**AKUNWATA ONYEACHONAM OKOLONJI**

**V.**

**CHIEF A.C.I. MBANEFO & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

THE 3RD DAY OF FEBRUARY, 2017

CA/E/175A/2006

**LEX (2017) - CA/E/175A/2006**

OTHER CITATIONS

3PLR/2017/36 (CA)

(2017) LPELR-41887(CA)

**BEFORE THEIR LORDSHIPS**

JOSEPH TINE TUR, JCA

RITA NOSAKHARE PEMU, JCA

MISITURA OMODERE BOLAJI-YUSUFF, JCA

**BETWEEN**

AKUNWATA ONYEACHONAM OKOLONJI Appellant(s)

AND

1. CHIEF A.C.I. MBANEFO

2. IGWE N.A.U. ACHEBE Respondent(s)

**ORIGINATING COURT**

HIGH COURT OF ANAMBRA STATE, ONITSHA JUDICIAL DIVISION (Ruling delivered on 12th April, 2006 WITH of Hon. Justice J.C. Nwadi presiding).

**REPRESENTATION/LAWYERS**

E.A. NWORA, Esq. - For Appellant

AND

DR J.O IBIK, SAN with him, O.J. IBIK, Esq., K.I. OBIANZOR, Esq. and C.M. EJEH, Esq. - For the 1st Respondent.

E.O. OFODILE, Esq. with him, CHIDU CHIGBO, Esq. For the 2nd Respondent. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMINISTRATIVE AND GOVERNMENT LAW:- Principle that *an office is not in the strict sense itself a right but it may be the subject of such a right* – Nature of rights inherent in the office of a Chief or a Family/Communal Head – Legal implications – Need for an administrative/executive authority to act judiciously before interfering therewith – Basis of – Failure thereto – When an interlocutory injunction would issue to restore and preserve the status quo

CONSTITUTIONAL LAW – JUDICIARY:- Section 294(2)-(5) and Section 318(1) of the 1999 Constitution as amended – Decision of a Court – Meaning and alternate designations of – Every judicial determinations by a Justice of the Supreme Court or the Court of Appeal – Constitutional designation of same as a “decision” or an “opinion” – Legal implication

CUSTOMARY LAW - CHIEFTAINCY MATTERS - TRADITIONAL RULER:- Purport of – Deposition/withdrawal of Recognition by a Governor - Exercise of executive power to so withdraw – Basis of – Duty to act judiciously in exercise of conferred power - When would be deemed to have been properly exercised – When an interlocutory injunction would issue to preserve the status quo

CUSTOMARY LAW – CHIEFTAINCY AND COMMUNAL/FAMILY HEADSHIP MATTERS:- Nature of office inherent in the title of a chief or family/communal head – Whether merely honorific or parallels any office known to the English system – Rights attaching thereto – How derived and properly exercised

ETHICS - LEGAL PRACTITIONER - DUTY OF COUNSEL:- Duty as an officer of the Court – Proper way of citing a case/precedent before the Court – Principle that facts and circumstances of a case determines the authorities a learned Counsel should cite in Court to support his argument.- Counsel misrepresenting the decision or character of the Court below before an appellate court – Attitude of appellate court thereto

ETHICS – LEGAL PRACTITIONER – DUTY AS AN OFFICER OF THE COURT:- Duty of Counsel to ensure obedience to the orders of the court especially on the part of his client – Counsel attempting to intimidate the court or attempting to foist a fait accompli on the Court by hinting that any decision of the Court not consistent with the expectations of his client(s) or their privies would be disregarded in honour of their ‘custom’– Attitude of Court thereto as a blatant promotion of recourse to self-help

**PRACTICE AND PROCEDURE ISSUES**

ACTION - CASE CITATION:- What should determine the judicial authority cited by counsel.

ACTION- SELF HELP:- Evidence of on the part of any party to a legal proceeding - Attitude of the Courts thereto.

APPEAL - DUTY/ROLE OF A RESPONDENT - Duty of a respondent in an appeal. What constitute.

APPEAL - ISSUE(S) FOR DETERMINATION:- Proliferation of issues – Attitude of court thereto - Whether formulated issues can be merged - Whether a Court is bound to consider all the issues formulated by the parties – Right of Court, in appropriate cases to refrain from addressing all the issues raised by parties

APPEAL - RECORD OF APPEAL:- Principle that parties and the Court are bound by the record of appeal – Legal effect

COURT - POWER OF COURT:- Pending appeal - Power of the Court of Appeal in relation thereto

EVIDENCE - ADDRESS OF COUNSEL:- Principle that address of Counsel cannot take the place of evidence – Legal effect

JUDGMENT AND ORDER - EQUITABLE REMEDY - INTERLOCUTORY INJUNCTION:- Meaning, nature and purpose of - What the court must consider in an application for interlocutory injunction – When it will be granted.

INTERPRETATION OF STATUTE:- Section 294(2)-(5) and Section 318(1) of the 1999 Constitution – Interpretation of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

Chief A.C.I. Mbanefo filed a suit against (1) Igwe N.A.U. Achebe and (2) Akunwata Onyeachonam Okolonji before the High Court of Justice, Anambra State in the Onitsha Judicial Division praying the court, inter alia, for a declaration that under Onitsha native law and custom the plaintiff is, and was, duly and properly installed and initiated into the vacant seat of ODU OSODI of Onitsha in 1994; a declaration that under Onitsha native law and custom the plaintiff is entitled to occupy the traditional office of ODU OSODI of Onitsha and the traditional rank of NDICHIE UME and NDICHIE UKPO for life; a declaration that under Onitsha native law and custom the plaintiff as ODU OSODI, NDICHIE UME and MBANEFO ODU III is entitled to enjoy and exercise the rights and other privileges, powers and benefits accruing therefrom to the exclusion of all and sundry; a declaration that the purported installation by the 1st defendant of the 2nd defendant as ODU OSODI of Onitsha in the life time of the plaintiff as the incumbent of that traditional office and title is illegal, inconsequential, null and void and contrary to Onitsha native law and custom; a perpetual injunction restraining the 2nd defendant from parading himself as ODU OSODI of Onitsha and/or purporting howsoever to act in that capacity; a perpetual injunction restraining the 1st defendant from holding out the 2nd defendant as ODU OSODI of Onitsha.

