notes and Precedents,* Chenglo Limited, Enugu, p. 121

41 order 8 Rule 4 of the High court (Civil Procedure) Rules, Kano State, 2014, order 7 Rule 4 Abuja High court (Civil Procedure) Rules (op. cit)

42 Dangabar v. F. R. N. (2014) 12 NWLR (Pt. 1322) p. 575

43 order 7 Rule 19 Abuja

44 order 7 Rule 20, Ibid

45 order 7 Rule 18, Ibid

46 order 39 Rule 1 High court (Civil Procedure) Rules (2007), Lagos State

47 order 39 Rule 2 Ibid

other party intends to oppose the motion, it shall file the written add*res*s and counter-affidavit within 7 days of the service of the motion on him depending on the type of order sought or originating process filed before the court. The applicant in turn, has 7 days after the service of the counter affidavit on him to file an address in reply on point of law and further and better affidavit which also depends on the originating process**.**[48] At the hearing, if the judge is of the opinion that any person who sought to have been put on notice, had not been put on notice, the court may adjourn the hearing to another date until all the parties are duly served. Where the court adjourns the hearing, it will do so on terms as it deems fit.[49]

When all processes are before the court, a date will be fixed for both parties to appear before the court and move their processes. The applicant moves his application by oral argument and the time limit for oral argument is not more than 20 minutes as provided by most of the Rules of courts, for instance, order 7 Rule 8 Abuja and order 31 Rule 4 of Lagos**.**

However, one of the purposes of order of injunction is usually to protect an applicant's existing legal right from invasion by the respondent. The power to grant interlocutory order of injunction is one of the inherent powers of a court of law for the enhancement of the administration of justice. The grant of an order of interlocutory injunction is an equitable remedy within the discretionary powers of the court. Nonetheless, the power must be exercised judicially and judiciously, taking all relevant circumstances into account. An applicant for a non- permanent injunction in this case interlocutory injunction may bring the application with notice to the other side as is appropriate. It is a duty on applicant who seeks for an interlocutory injunction, to have

[48] order 39 Rule 1 (3) and (4), Ibid
[49] order 39 Rule 6 Ibid, order 7 Rule 22 Abuja

before the court motion on notice for the substantive suit. The court, before which the applications are filed, hears or grants the interlocutory order first, which lasts up to the date for the determination of the substantive suit. Also, interlocutory injunction has certain conditions that must be satisfied before being granted by the court.

3.3 Conditions that must be satisfied for the grant of interlocutory injunction

The principles or factors to be considered in an application for Interlocutory injunction were elaborately laid down in ***Adeleke v. Lawal***[50] as follows;

a. There must be a subsisting action before the court;
b. The subsisting action must clearly denote a legal right which the applicant must protect. A legal right recognized either at law or at equity;
c. The applicant must show that there is a serious question or substantial issue to be tried, necessitating that, the status quo should be maintained, pending the determination of the substantive action and the court must be satisfied that there is indeed one;
d. The applicant must show that the balance of convenience is in favour of granting the application; the court will consider the balance of convenience as between the parties, whether damages will be an adequate remedy for the applicant and the applicant must disclose all material facts.
e. The applicant must show that there was no delay on his part in bringing the application;
f. The applicant must show that damages cannot be adequate compensation for the injury he wants the court to protect;

[50] Op. cit. Footnote No. 25 p. 5

g. 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.

h. The Judge must not go into the merit of the substantive suit.

Condition (a) is appropriate. This is because it is by the determination of the subsisting suit on merit that the court will either make the order permanent or refuse it entirely. Also, the *res*ponding party may not be seriously prejudiced by the grant of the Interlocutory order, because there is a subsisting suit which he might at the end get Judgment. Condition (b) is also appropriate here, because at this stage, there is no urgency and it will serve the interest of justice to require the applicant to show that he has a legal right to be protected, failure of which, the application should be refused. Another condition that is very relevant and important is (g). When this condition applies, the applicant will be very meticulous, knowing full well that he will suffer some loss.

Be that as it may, all the other principles are the conditions that are often difficult to satisfy by the applicant. For instance, substantial/serious issues to be tried; serious issue is relative, what A may see as serious B may not see it as such. Also, what judge A may consider as serious issue judge B may take it as trivial, therefore, this condition is ambiguous. The issues of the balance of convenience on the side of the applicant and other conditions have all been taken care of by the undertaking for the payment of damages to the adverse party where the court discovers that the order should not have been granted. This requirement a lone will make the applicant to be very careful in seeking for the order of injunction mala fide.

The above listed conditions for the grant of Interlocutory injunction are discussed in details below;

(a) Legal right or interest to be protected

Before an injunction can be granted, the applicant must show that he has sufficient inte*res*t in the reliefs sought as was decided by the Court of Appeal in ***Jimoh v. Aleshinloye***[51] where it was held that the 1st respondent who maintains the title of, eleju of ejuland and not eleju of igbonla did not show sufficient inte*res*t in the title eleju of igbonla to warrant the grant of an injunctive relief by the trial court against the appellant use of the title eleju of igbonla in his favour. This decision is very right, because as was clearly in the previous discussions of the principles for the grant of the orders of injunction that, if the applicant cannot establish the existence of legal right it means he does not have *locus standi* and or cause of action. However, it is fundamental rule that the court will grant an injunction only to support the protection of a legal right. This was also the decision of the Supreme court in ***Adeleke v. Lawa****l.*[52] In this case, lack of a legal right denied the applicants the injunction they sought. The facts of the case were that the appellants applied for an injunction to *res*train the respondents jointly and severally, their agents, servants or any member of the Babasanya Family of Ede Community from crossing the boundary and reaping the appellants' palm trees without the consent and authority of the appellants. The appellant's application failed in this case because they could not establish the existence of a legal right to be protected. This decision is equally right for the above stated reasons.

In all above cited cases, the orders of injunction sought were refused on the grounds that the applicants could not prove the existence of a legal right to be protected. Usually, legal right attaches to pecuniary inte*res*t of the applicant that is at risk of being harmed by the respondent. The applicants in the above cases lacked pecuniary inte*res*ts that were at

51 (2014) 15 NWLR (Pt. 1430) 277 at 288

52 Op. cit. Footnote No. 4 p. 10

risk of harm, they could therefore not prove legal right to entitle them to the remedy of injunction[53].

(b) Balance of Convenience

In considering the issue of balance of convenience, in an application for Interlocutory injunction, the case of both sides must be taken into consideration, as the remedy being sought is not only equitable but discretionary as it is within the powers of the court to grant the application or refuse same.[54] The determination of where the balance of convenience rest in a case, is a question of fact and not law. The court is therefore, obliged to study and rely on the facts presented to it by the affidavit evidence of the parties.[55] The conditions of undertaking to pay damage to the respondent and the existence of a legal right have been taken care of by this principle, so long as there are such conditions, the issue of balance of convenience should not arise.