Pleadings were filed and exchanged between the parties. The 1st respondent filed an application for interlocutory injunction pending the determination of the substantive suit by.

The interlocutory injunction was contested on affidavit and counter affidavit evidence.

DECISION(S) APPEALED AGAINST

The trial Court made a bench Ruling granting the interlocutory injunction and thereby restraining the 2nd defendant from parading himself as ODU OSODI of Onitsha and/or purporting howsoever to act in that capacity and restraining the 1st defendant from holding out the 2nd defendant as ODU OSODI of Onitsha pending the determination of the suit on merit. Dissatisfied, the 2nd defendant/appellant against the Ruling.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

(i). Whether in spite of the applicant’s application for the withdrawal of the motion, the Court was right in insisting on hearing the same?

(ii). Whether in the nature of the claims being advanced and the pleadings, the applicant had in fact a legal right to the title in issue, worthy of protection by an interlocutory order?

(iii) Whether the Court was right in the conclusions arrived at on the issues of status quo ante bellum and balance of convenience between the parties in the suit?

(iv) Whether the order made can be justified based on the issues raised and the materials placed before the Court.

*BY THE RESPONDENT*

*“1. Whether in spite of applicants (sic) application for the withdrawal of the motion, the Court was right in insisting on the hearing the same?*

*2. Whether in the nature of the claims being advanced and the pleadings, the appellant had in fact a legal right to the title in issue worthy of protection by an interlocutory order?*

*3. Whether the Court was right in the conclusions arrived at on the issue or status quo ante bellum and balance of convenience.*

*4. Whether the order made can be justified based on the issues raised and the materials placed before the Court.”*

*AS ADOPTED BY COURT*

[The Court adopted but merged the issues for determination distilled by the Appellant thereby producing two issues through the merging of (ii)-(iii) and retaining the first issue as its issue two, to wit:

“(1) Whether there was enough materials upon which the learned trial Judge could have granted or refused the application for interlocutory injunction pending the determination of the substantive suit.

(2) Whether the learned silk representing the 1st respondent in the Court below withdrew his motion for interlocutory injunction but the learned trial Judge insisted that the application must be heard.”]

DECISION OF COURT OF APPEAL

1. Since the Constitution of the Federal Republic of Nigeria, 1999 as amended came into effect on 29th May, 1999 the intention of the legislature is that any determination by a superior Court of record established under the Constitution that hears evidence and relies on the final addresses of Counsel to determine the dispute should title its reasoning as *“decision”* under Section 294(1) of the Constitution. Every determination by the Justices of the Supreme Court and the Court of Appeal is either a *“decision”* or an *“opinion”* under Section 294(2)-(5) of the Constitution.

2. Under Section 318(1) of the Constitution, an interlocutory decision qualifies as a *“decision”* of court alongside other *determination of the Court which includes judgment, decree, order, conviction, sentence or recommendation.* However, whether a decision is final or interlocutory depends n the circumstances of each case.

3. An appellate court is bound by the entries made by the learned trial Judge in regard to the proceedings against which the appeal arose. A Court of Appeal will act only on the printed and certified true copies of the record of appeal.

4. *The jurisdiction to grant an interlocutory injunction is related not to the most just method of protecting established rights, but to the most convenient method of preserving the status quo while rights are established. Interlocutory injunctions may be prohibitory, mandatory, or quia timet. Normally such an injunction* *remains in force until the trial of the action, but an interim injunction may be granted, which endures for some shorter specified period. If the parties consent, the interlocutory hearing may be treated as a final trial if the dispute is of law. But this will not be possible if the dispute is of fact, as affidavit evidence is unsuitable for such issues.*

5. The case of Chief A.C.I. Mbanefo in the Court below is that he was duly and properly installed and initiated into the vacant seat of Odu Osodi of Onitsha in 1994 and is entitled to occupy that traditional office and hold the traditional rank of Ndichieume and Ndichie Ukpo for life according to the Onitsha Native Law and Custom hence the Chief sought the declarative reliefs in the Court below coupled with perpetual injunction in paragraph (d) of his claim. If at the end of the trial the Chief is able to prove his claim I think he would be entitled to the perpetual injunction claimed, if not the Court below would dismiss.

6. *An office, which include the office of a Chief, is not in the strict sense itself a right but it may be the subject of such a right. Thus, a person may have a right (in the strict sense) to be appointed to it or to hold it for a period of time. It may also have such rights appurtenant to it, such as a right to salary. In so far as deprivation of the office extinguishes such rights, a decision to deprive is a* *determination affecting the rights of the office holder. Therefore, a decision to depose or deprive the holder of the office can only be deemed proper arrived following a judicious determination in accordance with the rule of natural justice that the individual affected must be given an adequate opportunity to be heard.*

7. No citizen is to take laws into their hands. Courts of Justice do not encourage self-help. Grievances should be submitted to the Courts of law and equity for determination. An interlocutory injunction being one of the devices which ensures that recourse to self-help is restrained while parties ventilate their case before their court.

Appeal against issuance of the interlocutory injunction dismissed.