(c) Serious/Substantive Triable Issues

The new position in respect of this condition is that, all an applicant for *interim* or Interlocutory injunction is required to show is a serious issue to be tried. Formerly, the requirement under this head used to be that the applicant must make out a strong prima facie case that, he was likely to succeed at the trial of the case. The use of such exp*res*sions as a probability, a prima facie case, or a strong prima facie case in the context of the exercise of a discretionary power to grant an Interlocutory injunction leads to confusion as to the objective sought to be achieved by an Interlocutory injunction.[56] At this juncture it is pertinent to understand that in both applications, the supporting affidavits must carry a paragraph indicating that the applicant has a strong prima facie case. It is sufficient if the

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53 Usman A. K., Op. cit. p.72
54 Wali v. Amaefule (2014) NWLR (Pt. 1421) 298 at 305
55 Ibid p 306
56 Usman A. K. Op. cit. p. 90

applicant establishes substantial issues to be tried at the hearing of the substantive case for an order of injunction being sought by an applicant[57].

This requirement of serious triable issues is necessarily a requirement relevant to *interim* or Interlocutory injunction before the determination of the substantive suit as was the case in ***Baa vs. Adamawa Emirate Counsel***,[58] The 1st respondent filed an action against the appellant and the 2nd and 3rd *respondent*s at the High court of Adamawa State claiming, among others, declarative and injunctive reliefs in respect of a farmland located at Mallam Madugu, Gire Local Government of Adamawa State, which the 1st respondent claimed it entrusted the 3rd respondent in his former position as the former district head of Gire. The 1st respondent further claimed the 3rd respondent made a gift of land to the 2nd respondent who later sold same to the appellant.

The 1st respondent filed a motion ex parte and simultaneously filed a motion on notice seeking *interim* and interlocutory orders of injunction respectively against the appellant and the 2nd and 3rd *respondent*s. Both motions essentially sought injunctive orders *res*training the Appellant and the 2nd and 3rd *respondent*s from entering the land in dispute and from dealing with it in any way whatsoever. The trial court granted the motion *ex-parte* as prayed after hearing parties thereon. Subsequently, after arguments were heard on the motion on notice. The trial court also granted the application and ordered an accelerated hearing of the substantive suit. The sole reason advanced by the trial court for granting the motion for interlocutory injunction was that it would be better to proceed to hear the substantive suit instead of spending time hearing arguments on the motion.

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57 Ibid

58 (2014) 8 NWLR (Pt. 1410) p. 539

(d) Damages must not be a Sufficient Remedy in Equity

What the court should take cognizance of in an application for an order of injunction is whether if the applicant's substantive application for injunction succeeds, he can be compensated with money, for whatever damages or inconveniences he might have suffered as a *res*ult of the court's refusal to grant the application for injunction.[59] If the court realizes that damages cannot be awarded to the applicant as adequate remedy, then, the application should be granted. Inadequacy of damages is a core equitable condition for the grant of injunction. Once damages would be adequate, injunction would not be granted because equity follows the law. Consequently, for perpetual injunction, it is inconceivable that damages would ever be adequate if the applicant is required to submit to the perpetual violation of his right by the respondent.

(e) Undertaking as to Damages

Where an applicant is seeking for an equitable remedy of either *interim* or Interlocutory injunction, it is mandatory on him to make an undertaking that he would pay damages to the respondent if it turns out that an injunction granted to him ought not to have been granted in the first place.[60] If the undertaking as to damages was made to obtain an *interim* injunction, damages to be paid fall due if the application for Interlocutory injunction is refused by the court and the *interim* injunction discharged. Damages will also fall due if by reason of lack of diligence to prosecute the Interlocutory injunction, the *interim* injunction is discharged.. The foregoing requirement is fundamental for the grant of injunction.

(f) Undertaking in Lieu of injunction

It is paramount to understand here that, usually, a party seeking the remedy of injunction makes undertaking. But in certain cases, it is the Defendant or respondent that

[59] F. C. D. A. Vs. Unique Future Leaders Int'l Ltd (2014) 17 NWLR (Pt. 1436) p. 213
[60] Baa vs. Adamawa Emirate Counsel (2014) 8 NWLR (Pt. 1410) p. 539

may make an undertaking not to proceed with the action against which the order of injunction is being sought by the Plaintiff.[61] This is a situation where undertaking, given by a Defendant before hearing, not to perform the act sought to be *res*trained by Interlocutory injunction, achieved the same *res*ult as an Interlocutory injunction. Apart from being a voluntary act, a lot of time is saved. In appropriate cases, if a Defendant refuses to give an undertaking, his refusal may raise a p*res*umption that the apprehended acts may take place.[62]

3.4 Instances where injunctive orders should not be granted

There are certain circumstances under which an order of injunction should not be granted. It is pertinent to note that an injunction will not be granted where it is not sought for or where it would cause hardship to a third party neither will it be granted in favour of a volunteer as equity will not assist a volunteer.These situations include among others:[63]

1. Where the subject matter in dispute is a perishable commodity in the process of perishing.
2. When the grant of the injunction will lead to the closure of the entire university system in the country.
3. When it will grind to a halt the machinery of government or administration of justice.
4. When it will *res*ult in closure of medical facilities in a particular area where such facilities are the only ones in the area.
5. When it is for the closure of a whole market.

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61 Usman A K. Op. cit. p. 91
62 Ibid p 93
63 Ibid, p. 121

In the first instance, i.e. where the subject matter in dispute is a perishable commodity in the process of perishing, justice demands that the only way of protecting the inte*res*t of both parties is by allowing the commodity to be dispose off. Education is very fundamental, in fact, it is the back bone of every society, and it should therefore not be tampered with for the personal inte*res*t of individuals. This is one of the reasons that the order of injunction will not be granted where it will lead to the closure of the entire university system in the country. The same applies to where it will grind to a halt the machinery of government or administration of justice.

In the same vein, an injunction should not be granted when it will result in closure of medical facilities in a particular area where such facilities are the only ones in the area. This position is right because even the justice we are capitalizing on can only be attained if there is health in the society. Nonetheless, markets serve some very significant roles in the enhancement of the economy of the country and it is the place where the general public patronizes for life necessaries, as such, any order that may lead to the closure of a whole market cannot see the light of the day.

However, what is always recommended in the above circumstances is that the trial court instead of granting any injunctive order that will jeopardize the inte*res*t of the general public it should order for accelerated hearing of the matter and give Judgment expeditiously. This is fundamental in the dispensation of justice in this country

3.5 Instances where injunctive orders apply

Injunctive orders are applied in almost every type of action whether in tort or in contract. The remedy enjoys application on the torts of libel, nuisance, passing off and t*res*pass. It is also invoked in cases of abuse of confidential information, breaches of contract, breach of trustee duties, constitutional matters, chieftaincy matters, and matrimonial causes. Therefore, we are going to look at some of areas where injunctive orders apply as follows;[1]

(a) Chieftaincy Matters

The politicisation of chieftaincy matters has always contributed to the increment of disputes over chieftaincy matters. In such disputes one party or the other often goes to court seeking the remedy of injunction against the other party. Before an injunction can be granted, the applicant must show that he has sufficient interest in the reliefs sought as was decided by the court of Appeal in ***Jimoh v. Aleshinloye***[2] where it was held that the 1st respondent who maintains the title of, eleju of ejuland and not eleju of igbonla did not show sufficient inte*res*t in the title eleju of igbonla to warrant the grant of an injunctive relief by the trial court against the appellant use of the title eleju of igbonla in his favour. The application for injunction in this case failed. In an application for an injunctive order, the attitude of the court to the application will depend on the stage of the process of becoming a chief which includes nomination, selection, approval and installation.

The application of the appellant in the above cited case could not succeed because he could not show to the court the sufficient inte*res*t he has in the title. Also, the grant of the application is within the discretion of the court and the court stated

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1 Ibid, p. 97

2 (2014) 15 NWLR (Pt. 1430) p.277 at 288

that its attitude to the application of such nature will depend on the stage of the process of becoming a chief which includes nomination, selection, approval and installation which are all absent in the application. Had the appellant supplied the necessary requirement for the grant of the order, the application would have succeeded.

However, in proper cases, the court would grant the injunction sought to avert communal crises. Although most chieftaincy disputes are regulated by the customary law of the community the dispute arose. Where the customary law recognizes injunction as a relief, injunction may be sought and obtained under that customary law. Where however the customary law concerned does not provide for the remedy of injunction, reliance may be placed on equity to provide the remedy[3].

(b) Land Matters

As to the principles guiding the order of Interlocutory injunction in land matters, the filing of a survey plane is not necessity or a *sine quanon* to the notion 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 for 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 on the merit of the case In a land matter, the identity of a 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 tired to it.

In some cases order of *interim* or Interlocutory injunction would be granted even though the exact description of the land was not placed before the court. Failure

[3] Usman A. K. Op. Cit. P. 71

to establish the identity of the land was not a bar to the grant of the order of injunction because the summons described the land. An important subject matter of litigation in Nigeria is land. Most of the actions filed in Nigerian High courts arise from land disputes. The claims are usually for declaration of title to land, injunction and damages[4]. There is probably no other area of litigation where injunctive orders play a more prominent role than in land matters[5]. Often the person using the land as plaintiff alleges that the defendant is preparing to build or cultivate the land in dispute. In other cases, it may be alleged that the defendant is about pulling down a building or destroy or alter the character of the land.

In the above circumstances, the courts will usually be swayed to grant injunction against the threatened acts. In addition to other requirements, the first requirement the applicant needs to satisfy for an order of injunction in land dispute is to identify the land in dispute. In majority of decided cases, the requirement of the law as to identification of the land in dispute is lower in the case of *interim* and Interlocutory injunction than in the case of perpetual injunction. In the case of *interim* or Interlocutory injunction all that is requi*res* is that the land should be readily identifiable by the defendants from the plaintiff's general description in his affidavit. This is because at the emergency stage of filing a writ, the plaintiff may not have in his possession a plan of the land in dispute. It is sufficient, therefore, if the boundaries of the land are described in the affidavit for instance: That the land in dispute is bounded on the northern part by a road, on the southern side by a river, on the eastern side by a mango tree and on the western side by a fo*res*t. The urgency of the situation

4 *Kango v. Goza* (2007) 2 FWLR (Pt. 56) 89
5 Ibid

in the case of an *interim* or Interlocutory injunction however may suspend the requirement of a plan of the land in dispute.

A claim for an injunction may not fail when a claim for declaration of title fails. The reason for this rule is that injunction is remedy against possession and no against title.

(c) Electoral Matters

Election in Nigeria is a recurrent phenomena and it is inte*res*ting to know that in election petitions, injunctions are rarely granted. The reason for refusal to grant injunction in election petitions is in part due to the fear of creating a *lacuna* in government and the thinking that the *res* in litigation is not a perishable commodity. The petitioner always challenges the assumption of office by the respondent in the petition and so is always desirous of an injunction to be granted in his favour to stop the assumption of office by the respondent.

courts are reluctant to grant an *interim* or Interlocutory injunction to remove a sworn-in elected political office holder, they also appear loath to *res*train the swearing in of an elected person whose election is challenged on the consideration that the *res* is not perishable as when the substantive petition is determined in favour of the petitioner he will be sworn into such an office and enjoy his full tenure. The *res* in political cases is perishable, the tenure for elected officers under the Constitution of the Federal Republic of Nigeria 1999 (amended) is four years[6]. Therefore, no doubt four years is perishable. Upon successful litigation a person who challenged the election of an office holder is allowed to commence his tenure afresh, refusing to grant injunction on the ground that the *res* is not perishable may hold some water.

[6] Section 8 of the 1999 Constitution, Op. cit

Except for the weighty consideration of a vacuum in the office, it is contended that where there is a real likelihood of an adverse claimant succeeding in his litigation in cases of elective offices, an *interim* or Interlocutory injunction if sought should be granted pending the determination of the case. To avoid creating a vacuum in the office in such a situation, an *interim* administrator might be appointed to hold the disputed office pending the determination of the petition. It is quite painful for a party who was cheated at the polls to stand by watching a usurper enjoying an office that is not his, while waiting for the end of a petition that is always protracted. It is suggested that in such a situation, an injunction should be granted to *res*train the swearing in of the doubtful successful party pending the final determination of the case. This juridical position would reduce election malpractice/rigging knowing that they would be *res*trained from being sworn into such an office. This would also prevent slavish expenditure of public funds. An order of interlocutory injunction will not be granted against a completed act in election petition matters. An interlocutory injunction is no more a remedy for an act which had already been carried out.

(d) Tort of Passing off

The tort of passing off is simply a situation where a producer of goods tries to pass off his goods, which in most cases are substandard goods, for the goods of another producer of similar goods, often of a higher quality. More so, in some cases, the remedy of injunction is granted against the tort of passing off. In such a situation, a prohibitory injunction may be sought to restrain the defendant from trading under a name so similar to that of the plaintiffs as to likely to mislead the public into thinking there was some connection between the two firms and to stop producing substandard products.