**MAIN JUDGMENT**

JOSEPH TINE TUR, J.C.A. (DELIVERING THE LEADING JUDGMENT):

Before I delve into a consideration of the substantive appeal, I shall draw attention to the provisions of Sections 294(1)-(5) read together with Section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. The provisions are couched as follows:

*294(2) Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion:*

*Provided that it shall not be necessary for the Justices who heard a cause or matter to be present when judgment is to be delivered and the opinion of a Justice may be pronounced or read by any other Justice whether or not he was present at the hearing.*

*(3) A decision of a Court consisting of more than one Judge shall be determined by the opinion of the majority of its members.*

*(4) For the purpose of delivering its decision under this section, the Supreme Court, or the Court of Appeal shall be deemed to be duly constituted if at least one member of that Court sits for that purpose.*

*(5) The decision of a Court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of Subsection (1) of this Section unless the Court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.*

Section 318(1) of the Constitution reads as follows:

*318 (1) In this Constitution unless it is otherwise expressly provided or the context otherwise requires:*

*xxxxxxxxxx*

*Decision means in the relation to a Court, any determination of that Court*

I have used the word *“Decision”* rather than*“Judgment”* or “*Ruling”* in the determination of this appeal. I could have also employed the word “*opinion*” Since the Constitution of the Federal Republic of Nigeria, 1999 as amended came into effect on 29th May, 1999 the intention of the legislature is that any determination by a superior Court of record established under the Constitution that hears evidence and relies on the final addresses of Counsel to determine the dispute should title its reasoning as *“decision”* under Section 294(1) of the Constitution. Every determination by the Justices of the Supreme Court and the Court of Appeal is either a *“decision”* or an *“opinion”* under Section 294(2)-(5) of the Constitution. In the Automatic Telephone And Electric Co. Ltd. vs. The Federal Military Government of the Federal Republic of Nigeria (1968) All NLR 416, Ademola, CJN, held at page 420 as follows:

***“****We observe that decisions or judgments are called opinions in the United States and we cannot see the difference between these words in the present context.*

*For these reasons we hold the view that the decision of the learned Chief Justice on the particular question before him was a final decision and that an appeal would lie.”*

Section 318(1) of the Constitution (supra) has defined the word *“decision”* to mean *“in relation to a Court, any determination of that Court and includes judgment, decree, order, conviction, sentence or recommendation.”*  Omitted from this definition is the word “*ruling”; “final”;* or *“interlocutory”* decision or judgment, etc. This is because the Courts have over the years spent a lot of time and energy in trying to determine when a judgment, ruling, order or decision, etc, is *“final”* or *“interlocutory”* to the extent that in Ojora & Ors. vs. Odunsi (1964) NMLR 12, Taylor, JSC held at page 15 as follows:

*It is within the discretion of this Court to grant an application for**extension of time to appeal if the circumstances of the case warrant it. In the particular case on appeal before us the would-be-appellants are out of time because of an error in Law in treating the order sought to be appealed against as a final instead of an interlocutory one, a matter which is not always free from difficulties*

Section 241(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 as amended however provides as follows:

*(1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:-*

*(a) Final decisions in any civil or criminal proceedings* *before the Federal High Court or a High Court sitting at first instance.*

As far as my research can permit, this is the only provision in the Constitution that employs the phrase *final decisions* but without definition.

I have chosen to tag any determination I render in the Court of Appeal as a “decision” or an “opinion” to conform with the requirements of the Constitution. Moreover, every Justice of the Supreme Court or the Court of Appeal has the constitutional right to render an “opinion” or a “decision” or to adopt the reasoning of any of brother Justices that heard an appeal. The determination of the majority of the Justices that heard the appeal constitutes the opinion or decision of the Court of Appeal or the Supreme Court hence there is nothing like a “lead” or a “minority” decision or opinion of the Justices of the Supreme Court or the Court of Appeal. The lack of understanding of the provisions of Section 294(3) of the Constitution often misleads laymen and women into holding the erroneous view that some Justices rendered majority or minority decision or an opinion in the course of hearing and determining an appeal particularly on sensitive causes and matters thereby ridiculing some Justices but applauding others, etc. I am however of the humble opinion that the requirements in Section 294(1) of the Constitution have no application to Section 294(2) and (3) of the Constitution until there is a Constitutional amendment.

I shall now consider the facts of this appeal.

The substantive proceedings were initiated by Chief A.C.I. Mbanefo against (1) Igwe N.A.U. Achebe and (2) Akunwata Onyeachonam Okolonji before the High Court of Justice, Anambra State in the Onitsha Judicial Division holden at Onitsha on 1st March, 2005. The substantive claim read as follows:

*(a) A declaration that under Onitsha native law and custom the plaintiff is, and was, duly and properly installed and initiated into the vacant seat of ODU OSODI of Onitsha in 1994.*

*(b) A declaration that under Onitsha native law and custom the plaintiff is entitled to occupy the traditional office of ODU OSODI of Onitsha and the traditional rank of NDICHIE UME and NDICHIE UKPO for life.*

*(c) A declaration that under* *Onitsha native law and custom the plaintiff as ODU OSODI, NDICHIE UME and MBANEFO ODU III is entitled to enjoy and exercised the rights and other privileges, powers and benefits accruing therefrom to the exclusion of all and sundry.*

*(d) A perpetual injunction restraining the defendants jointly and severally from interfering with, and/or continuing to obstruct, interfere with, deny or howsoever preclude, the plaintiff in the exercise and/or enjoyment of the rights, privileges, powers and other benefits accruing to the traditional office and rank of ODU OSODI, NDICHIE UME, NDICHIE UKPO, MBANEFO ODU III under Onitsha native law and custom.*

*(e) A declaration that the purported installation by the 1st defendant of the 2nd defendant as ODU OSODI of Onitsha in the life time of the plaintiff as the incumbent of that traditional office and title is illegal, inconsequential, null and void and contrary to Onitsha native law and custom.*

*(f) A perpetual injunction restraining the 2nd defendant from parading himself as ODU OSODI of Onitsha and/or purporting howsoever to act in that capacity.*

*(g) A perpetual injunction restraining the 1st defendant from* *holding out the 2nd defendant as ODU OSODI of Onitsha.*

Pleadings were filed and exchanged between the parties. Next followed an application for interlocutory injunction pending the determination of the substantive suit by the 1st respondent. The interlocutory injunction was contested on affidavit and counter affidavit evidence. The learned trial Judge granted the prayers for interlocutory injunction against the 1st respondent and the appellant (Akunwata Onyeachonam Okolonji). The appellant appealed on 4th July, 2006 and filed his brief of argument on 16th August, 2006 which was adopted on 3rd November, 2016 when this appeal was argued. The brief set out the facts that have led to this appeal as follows:

*At the time of filing the suit, the plaintiff also filed an application for interlocutory injunction (See pages 19-22), to which the defendants filed their counter affidavits (See pages 54-58 for 1st defendant, pages 79-123 for 2nd defendant and pages 138-143 for plaintiff/applicant’s reply to the counter affidavits). On 22nd April, 2005 the 1st defendant’s Counsel filed the Motion at pages 66-71 contending the incompetence* *of the plaintiff’s suit and the motion was argued, to which the Court delivered a considered Ruling on 21st July, 2005 (Pages 338-342), refusing the application. After the Ruling, Counsel for the plaintiff then applied for the withdrawal of the said application for interlocutory injunction, so as to proceed to hearing on the suit (See pages 143 L11-22), which by the expressed Ruling of the Court was not countenanced. In reaction to that refusal to dismiss the suit 1st**defendant Counsel filed another application at pages 199-205 for stay of proceedings in the cause pending their appeal to this Court against the Court’s Ruling of 21st July, 2005. The application was argued as at pages 346-348 and the Ruling thereon adjourned to 8th March, 2006, when it was delivered (See pages 349-351).*

*Immediately after the Ruling was delivered refusing the stay of proceedings, ending with the Court’s observation that –*

*“This Court is satisfied that this application for stay of proceedings is merely aimed at achieving a delay. Vide case of Panalpina vs. Glenyork (2002) 8 WRN 114 at 123. There is no appeal pending before any appellate Court.*

*The application is aimed solely as delay tactics.”*

*The Court invited Counsel for the plaintiff to move their application for interlocutory injunction (See page 352 L16), to which the Counsel obliged, despite the earlier application for its withdrawal and the fact that the Motion was not fixed for hearing on that date. At the end of the hearing thereon (See pages 23-26 for applicant’s brief of argument, pages 59-63 for 1st respondent’s brief, pages 76-78, pages 144-148 for applicant’s reply to respondent’s brief, and pages 292-302 for 2nd respondent’s further written address) and the argument recorded at pages 346-348, the Court delivered a considered Ruling granting the injunction. The Ruling of the Court appealed against is at pages 360-371. Our Notice and Grounds of Appeal are contained in the supplementary Record on the Appeal at pages 4-12.*

The appellant formulated the following issues for determination:

*(i). Whether inspite of the applicant’s application for the withdrawal of the motion, the Court was right in insisting on hearing the same?*

*(ii). Whether in the nature of* *the claims being advanced and the pleadings, the applicant had infact a legal right to the title in issue, worthy of protection by an interlocutory order?*

*(iii) Whether the Court was right in the conclusions arrived at on the issues of status quo ante bellum and balance of convenience between the parties in the suit?*

*(iv) Whether the order made can be justified based on the issues raised and the materials placed before the Court.*

The appellant relied in this appeal on a Reply Brief filed on 14th November, 2006. The 1st respondent’s brief was filed on 25th October, 2006 and also adopted on 3rd November, 2006 when the appeal was argued. In paragraphs 1.1 to 2.19 pages 1-7, Dr. J.O. Ibik, SAN of learned Counsel to the 1st respondent set out the following facts to wit:

*This is an interlocutory appeal brought by the 2nd defendant/appellant against the Ruling of the High Court of Anambra State (Onitsha Judicial Division) delivered by Hon. Justice J.C. Nwadi in Suit No.O/109/2005 on 12th April, 2006 granting interlocutory injunction restraining the 2nd defendant/appellant and the 1st defendant/respondent in terms of the orders* *sought by the plaintiff/respondent in a motion on Notice canvassed in the said suit.*

*The instant appeal is filed pursuant to Order for enlargement of period and leave granted by the Court of Appeal on 28th June, 2006. By a separate Notice of Appeal dated 25th April, 2006 the 1st defendant/respondent had appealed against the said ruling. Both interlocutory appeals have been duly entered separately in the respective individual capacities of the appellants.*

*FACTS OF THE CASE:*

*For a proper appreciation of the argument canvassed in the instant appeal, the pertinent facts of the case may be succinctly stated as follows:*

*In or about 1994, during the tenure of Igwe Ofala Okagbue as the recognized traditional ruler of Onitsha, the plaintiff/respondent was installed ODU OSODI of Onitsha sequel to vacancy in the traditional NDICHIE UME title of ODU OSODI of Onitsha occasioned by the death of the incumbent. The 2nd defendant/appellant contested and lost the selection and installation to the said vacant title. He also unsuccessfully challenged the plaintiff/respondent and the said traditional ruler in Suit No.O/670/1994 in the lower Court. After the* *death of the said Igwe Ofala Okagwe the 1st defendant/respondent emerged as the successor to the traditional rulership title of Obi of Onitsha in controversial circumstances giving rise to a number of actions still pending in the lower Court. The plaintiff/respondent sued the 2nd defendant/appellant and the 1st defendant/respondent in Suit No.O/109/2005 for the wrongful act of the 1st defendant/respondent purporting clandestinely to install the 2nd defendant/appellant as the ODU OSODI of Onitsha during the incumbency of the plaintiff/respondent as ODU OSODI and in breach of the native law and custom of Onitsha.*

*The action in Suit No.O/109/2005 is in personal capacity. Simultaneously with the commencement of the said suit on 25th February, 2005 the plaintiff/respondent brought a motion on Notice for interlocutory injunction restraining the defendant in terms of the prayers therein sought. The said motion at pages 19 to 26 of the record was initially fixed for hearing on 25th April, 2005 before Hon. Justice Umeadi, J. But before the hearing date the case was transferred to Honourable Justice J.C. Nwadi for reasons or grounds undisclosed to the* *plaintiff/respondent.*

*With the commencement of the said action the plaintiff/respondent filed his statement of claim see pages 4 to 11 of the record. After entering an appearance the 1st defendant/appellant filed his own statement of defence on 6th April, 2005 (see pages 31 to 43 of the record) coincidentally with the statement of defence of the 2nd defendant/respondent at pages 44 to 53 of the record.*