The fundamental question worth raising here is could there be a tort of passing off in services against which an order of injunction can lie? In an attempt to answer this question we can say services always require personal involvement of the service provider and so a service provider can hardly pass off himself for another service provider. For instance, one lawyer or doctor can hardly pass off himself for another lawyer or doctor. But if it is possible for a lawyer to pass off his chambers or law office for that of a more prominent lawyer, for example, injunction may lie against this tort as against one involving goods[7].

(e) Tort of Nuisance

Courts in almost all cases of nuisance where order of injunction was sought, the order was granted. More than any other tort, the tort of nuisance is the most suitable tort for the grant of the remedy of injunction. Nuisance, unlike other torts, can hardly be paid for with money by award of the common law remedy of damages. The equitable remedy of injunction may be sought against the nuisance of noise.[8] Decisions against the nuisance of noise pollution are desirable in a society such as ours which is 'noise-prone'. The courts have however, pointed out that the law cannot take into account every unwanted noise by holding that noise is only actionable when it steps out its background and becomes nuisance. The courts are particularly concerned with the nature, quality and duration of noise and the time of the day of its occurrence; night-time noise being more likely to be actionable.

However, whenever noise is made carelessly, negligently or selfishly to the harm or reasonable annoyance of neighbors, or even strangers, it becomes an actionable nuisance, a pollution which society should not permit. Where the music by

[7] Ibid
[8] ibid

reason of its loudness and duration and the time it is played, is such that it is likely to cause serious dist*res*s to the inhabitants of the locality, the local authority may take steps to ensure that it ceases.

(f) Tort of Libel

An order of equitable remedy of injunction may be granted to *res*train the tort of libel. In an era of massive publication such as the p*res*ent time in this country, the common law remedy of damages is utterly incapable of meeting the justice of cases where libel is alleged and proved. Injunction is the most just remedy that would ar*res*t the libel and ensure that it does not happen or reduced in this country[9]. This will without thought play a significant role in the dispensation of justice in Nigeria.

(g) Tort of Trespass

This in law constitutes the slightest disturbance of the possession of land by a person who cannot show a better right to possession. Injunction is available against the tort of t*res*pass to property. Nonetheless, a plaintiff who is in lawful and effective possession of a property can therefore apply for the equitable remedy of injunction. However, where possession is not strong enough to enable the plaintiff maintain an action for t*res*pass injunction would not be granted. The court should also dismiss any claim for injunction because an order for injunction is only ancillary to prevent further t*res*pass[10].

(h) Contract Matters

It is common for parties to contract and to breach a contract. The law of contract seeks among others, to ensure the enforcement of the rights and obligations of the parties as evidenced by the terms of the contract exp*res*s or implied. At common

[9] ibid
[10] ibid

law, the remedy against a defaulting party in a contract is damages. However, more often than not, the other party is more interested in having the contract performed or enforced than in being paid damages for its breach.

The terms of any contract are either positive or negative in nature. In other words, parties to a contract are either required to do certain things positive obligations, or to refrain from doing certain things – negative obligations. Usually an order of injunction can only lie against negative stipulations in a contract. This being the case, it is necessary to distinguish between negative and positive stipulations in a contract. A negative stipulation is prohibitory in nature and substance. The courts are more willing to grant injunction for breach of exp*res*s negative stipulation than they are for bread of implied negative stipulation. Consistent with the willingness of the court to grant injunction against breach of express negative stipulations in contracts, injunction may lie against restrain clauses in contracts of employment or trade. Such clauses usually seek to preclude an employee or apprentice from setting up his own business in competition with that of his employer or master within a certain location after leaving the services of the employer or master. The grant or refusal by the court to grant injunction in such cases depends on the facts and circumstances of the case filed before it.

(i) Trust Matters

The courts, grant injunction to retrain the trustees from completing the sale transaction at the instance of the beneficiaries. Furthermore, courts frown at breach of trust very seriously and they are often ready to grant orders of injunction against

breach of trust, in addition to any damages the beneficiaries of the trust may be entitled to[11].

(j) Tribunals of Enquiry

A tribunal or commission of inquiry can be restrained by an order of injunction from sitting or inquiring into a matter contained in the law setting it up on grounds such as want or excess of jurisdiction, defect of competency of any of its members, and breach or likelihood of a breach of the principles of natural justice.[12] A person seeking relief in *res*pect of the tribunal's act or decision may apply for a declaration and injunction by application for judicial commission of inquiry can be *res*trained by an order of injunction from sitting or inquiring into a matter contained in the law setting it up. However, an aggrieved party who wishes to restrain tribunal proceedings has two options namely: he may file an application before the tribunal challenging the competence and jurisdiction of the tribunal. If he is successful and the tribunal decla*res* itself to be without jurisdiction, the effect of such a declaration is an injunction against the tribunal entertaining the matter.

The application challenging the jurisdiction of the tribunal must of necessity be determined before the tribunal proceeds with the hearing of the substantive matter. If the tribunal rejects the application and proceeds with the hearing, the aggrieved party is not thereby rendered helpless. He may approach the regular court and apply for injunction to *res*train the tribunal from further sitting on the matter. It often happens that a tribunal may rush the hearing. If it does so, the aggrieved party may apply for injunction to restrain the submission of the report. Tribunals of Inquiry are interior judicial bodies to the regular courts. Tribunals of inquiry are therefore subject to the

[11] A. K. Usman Op. cit. p. 104
[12] Ibid, p. 115

supervisory jurisdiction of the regular courts. Because tribunals of inquiry are interior to regular courts, the regular courts can issue an injunction against a tribunal's act or decision[13].

Secondly, an aggrieved party may approach the high court for declaratory reliefs on the competence of the tribunal and apply for injunction orders to prevent the tribunal from sitting or continuing with further sittings. If he succeeds, the injunction obtained operates as an injunction against the tribunal of inquiry. If the court to which the application for a declaration against the tribunal however refuses to grant the sought declaration, the aggrieved party may file a Notice of Appeal and an application for injunction against the tribunal pending the determination of the appeal. If the tribunal has rushed to a decision in spite of the application before, it the aggrieved party may apply for orders of certiorari and prohibition and injunction *res*training the government from acting on the report pending the determination of the suit. The parties to the action must include the governor in the case of a state tribunal of inquiry or the p*res*ident in the case of a national tribunal of inquiry. The tribunal should also be made a party to such proceedings. It should however, be noted that the plaintiff or applicant's application for injunction *interim* or Interlocutory must satisfy the court that there exists- in the applicant a legal right that will be or is likely to be breached by the proceedings of the tribunal or commission of inquiry.