*On 18th April, 2005 the 1st defendant/appellant reacted to the motion for interlocutory injunction by filing a Counter-Affidavit and written address at pages 54 to 65 of the record. On 22nd April, 2005 the 2nd defendant/respondent also filed his own Counter Affidavit and written address at pages 76 to 125 of the record.*

*On 22nd April, 2005 the 1st defendant/appellant brought a motion on Notice (with no return date q.v. pages 66 to 71 of the record) seeking stay of further proceedings in the substantive suit and also challenging the competency of the said suit. On the same day the 2nd defendant/respondent reacted to the motion for interlocutory injunction by filing his own Counter Affidavit and Written Address. Due to the peripheral nature of the* *orders sought in the motion earlier brought by the 1st defendant/appellant challenging the competency of the plaintiff’s action Hon. Justice J.C. Nwadi, J., to whom the case was meanwhile transferred by order of the State Chief Judge decided, with the consent of Counsel for all the parties, to first hear the said motion.*

*On 21st July, 2005 the lower Court delivered its Ruling dismissing the said motion referred to in paragraph 2.8 (supra). Counsel for the plaintiff/respondent called the attention of the lower Court to the**undisposed motion for interlocutory injunction specified in paragraph 2.5 (supra) and suggested that it might be better if the substantive suit were proceeded with since pleadings had been filed and exchanged. Learned Counsel for the 1st defendant/appellant reacted to the said suggestion by asking Counsel for the plaintiff/respondent to make up his mind whether to withdraw the said motion or not. Learned Senior Counsel for the 2nd defendant/respondent opined that the suggestion by Counsel for the plaintiff/respondent was tantamount to withdrawal of the motion under reference. However, the lower Court was firmly of the view that the* *Court ought to allow the Counsel for the plaintiff/respondent time to make up his mind whether to withdraw the said motion or not; and so ruled.*

*Immediately thereupon the learned Senior Counsel for the 2nd defendant/respondent moved his motion at pages 154 to 170 of the record for leave to amend the 2nd defendant’s statement of defence. This was granted without objection. Thereupon 2nd defendant/respondent filed his amended statement of defence with counter-claim at pages 232 to 241 of the record.*

*The 1st defendant/appellant appealed against the order dismissing his preliminary objection by his Notice of Appeal dated 29th July, 2005 (see pages 181 to 188 of the record). He followed up the said Notice of Appeal with another motion on Notice dated 14th February, 2006 praying for stay of further proceedings q.v. pages 199 to 222 of the record. At the end of the proceedings on 21st July, 2005 the case was formally adjourned to 2nd and 3rd November, 2005 “for motion or hearing of the substantive suit” see page 244 lines 17 to 19 of the record. The next hearing date was on 21st February, 2006 due to intervening public events.*

*On* *21st February, 2006 the 1st defendant/appellant moved his motion aforementioned. This application was contested and Ruling thereon was adjourned to 8th March, 2006 when it was delivered with an order of dismissal of the said application.*

*On 8th March, 2006 after the said Ruling was delivered Counsel for the plaintiff/respondent reminded the lower Court of the long-outstanding motion for interlocutory injunction aforesaid and begged to move. He was permitted to move the application. Thereafter Counsel for the 1st defendant/appellant and 2nd defendant/respondent were, on their application, granted an adjournment to 20th March, 2006 to respond to the argument already canvassed in support of the application for interlocutory injunction.*

*By a motion on Notice dated 15th March, 2006 (with no return date) q.v. pages 242 to 257 of the record, learned Counsel for the 1st defendant/appellant prayed the lower Court for stay of proceedings and for an order expunging Counsel’s submissions in support of the application for interlocutory injunction. Also prayed for is an order setting down the said application for interlocutory injunction for argument* *afresh. This further application for stay was belittled by Counsel for the plaintiff/respondent. Learned Senior Counsel for the 2nd defendant/respondent also indicated his willingness to argue his response to the argument for interlocutory injunction. The lower Court directed the Counsel for the defendant/appellant to argue in opposition to the application for interlocutory injunction. Both Counsel submitted their respective arguments accordingly. Thereafter Ruling was reserved for 27th March,**2006. It was**however delivered on 28th March, 2006 due to intervening public holiday.*

*The issues joined in the pleadings of the parties are very fundamental and far-reaching as the numerous paragraphs in the statement of claim (at pages 4 to 11 of the record) the 1st defendant’s statement of defence (at pages 31-43 of the record) the 2nd defendant’s amended statement of defence with counter-claim (at pages 232 to 241 of the record) and the plaintiff’s Reply (at pages 288-291 of the record) ostensibly disclose. There was hardly any substantial common grounds between the parties in their averments, contrary to the view expressed in the* *appellant’s brief at page 2.*

*The limited contest on the question of interlocutory injunction was joined in the parties’ affidavit, counter affidavits and affidavit in reply contained respectively at pages 21 to 22, 54 to 58, 79 to 123, 138 to 143 of the record.*

The learned silk identified the following issues for determination:

*1. Whether in spite of applicants (sic) application for the withdrawal of the motion, the Court was right in insisting on the hearing the same?*

*2. Whether in the nature of the claims being advanced and the pleadings, the appellant had in fact a legal right to the title in issue worthy of protection by an interlocutory order?*

*3. Whether the Court was right in the conclusions arrived at on the issue or status quo ante bellum and balance of convenience.*

*4. Whether the order made can be justified based on the issues raised and the materials placed before the Court.*

The 2nd respondent’s brief filed on 22nd February, 2007 was withdrawn on 3rd November, 2016 and accordingly struck out.

I am of the humble opinion that it is a party that is aggrieved with the decision of a trial Court that usually appeals and formulates issues for determination. The duty of a respondent is to answer only the material points of substance raised and argued in the appellant’s brief, showing why the appeal should be dismissed. That is the purport of the provisions of Order 18 Rules 3(1)-(4) and 4(1)-(2) of the Court of Appeal Rules, 2011, which are couched as follows:

*“3(1) The brief, which may be settled by counsel, shall contain an address or addresses for service and shall contain what are in the appellant's view, the issues arising in the appeal as well as amended or additional grounds of appeal.*

*(2) Where possible or necessary, the reasons in the brief shall also be supported by particulars of the titles, dates and pages of cases reported in the Law Reports or elsewhere including the summary of the decisions in such cases, which the parties propose to rely upon. Where it is necessary, reference shall also be made to relevant statutory instruments, law books, and other legal journals.*

*(3) The parties shall assume that briefs will be read and considered in conjunction with the documents admitted in* *evidence as exhibits during the proceedings in the Court below, and wherever necessary, reference shall also be made to all relevant documents or exhibits on which they propose to rely in argument.*

*(4) All briefs shall be concluded with a numbered summary of the points to be raised and the reasons upon which the argument is founded.*

*xxxxxxx*

*4 (1) The respondent shall also within thirty days of the service of the brief for the appellant on him file the respondent's brief which shall be duly endorsed with an address or addresses for service.*

*(2) The respondent's brief shall answer all material points of substance contained in the appellant's brief and contain all points raised therein which the respondent wishes to concede as well as reasons why the appeal ought to be dismissed. It shall mutatis mutandis; also conform to Rule 3 (1), (2), (3), (4) and (5) of this Order.”*

It is permissible to merge issues that overlap to determine the real matter in dispute between the parties. See Anie vs. Uzorka (1993) 8 NWLR (Pt.309) 1 at 16-17.

The parties/Counsel are to assume that I read the proceedings of the lower Court, and the contents of all the briefs adopted in argument hence, I do not need to embark on a detailed summary of Counsel’s arguments to arrive at this decision. This was the posture of the Privy Council in Ijale vs. Shonibare, Privy Council Judgments (1941-1973) by Olisa Chukura, SAN, 1980 edition, page 947 where Lord UpJohn held at page 948 as follows:

*“There were many issues of fact before the trial Judge but only one relevant to this appeal, namely, an important issue as to the existence of a ledger or produce book alleged to belong to the appellant which the respondent said, would contain entries relating to the transaction and would establish his case. The appellant denied the existence of any such book and the trial Judge decided this issue in his favour. The Federal Supreme Court differed from the trial Judge fundamentally in holding that this ledger or produce book must be in existence. Therefore it followed, as the appellant had not produced it, that the inference must be drawn that its production would prove unfavourable to him. On this ground they allowed the appeal.*

*In these circumstances some review of the evidence by their Lordships is* *necessary but they propose only to review the pleadings and evidence relating to this question and in no wise to cover the many other matters which were in controversy before the trial Judge, but did not arise on the appeal before the Federal Supreme Court or before their Lordships.”*

The Supreme Court did likewise in Odutola Holdings Ltd. & Ors. vs. Mr. Kunle Ladejobi & Ors. (2006) 5 SCNJ 63where Ejiwunmi, JSC also held at pages 79-80 to wit:

*Against the reversal of this decision, the appellants have raised several issues which I have reiterated above already. But in my humble view, not all the issues raised are necessary for the determination of the appeal. This is because several of the issues raised by the appellants and which the Court below made pronouncements upon did not flow from the ruling given by the trial Court in respect of the application brought before it by the respondents.*

*After a careful perusal of the judgment of the Court below, the grounds of appeal filed against that decision and the subject matter of the application that led to the ruling of the trial Court, it is my respectful view that the only* *issue that are germane to this appeal are the 1st and 5th issues filed by the appellants. As the issues raised by the respondents are not dissimilar, they will be considered in the light of the arguments advanced in the consideration of the merits of the appeal.*

In the absence of a cross-appeal or a Respondent’s Notice, I shall determine this appeal on the issues formulated in the appellant’s brief. Upon merging the issues formulated by the appellant, the first question I shall determine will cover issues (ii)-(iii) as to whether there was enough materials upon which the learned trial Judge could have granted or refused the application for interlocutory injunction pending the determination of the substantive suit. I shall then consider issue (i) as to whether the learned silk representing the 1st respondent in the Court below withdrew his motion for interlocutory injunction but the learned trial Judge insisted that the application must be heard.

ISSUE (I):

The proceedings that gave rise to this appeal were conducted in the lower Court on 20th March, 2006. The proceedings is at pages 354 to 359 of the printed record to wit

*20th Day of March, 2006.*

*Plaintiff is present*

*2nd defendant is present.*

*Dr. J.O. Ibik (SAN) of Counsel appears for the plaintiff and with Ibik G.I. (Mrs) and Ikedigwe B.C., Esq.*

*F.O. Ofodile, Esq. of Counsel with Carol Anyikwa (Mrs) for the 1st defendant.*

*E.D. Chukwuma, Esq. of Counsel with C.C. Ononye, J.O. Emordi and Ngozi Okolonji for the 2nd defendant. Counsel says that Mrs. Emordi informs him that J.H.C. Okolo (SAN) asks that matter be stood down.*

*Dr. Ibik (SAN) informs Court that J.H.C. Okolo informed him to stand down the matter that he will make a brief stop at Awka and obtain date and rush down.*

*Court:- Suit is stood down till 10-11am.*

*J.H.C. Okolo (SAN) now appears for the 2nd defendant and with him Dr. Z.C. Anyogu, E.D. Chukwuma, C.C. Ononye, J.O. Emordi, Miss. Ngozi Okolonji for the 2nd defendant.*

*Dr. J.O. Ibik (SAN) adds the name of Chudi Obieze, I.G. Ibik (Mrs) and Ikedigwe B.C. E.O. Ofodile, Esq. appears with Carol U., Anyikwa (Mrs) for the 1st defendant.*

*Dr. J.O. Ibik asks Court to proceed with motion for interlocutory injunction. That each Court has its own duty to bring* *to bear on the litigants and has to act according to the rule of game. Counsel does not understand how application in the Court of Appeal for stay of proceedings in the main can be said to be in danger or rendered nugatory of the Honourable Court merely to conclude argument on the motion for interlocutory injunction aimed at the restoration of the status quo ante which is the restoration of the platform of the main cause will be addressed both in evidence and legal submission. Counsel asks Court to discountenance the invitation to stay proceedings in this case.*