(k) Constitutional Matters

The government or its agencies or private citizens and companies can be *res*trained by an order of injunction from breach of the right to liberty of an applicant for injunction. Injunction plays a very important role in constitutional law being an

[13] Ibid, p. Ii6

area of public law, both as a pre-trial and a post-trial relief. There are doubts in Nigeria as to whether or not an order of injunction would lie against the government or any of its departments or officers in their official capacity.[14] An injunction could also lie against the government, minister or other public official in their official capacity. The court will readily grant such injunction where it has pronounced a governmental action invalid or unconstitutional.

Courts are, however, careful in granting injunction in constitutional matters where doing so would create or exacerbate public disorder. It is worth noting that the Fundamental Rights (Enforcement Procedure) Rules[15] give the court statutory power to grant *ex-parte* or post judgment orders of injunction in appropriate cases against government and its agencies[16]. An area of constitutional law where there exists a considerable doubt as to the availability of the remedy of injunction concerns the p*res*entation of a bill or other instrument for presidential assent or for the approval of the executive council, An injunction can also lie against the state or any of its organs or agencies to restrain the breach of the Constitution or any other law of the Nation. Similarly, the state can obtain an order of injunction against any person or body of persons to restrain the breach of the Constitution or any other law of the Nation. The State itself has the imperative duty to ensure that the Constitution is not breached. Injunctions have also been granted in the area of public law to restrain breach or threatened breach of statue even where the statute makes provisions for appropriate penal sanctions for its breach.

An issue of moment in granting injunction in constitutional matters is who can bring an action for injunction against a breach of the constitution. Is the Attorney General

[14] Ibid p. I05
[15] 2009
[16] order 4 r 3 Fundamental Right (Enforcement Procedure) Rules 2009

the only competent person to institute such action or can a private person, on the basis of citizen standing, also institute an action in this regard?

(l) Companies Matters

An equitable remedy of injunction may be granted to restrain the directors of a company who are reasonably suspected to act ultra vires the company's objects from proceeding with the ultra virus act.[17] This is very fundamental in the dispensation of justice in Nigeria.

[17] Usman A. K. Op. Cit p. 106

CHAPTER FOUR; CONSEQUENCES OF DISOBEDIENCE TO *INTERIM* AND INTERLOCUTORY INJUNCTIVE ORDERS

4.1 Introduction

In the preceding chapters, the researcher centered on the *interim* and interlocutory types of injunctions and other related issues, such as procedure for the application for injunctive orders, instances for application of injunctive orders, instances where Injunctive order cannot apply and conditions to be fulfilled before the orders can be granted by the court. This chapter would focus on how *interim* and interlocutory injunctive orders being sought and obtained are served on the respondents and the procedure for the service as well as the consequences of disobeying them.

4.2 Service of the order of injunction

When an application for orders of *interim* or interlocutory injunctions succeeds the next task ahead is how such an order obtained should be served on the respondent in order for the applicant to enjoy the fruit of his Application. This is because service is what often gives the respondent notice of the existence of such order of the court against him particularly *interim* order which is usually granted in the absence of the responding party.

The service of an order is meant to bring to the attention of the respondent the existence of an order against him. The issue of service is fundamental and where an order is not served, the court would be constrained to take any step further towards the execution of such an order[1]. Where there is failure to serve a party with the copy of the order for injunction, it goes to the root of the proper procedure of litigation. Also, a person required to be served but who was not served is entitled to have any order

[1] Ogundayisi p. 102

made against him set aside as a nullity because service is a condition precedent for a court assuming jurisdiction.[2] Service of an order of injunction like every other court process is the duty of the Sheriff or Bailiff of the court or police constable or any other person so appointed to serve court process.

Service may be personal or by substituted means. Personal service means the delivery of the copy of the order or court process to the person directed in the order or process personally. In certain situations, personal service may not be required; for instance, where a respondent authorized in writing his legal practitioner to accept service and such a legal practitioner enters appearance on his behalf

Be that as it may, there are two modes of serving the order of injunction namely order: Personal service, and substituted service.

4.2.1 Personal Service

This is the delivery of the injunctive order to the person to be served personally. In some cases, personal service may not be required where the respondent has authorized his legal practitioner in writing to accept service and such a legal practitioner enters appearance on his behalf. The written authority given to the legal practitioner must be attached to the memorandum of appearance filed by such legal practitioner.[3] In Lagos, persons who are under legal disability shall be served through their guardian. However it is provided in this rule of court that personal service on a minor who is over 16years of age living independently or doing business is good and sufficient.[4]

In Abuja and Kano, service on an infant shall be affected on his Father or guardian. If he has none, then upon the person with whom he resides or under whose

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2 Ibid p. 103

3 order 7 Rule 3 Lagos and Oyo Rules, order 11 Rules 3 Abuja and order 12 Rule 3 Kano.

4 order 7 Rule 6 (1) Lagos HCCPR, 2012.

care he is.[5] Where after due diligence personal service of the order of court proves to be practically impossible, the available option to the applicant in law is to resort to substituted service where it is allowed, by applying for, same before the court.

4.2.2 Substituted Service

This situation usually arises where the respondent could not be personally served with an order of the court after due diligence by the serving officer/person. Where a court process cannot be effected on a party personally, substituted service may be resorted to.[6] Any party wishing to apply for substituted service may bring an application *ex-parte*, for leave of court, to effect such service. Such an application will be supported by an affidavit disclosing various attempts made at personal service. When an order is granted upon satisfaction by the court, then the other party would be served by the substituted means. It should be noted that substituted service is only relevant for natural persons. Therefore, an artificial person such as a company cannot be served by substituted service

However, in respect of a lunatic or a detainee in prison, services should be effected on the head of the asylum or prison, as the case may be.[7] There is no such distinction in Lagos as they are all classified as persons under legal disability but there is a provision in relation to a detainee or a prisoner under order 7 Rule 7 allowing service on the head of the prison, as the case may be.

With Regards to service on the partnership of order of injunction or any court process, service may be effected on any of the partners or at the principal place of business within the jurisdiction of the court, before which the matter is filed. It may also be served upon any person having the control or management of

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5 Order 11 Rule 11 Abuja and order 12 Rule 11 Kano.

6 Order 7 Rule 5 Lagos and Oyo, under 11 Rules 5 Abuja and order 12 Rules 5 Kano.

7 Order 11 Rule 10 Abuja and order 12 rule 10 Kano

the partnership business.[8] In respect of companies, section 78[9] provides for service of processes on companies registered under the Act. It states that such service should be in accordance with the rules of court that is applicable. Under the various high court rules, service of order or court process may be effected on any director, secretary or other principal officers of the company or by leaving it at the corporate head office of the company and same is deemed as proper service.

It is not acceptable to effect such service at the branch office of the company. The mode of service on a limited liability company is as provided under Section 78 of CAMA and the relevant rules of court. Under that law, service on a company can only be effected at its registered office and not its branch office.

However, it is desirable that service on company ought to be at the registered office, order could effectively be served on a corporate body when served on any of it branches. These positions seem to be true position of the law when the provisions of the rules of courts are examined. Order 7 provides thus:

‘‘*Subject to any statutory position regulating service on a registered company corporation or body corporate every originating corporate, every originating proves or other process requiring personal service may be served on the organisation by delivery to a director, secretary, trustee or other senior principal officer of the organisation, by leaving it at the registered, principal or advertised office or place of business of the organisation within the jurisdiction’’.*

In researcher’s humble opinion the underline persons and places could be at a branch of the company or head office or registered office as the case may be. This is also the position under the provision rules of courts[10] the mode of service on a

[8] order 7 Rule 8 Lagos and Oyo Rules, order 11 Rule 7 Abuja and order 12 Rule 7 Kano.

[9] Companies and Allied Matters Act.

[10] order 11 Rule 8 Abuja, order 2 Rule 8 Kano and order 7 Rule 9 Oyo Rules

limited liability company is as provided under Section 78[11] and the relevant rules of court. Under that law, service on a company can only be affected at its registered office and not its branch office. it is worthy of note that there could not be substituted service on a corporation and the rules on substituted service on a cooperation and the rules on substituted service only applied to natural persons.

The implication of failure to comply with the law will affect the foundation of the case. Failure to serve a process where service of process is required is a failure which goes to the root of a proper procedure of litigation. Also, a person required to be served but who was not served is entitled to have any order made against him set aside as a nullity, because service is a condition precedent for a court to assume jurisdiction over a matter. Nonetheless, unincorporated business enterprise may be served with **a**n order of court on a partner or persons apparently in control of management of the business.

Where a party has been served either personally or by substituted means, the person effecting service is usually required to depose to an affidavit of service stating among others, the fact of service, date time, place and mode of service. There should also be exhibited the acknowledgment of service where appropriate. The affidavit of service is prima facie proof of the service of the order or process.[12]

Orders of a competent court of law must be obeyed as long as they subsist if the authority and administration of the court are not to be brought into disrepute, scorn or disrespect. The orders once directed remain binding on parties thereto until they are set aside by a superior court of competent jurisdiction or declared null and void. Thus, once a party on whom the order is directed knows of the subsistence of such an order

[11] Companies and Allied Matters Act

[12] order 7 Rule 13 Lagos and Oyo, order 11 Rule 28 Abuja and order 12 Rule 28 Kano.

of the court, whether valid or not and whether regular or irregular or even perverse, he is obliged to obey it howsoever.

However, in a democratic polity, where the principles of rules of law are well-established in the system, it will be working in an anti-clockwise course, dis*res*pect and in fact an assault on democracy if a person or body of persons however highly placed, shall decide to brush away, relegate and ridicule court's order. The court on the other hand is always protective of its decision and will not allow anybody to ridicule it. A court of law is not a toothless bull-dog, it can bark, bite, break and may, as circumstance may warrant, eat up the bones. The thorny issue of disobedience of court orders had been pronounced upon as long ago as 1846 by Lord Cottenham L.C. in the case of ***Chuk v. Craner Cooper Tempt. Cott***[13] and by Ogundare JSC in the case of ***Rossek v. ACB Ltd***[14] who treated the matter extensively. Below is, inter alia what he said

> *''a party who knows of an order, whether null or valid, regular or irregular cannot be permitted to disobey it. It did not even signify whether the order is drawn up. That there were many cases in which a party had been held to have committed contempt for disobeying an order, which had not only been served, but have not even been drawn up. It would be more dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court or not and that they should obey the order or not''*

Taking a critical observation on the foregoing paragraphs, it is established that, orders of the court are meant to be obeyed no matter what the circumstance may be

[13] 338 at 342, 47 ER 884 at 885

[14] (1993) 8 NWLR (Pt. 312) 382 at Pp. 434-435 S-C

before taking any decision. This leads us to the issue of how the injunctive orders obtained from the court by the applicant are legally enforced in order to enjoy the fruit of the order.

4.3 Procedure for enforcement of orders of injunction

Order of court is not useful if practical step is not taken to enforce the order against whom it is directed. More so, it is human and very likely that the respondent will not want to willingly obey the terms of the injunctive order unless the force of law is used against him. Thus enforcement of order entails the rules and procedure to make use of to realizing the fruit of the injunctive order being granted by the court against the respondent and in favour of the applicant.

All superior courts have a uniform procedure for enforcing orders of injunction. The Sheriffs and Civil Process Act[15], governs the enforcement. However, courts established by states laws are not govern by the Act. They can therefore enact their laws for enforcement of the injunctive orders. The applicable rules are rules made pursuant to the Act. One thing worthy of noting at this stage is that, enforcement is not limited to judgments it extend to all sorts of orders of the court as it is enshrine under section 19 Sheriff and Civil Process Act.

However, the applicable laws for the enforcement of the orders of injunction (like any other judgment or order) in Nigeria are the Sheriffs and Civil Process Act (or the respective Laws of various States of Nigeria) and Judgment (Enforcement) Rules made there under. These Acts/Laws are meant to be complied with. Therefore, any intentional and or flagrant refusal and or neglect to obey an order of injunction may lead to or constitutes a civil contempt of court as clearly provided under Section 72.[16]

[15] Cap S6 L.F.N., 2004
[16] Sheriffs and Civil Process Act, 2007

Any person or party that successfully obtained an order of injunction and desires to enforce such order or any coercive order made *ex-parte*, it is a duty on such a successful party to cause a copy of such order and form 48[17] to be served on the person affected by the order personally as provided under Sheriffs and Civil Process Act and Judgment (Enforcement) Rules**.** It is also imperative that the form must be endorsed with the court's order. The rule is that an application to issue form 48 should be made to the registrar for the enforcement of such injunctive order by the applicant. When the legal processes or documents are prepared and signed by the Registrar of the court, the rule is well settled that the respondent, Defendant or Judgment debtor shall be personally served with the injunctive order or Judgment. Personal service means nothing other than service or delivery of the court order along with the form 48 on the very person who may stand trial for the disobedience of the court order, if he may fail to comply with such an order. This is because, as earlier stated, defying the court's order means committing contempt of court and it attracts punishment.

However, the intention of formulating these orders is to afford a person whose committal is sought for a failure to obey a court order a hearing before he is committed to prison, such hearing is not the equivalent of a criminal trial in the ordinary manner. It is rather a special procedure to expeditiously deal with the recalcitrant person. Once the court is satisfied that an order was made which a person has refused to obey, he may be sent to prison once it appears notice as in form 49 has been served on him and if the order was made in his absence that a copy thereof has been served on him.

[17] a special form or format provided by the Law which shall be filed with the details of the content of the court order to be served or delivered at the instance of the applicant against the Defendant or respondent accompanied with the copy of the order in which the order of injunction was granted by the court.