*J.H.C. Okolo (SAN) informs Court that he is prepared to proceed for interlocutory injunction.*

*E.O. Ofodile is now asked to deliver his reply in the motion for interlocutory injunction. Counsel refers to the 1st Counter affidavit filed of thirty paragraph deposed to by Nwolisa Agusiobo dated 18th April, 2005 and filed the same day. Counsel relies on all the paragraph of the affidavit as well as a written address filed on behalf of the 1st defendant/respondent dated 15th April, 2005 and filed on 18th April, 2005. Counsel adds that the gravamen to the objection being sought is that you do not* *make injunction against a completed act.*

*J.H.C. Okolo (SAN) refers to Counter Affidavit filed by 2nd defendant dated 22nd April, 2005 with various exhibits. On 22nd April, 2005 Counsel filed reply brief on the application. Counsel relies to the processes in opposition to the application. Summary of 2nd defendant’s position that going by the statement of claim. Counsel wishes to direct Court’s mind to paragraphs 34 and 36, paragraph 34 states that 2nd defendant has since March, 1994 assumed paraded himself as Odu. Refers to the paragraph which publicly terminated what plaintiff use to enjoy. Counsel says that plaintiff is now asking in 2006 to wave a bond interlocutory order. Adds that equally does not aid the indolent. Counsel allies himself with the issue of the act having been completed long ago. This type of order being sought is not amenable.*

*Counsel observes at the claim at paragraph 42(a), (b) and (c) plaintiff is asking to reach a finding that his first installation was in order and requests his Lordship that as since that installation is upheld no one will in his life time be installed. Simple nationality demand that the validity* *of his recognition has to be reached that the Court can reach the decision that he was properly installed at the end of the case. Counsel states that until that decision is reached the Court will be jumping the gun before reaching the point.*

*Refers to the life time exclusive right is subject to evidence which are matters of customary law and until the Court hears evidence will not be in a position to reach decision one way of the order. Counsel urges Court to have regard to the case of the Supreme Court in Elesie Agba vs. Okogbue (1991) 7 NWLR (Pt.204) at page 391.*

*Judgment written by Hon. Justice P.K. Nwokedi dealing with contemporary societal customary law and his view is that customary law is never static and if it were it will lose its essence. In this case an age grade imposed particular pattern of conduct of all the people coming to the group and in the course of it, certain sanctions were imposed for non-compliance, and when it occurred they sequestrated or seized his property and the victim went to Court and said the grade has no rights to seize his property and the ultimate view of the Supreme Court that conduct must be viewed with the* *acceptance of the conduct within the community unlike what it used to be before our forefathers decisions is that the conduct was not enforced even though they did not say the conduct was repugnant, that is a conduct which had existed for centuries was rejected.*

*The relevance is that the customary practice is a volatile concept and that what our forefathers did is not what happens today. States that plaintiff should get into the witness box and say how he is entitled to. Counsel refers to another aspect is the propriety of making the order for interlocutory injunction when the time state of the past have been accepted by both sides.*

*Counsel states that the title is not something personal but created within Onitsha indigenes and the rights and obligations revolve within the same community and not the person so installed but the community and that it requires the acceptance of the community to wear an empty garland and if it is not accepted by the community it becomes meaningless.*

*Submits that community interest cannot be stopped at this stage can not say to the 2nd defendant stop parading yourself as Odu, until I reach a decision in this suit.*

*And that going by the community essence any decision one way or other will not change the order. Counsel refers to Bulunkutu vs. Zwangina (1997) 11 NWLR (Pt.529) 526 particularly 539-540 that Court should desist from making orders in vain and if the community says they don’t know the person in favour of interlocutory injunction where then is the Court. The common parlance is that you take out fish from Anam citizen you have affected the entire Anam citizen. Submits that the balance of convenience is on the Onitsha community and not on the dramatis person, Counsel urges Court to hold that such orders ought not to be made at this stage let the plaintiff go into the witness box. Akinwose vs. AIT Ltd. (1961) WRNLR 116 urges Court to reject the application.*

*Dr. Ibik seeks an indulgence to use the affidavit sworn by plaintiff/applicant raising a new fact that were not contained in the plaintiffs’ supporting affidavit for interlocutory injunction. Refers to the written address and reply to point of law.*

*Counsel observes that at the stage of interlocutory application an iron clad (gate) between the matters to be determined in the main case and* *the matters raised in the interlocutory injunction. Refers to points raised by J.H.C. Okolo (SAN) the points in statement of claim and substantive reliefs claimed opining that until your Lordship comes to the conclusion that the plaintiff is entitled to the declaration sought by him one cannot look at the interlocutory application. That is because the position of 2nd defendant was accepted to have been in existence since 1994 that Court should not grant the application. Counsel states that 2nd defendant by his amended statement of defence has put in a declaration in his favour in his counter claim. Both claim and counter claims are to be addressed at the hearing of the substantive suit not at this stage of interlocutory injunction. Any point for the substantive trial should not be nibbled at this stage for interlocutory application the triable issues was distilled from NAL Bank (2002) states that the ratio in that case is that the Court looks at the affidavit materials so as to determine whether there is a triable issue.*

*On the issue of completed act Governor of Lagos State, Onyeso & Nebedom, where the Supreme Court held that where the alleged* *complete act is the very cause of action the Court must ignore the so called completed act. It is the exercise of the Court’s discretion to order injunction. Refers to paragraph 2 of written address. Akibu vs. Oduntan states that it is non-issue Onitsha indigenes are not parties to the suit, states that in plaintiff’s affidavit 2nd defendant insatiable quest to be an Odu in 1994 ended up in a fiasco in Suit No.O94 cited which was taken out and the present plaintiff and late Igwe of Onitsha that no body appointed him Odu and he recited and said he was no longer interested.*

*On issue of delay, action is taken with the coming into play with 1st defendant, the two collaborated one with the other secretly to install 2nd defendant as Odu and as soon as it was discovered plaintiff came to Court. Submit that balance of convenience tilts in favour of the plaintiff especially when Onitsha community alone is not part of the game. Submit that 2nd defendant stops parading as Odu till the end of the suit.*