In this regard service on any other person rather than the alleged contemnor or dropping it in his office and or house unless there is a court order to that effect, does not constitute proper service in law.[18] Any order of a court of competent jurisdiction remains valid and binding unless and until it is set aside by an appellate court or by the lower court itself when it acted without jurisdiction or discovers impropriety of giving the order later on.

All the same, there is an unqualified obligation on every person against whom an order of injunction is given to obey it unless and until it is set aside for any reason by either the trial court or on appeal. This is because to hold otherwise is to give a party against whom such order is given the expression that it is within his discretion to decide in his wisdom, that the order is invalid and or not binding on him and this will amount to an invitation to anarchy or contempt of court. Thus a party against whom a court order is given must obey it. It is immaterial that it had been wrongly obtained or given *sou motu*.[19] However, the general principle of law is that injunctive order must be obeyed. This principle like any other principle has exceptions. Thus, unless court orders are coercive or injunctive in form, they cannot be enforced by committal sequestration. Consequently, a declaratory order merely declares the rights of the parties and is dormant.

Beyond that, it has no force of execution like other injunctive or coercive orders. When a court makes only a declaratory order, it is not contempt for the party affected by the order to refuse to abide by it. If he so refuses, then the other party in whose favour the court makes the declaratory order can go back to the court and seek an injunction to enforce the law. This is equally because the basis of the practice of the courts in making declaratory orders rather than granting injunctive or other coercive

[18] Usmann A. K. Op. cit. p. 122

[19] Ibid

relief is where the respondent/defendant is a responsible authority. It is thought inconceivable that a declaratory order would not result in the plaintiff obtaining his right. Moreover, obedience to the order of the courts is very fundamental for peace and stability of every nation notably Nigeria, because that is what will bring about true dispensation of justice thereby protecting the rights of parties and or citizens of Nigeria in general.

4.4 The consequence of disobedience to the order of injunction

Orders of the court are meant to be obeyed by the party they are directed to. Moreover, injunctive orders are not exception to the above mention rule therefore, they should be obediently observed. Any party or individual that flagrantly refused to comply with an order of the court is referred to as a contemnor is. A contemnor is one who has committed contempt of the court. He is the person on whom an order of a court of competent jurisdiction is directed to do or restrain from doing an act and who in defiance or seeking one subterfuge or the other refuses to comply with the order so made.

Therefore, it is the essence of issuance of forms 48 and 49 pursuant to the Sheriffs and Civil Process Act in the contempt proceedings to appraise and warn the party on whom they are issued that he risks being put in Prison custody if he does not comply with the contents of the forms which proves that he is a contemnor. The forms when served, afford the contemnor with the opportunity to recant. These forms provide him with a chance to try and comply with the order of the court. Therefore, if the person upon whom the forms were served takes immediate steps to comply with the said order of the court all he needs to do is merely to immediately inform the court that he had complied with the order. There would therefore be no need to proceed further with him.

Conversely, failure to obey any order of injunction is a clear contempt of court and the court has the power to commit the contemnor to prison for the contempt he committed and not for the case between him and the other party. This is not only for the party against whom the order is directed but any other party, who knowing of the existence of the order of injunction proceeds to assist in its breach. Let us now see who a contemnor is, types of contempt and what he (the contemnor) deserves for the defiance of the order of the court.

Contempt of court embraces such undesirable acts as insult or unpleasant comments with very disturbing motives against a court and smearing or besmirching its dignity, its majesty, its aura, its responsibility, or indulging in expensive sinister and offensive acts or words that would lower the esteem of the court in the eyes of the public. Nonetheless, there are two kinds of contempt; civil and criminal contempt. Civil contempt affects the party on whose behalf it was made while criminal is a willful disobedience or disregard of the court's order. By its nature, punishment for contempt is the exercise of the powers of the court to punish an offender for an act that somehow affects the dignity of the court in the administration of justice. It is inherent power in that it is innate to the court once it is established.

The history of punishment for contempt by the court could be traced to an order made by one Lord Chief Justice of England, Lord Gascoigne who in the middle ages upbraided Prince Henry of Mommonth for his uncouth and unbecoming behaviour in the court. The prince used force to extricate his servant who was brought to the court for his unruly behaviour. The Chief Justice committed the prince for his intolerable unbridled behaviour. The case which however now forms the bedrock of our understanding of contempt matter can judicially speaking be traceable to the

pronouncement of Wilmot J. in ***R v Almon (1765) Wilm 243***. The leaned Judge stated as follows in this matter;

''The power which the courts *have of vindicating their authority is coeval with their first foundation and institution; it is necessary incident to any* court *of justice, either of record or not to fine and imprison for contempt to the* court*, acted in the face of it .... And the issuing of attachments by the Supreme* courts *of Justice in Westminster Hall for contempt out of* court *stands upon the same immemorial usage as supports the whole fabric of the Common Law. I have examined very carefully to see if I could find any vestiges or traces of its introduction, but can find none. It is as ancient as any other part of the Common Law, there is no priority or prosperity to be discovered about it and therefore cannot be said to invade the Common Law, but to act in alliance and friendly conjunction with every other provision which the wisdom of our ancestors have established for the general good of the society*[20]

One therefore can conclude that wherever the circumstances of proceedings dictate the necessary invocation by the court of its inherent powers to punish for contempt and impose the desired punishment, it shall be seen to be to preserve the magesterium of court's greatness in demonstrating that it is the bulwark against any invidious act or behavior that strikes at the root of the rules of law. It is plain and unqualified obligation if every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. This is so even in cases where the person affected by an order believes it to be irregular or even void. So long as it exist the order most be obeyed to the better[21]

[20] *Udo v Jolaoso* (2005) ALL NWLR (PT**. 262) 428 S. C.**

[21] *Udo v. Jolaoso (2005) ALL FWLR (Pt.. 262) 428 S. C.*

Essentially, it is invoked by the court to protect its dignity and majesty so that its orders cannot be trivialized or treated with levity. In other words, a court exercises the power which cognately vested in it as a judicial body. By its nature, punishment for contempt is the exercise of the powers of the court to punish an offender for an act that somehow affects the dignity of the court in the administration of justice. It is inherent power in that it is innate to the court once it is established. Essentially, it is invoked by the court to protect its dignity and majesty so that its orders cannot be trivialized or treated with levity. In other words, a court exercises the power which cognately vested in it as a judicial body.

CHAPTER FIVE; CONCLUSION

5.1 Summary

Injunctions are equitable remedies which were first introduced in England to mitigate the hardship of the Common Law. Nigeria later on encapsulated some of those equitable remedies into its legal system. Since the inception of these principles in Nigeria, many achievements were recorded in the area of justice dispensation in various societies and the country in general. Even though, the grant of these equitable remedies are left within the powers or discretion of the courts, the courts are notwithstanding enjoined to exercise such powers or discretion judicially.

Injunction as a widely accepted and discretionary order of the court has gained currency in the administration of justice in Nigeria and is also prevalent and applicable in diverse aspects of human endeavour and transactions. It is an indispensable remedy in contract where it is ordered to prevent breach thereof. It is applicable in trust to enforce those obligations of trustees for the inte*res*t of their beneficiaries. Injunctions are also relevant to *res*olve conflicts or disputes that ensue from any transaction or agreement. Also injunction is used to prohibit companies from acting beyond the scope of their functions (that is ultra vires). Injunction is also granted to prevent defamatory matters or publications and it can also be granted to regulate and control family matters and judicial proceedings.

The examination of injunctive principles within the matrix of the Nigerian courts shows that legal decision making is best understood as a complex mix of principles and policies and Nigerian courts makes decisions more often having regards to public inte*res*t. Finally, though injunction is an equitable remedy, the court must act judiciously in granting or refusing the injunction and must necessarily take into consideration amongst other things the conduct of the parties. As no two cases are the

same, injunctions should be granted to the peculiar facts of each case, but in any circumstance, justice must not only be done but must be seen to be done.

Throughout this work, an attempt has been made to critically deal with the equitable remedies of injunction, their types, the conditions for their grant, the areas of application, instances where the orders are not granted, the attitude of courts and lawyers towards the matters for injunction, the procedure for the enforcement of the injunctive orders, the consequences of disobediences to the orders of injunction and the role these orders play in the attainment of justice in Nigeria. In a n nutshell the entire work is divided into chapters as follows;

5.2 Observations

Preparation, service, further hearings and enforcement are all essential parts of the process for obtaining injunctions. The costs of making an application for an injunction can therefore be high; although a large amount of the work may ultimately have been necessary for the purpose of the litigation itself, and the injunction process may lead to a *res*olution of the underlying dispute without the need for a trial.

1. It has been observed that there exist a fundamental contradiction or legal conflict between the constitutional doctrine of *Audi altera patem* rule for the fair hearing of all the parties before the court decide on a matter on the one part and the rules of courts and the various High Court Rules which specifically provide and empower the courts to hear one party, consider and grant or refuse the application where the court is faced with an application for *interim* injunction. These conflicts still exist in the legal parlance for application of injunction; that is the Constitution provides that both sides of the parties must be heard before the determination of any matter before the court and the rules of court provide for hearing application *ex-parte* by hearing one side.

2. It is also observed that two fundamentally conflicting principles of law both of which a condition for grant of an interlocutory injunction; one is a judge faced with the determination of an interlocutory application for injunction must limit his authority to the motion or interlocutory applicant alone he must not go into the merit of the case to ensure that before he considers and grants the applicant for interlocutory injunction, the substantive case of applicant must reveal to him that, it contains or discloses serious triable issue.

3. It has been observed that the grant or refusal of the injunctive orders as provided by the rules of courts and as determined in the decided cases, is completely within the discretion of the court despite their significance in the dispensation of justice.

4. Another fundamental observation made is that, some of the injunctive orders being refused by courts are because the applicants could not in one way or the other fulfilled the laid down conditions for the grant of such injunctive orders.

5. It is humbly observed that, orders of injunctions greatly assist in the course of justice, thereby providing *interim* and *interlocutory* reliefs as well as preserving the *res* and maintaining the *status quo ante*, pending the hearing and determination of the substantive application on its merit.

6. Respondents are sometimes prejudiced by the grant of the injunctive orders, because it is unnecessarily delayed; It is however evident that in practice; Counsel, courts and Litigants in some cases, misuse or abuse these equitable remedies of injunction.

5.3 Recommendations

Based on the above observations, the writer makes the following recommendations:

1. Since one of the main aim of *ex-parte* motion is to serve as an emergency legal procedure for the preservation of the subject matter of the suit or protecting the life, property or interest of the applicant from being lost or destroyed and the matter is not finally determined by the grant of the *ex-parte* application for *interim* injunction, rather only used sparingly, the issue still remains to be determined through the hearing of the motion on notice. This legal principle of *ex-parte* application should be allowed to continue in the inte*res*t of justice, despite the apparent legal contradiction against the Constitutional legal principle of hearing the other side so as to enjoy a certain level of preservative legal justice.

   It is recommended that the legal provisions for the *ex-parte* application for *interim* injunction be declared null and void being inconsistent with the clear provision of the constitution to the extent of the inconsistency and the legal process of the *ex-parte* application for *interim* injunction shall cease to exist so as to have full observance and enforcement of the constitutionally guaranteed legal principles of "hear the other side" in upholding the principle of fair hearing.

2. It is recommended that the two legal principles be allowed to subsist as each one is important for the determination of the case. Further, if interlocutory injunction is meant to p*res*erve the subject matter of the suit and a party feels aggrieved by the grant of the application, there are two remedies that are

available to the party; one is the applicant can file motion for the order to set aside. The other option is for the aggrieved party to appeal to the court of Appeal against the ruling in which the orders were granted.

3. The court should always refuse the prayer that the order should be granted pending the hearing and determination of the substantive application as always included in the *ex-parte* application for an *interim* order of injunction.

4. Expeditions hearing and determination of all matters on injunction on merit should be encouraged by the Bar and Bench for speedy dispensation of justice in Nigeria and interlocutory injunctions should be sparingly granted and only upon thorough scrutiny of the affidavit in support of the same.

5. It is also recommended that, all elections should be conducted very early and all election matters should be given expeditions hearing and determination

6. However, where a litigant is found in gross disobedience to an order of the court, such a litigant should be forced to comply with the order.

In this regards, it is now apparent that injunctions as equitable remedies were introduced to lessen the adversity of the Common Law. Since the inception of these principles in Nigeria, remarkable achievements were said to have been recorded in the area of justice dispensation in Nigeria. Despite the fact that, the grant of these equitable remedies are within the powers and discretion of the courts, the courts are notwithstanding enjoined to exercise such powers and discretion judiciously. Furthermore, it is plain that these equitable remedies of injunction play significant roles in the dispensation of justice in Nigeria.

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Sir,

APPLICATION FOR APPOINTMENT OF EXTERNAL EXAMINER

I, Balarabe Sabitu Usman with Registration Number **LL.M/LAW/6398/2011-2012** hereby apply for appointment of external examiner for the defence of LLM *Res*earch entitled; **''The Role of injunction in the Dispensation of Justice in Nigeria''**

Thank you for your kind consideration.

Yours faithfully,

Balarabe Sabitu Usman
LL.M/LAW/6398/2011-2012
08068138890