*J.H.C. Okolo refers to Court to the exhibits in this trial in view of Exhibits “B”, “C” and “F” and* *alongside Onitsha custom in the counter affidavit says that simply action is that 2nd defendant filed counter-claim. Refer to pendency of certain action, and that paragraph 15 of reply to amended statement of claim has been overtaken. Counsel refers to completed act and it is only in relationship to interlocutory action is concluded that is final for interlocutory injunction. The Court can set it aside in his judgment if he finds it necessary to do so.*

*Counsel asks the question that if injunction is granted the Odu having been removed and new Odu restrained that will be an affront for Onitsha people. States that substantive case should be heard.*

*Court:- On agreement of Counsel application is adjourned to 27th March, 2006 for Ruling.*

*SGD. J.C. NWADI, JUDGE, 20/3/2006.*

This Court is bound by the entries made by the learned trial Judge in regard to the proceedings of 20th March, 2006. SeeJulius Berger (Nig) Ltd. vs. Femi (1993) 5 NWLR (Pt.295) 612 at 619-620. This Court will act only on the printed and certified true copies of the record of appeal. See N.P.M. Co. Ltd. vs. CNDETS. S. (1971) 1 NMLR 223 at 226; Omohodion vs. C.O.P. (1961) 4 All NLR 594; Q vs. Ogodo (1961) 4 All NLR 700 and Q vs. Isa (1961) 4 All NLR 668.

In Enekebe vs. Enekebe (1964) NMLR 42, Bairamian, JSC held at page 46 that, “*In the cases on discretion which I have seen, the trial Court goes by the material presented to it, and the Court of Appeal goes by the material in the record”.*

I have deliberately reproduced the proceedings conducted in the Court below on 20th March, 2006 to show what E.O. Ofodile, Esq. of Counsel representing the appellant said in argument. At no time did the learned Counsel draw the Court’s attention to the pendency of any motion dated and filed on 15th March, 2006 for stay of further proceedings. Neither was there any suggestion from learned Counsel that the application should be heard together with the motion for interlocutory injunction but this was not opposed by Dr. J.O. Ibik, SAN of Counsel to the 1st respondent nor J.H.C. Okolo, SAN of Counsel representing the 2nd respondent. There is no evidence on record that the motion was listed for hearing on the 20th March, 2006. Indeed, none of the learned Senior Counsel alluded to the motion which has now given rise to issue one in this appeal. The learned trial Judge did not allude to it in his ruling delivered on 12th April, 2006. There is no affidavit from the appellant, E.O. Ofodile, Esq. of Counsel nor Mrs. Carol Anyikwa, Esq. of Counsel led on 20th March, 2006 or J.H.C. Okolo, SAN of Counsel that represented the 2nd respondent challenging the entries in the proceedings of 20th March, 2006. See Gonzee (Nig.) Ltd vs. NERDC (2005) All FWLR (Pt.274) 235where Edozie, JSC held at page 245 paragraphs “G”-“F” to wit:

*The Court and the parties are bound by the record of appeal as certified and is presumed correct unless the contrary is proved. A party who challenges the correctness of record of proceedings must swear to an affidavit setting out the facts or a part of the proceeding omitted or wrongly stated in the record. Such affidavit must be served on the Judge or registry of the Court concerned: See Ehikeoye vs. C.O.P. (1992) 4 NWLR (Pt.233) 57; Sommer vs. Federal Housing Authority (1992) 1 NWLR (Pt.219) 548; Texaco Panama Inc. vs. Shell PDC Nig. Ltd. (2002) FWLR (Pt.96) 579, (2002) 5 NWLR (Pt.759) 209 at 234.*

*The mere* *assertion in his brief of argument by learned Counsel for the plaintiff that the relevant exhibits were before the Court below, at the material time is insufficient to controvert the statement of the Court below to the contrary. Learned Counsel not being the registrar of the Court below who is the custodian of the exhibits, is not in a position to say whether those exhibits were before the Court below at the material time. I am therefore, prepared to agree with the statement by the Court below that the exhibits were not made available to it despite its request for them. But the crucial question is whether it was really necessary for the Court below to see those exhibits before reaching a decision on the issue of assessment of damages.*

The argument of E.O. Ofodile, Esq. who settled the appellant’s brief is not supported by the certified true copy of the appeal records.

Submissions of learned Counsel in briefs of argument do not take the place of legal evidence. See Yoye vs. Olubode (1974) 1 All NLR (Pt.2) 118; Zein vs. Geidam (2004) All FWLR (Pt.237) 457 at 480 paragraph “B” and Obuola vs. Coker (1981) 5 SC 197.

The facts and circumstances of a case determines the authorities a learned Counsel should cite in Court to support his argument. See Adegoke Motors Nig. Ltd. vs. Adesanya (1989) 3 NWLR (Pt.109) 250 at 265.

It is very wrong, and this may, depending on the circumstances of each case, constitute a professional misconduct to attack the decision or character of a learned trial Judge on an issue not argued nor canvassed in the Court below, on appeal. See Balogun vs. Obisanya & Anor. (1956) 1 FSC 22 at 23 and Atanda & Ors. vs. Ajani & Ors. (1989) 6 SCNJ 193 at 209 to 210. I resolve issue (i) against the appellant.

ISSUES (II)-(IV):

In Hanbury and Maudsley Modern Equity, 1976 edition by Harold Greville Hanbury appears the following statement on the nature of an interlocutory injunction pending the determination of the substantive suit at pages 78 to 79 to wit:

*The jurisdiction is related not to the most just method of protecting established rights, but to the most convenient method of preserving the status quo while rights are established. Interlocutory injunctions may be prohibitory, mandatory, or quia timet. Normally such an injunction* *remains in force until the trial of the action, but an interim injunction may be granted, which endures for some shorter specified period. If the parties consent, the interlocutory hearing may be treated as a final trial if the dispute is of law. But this will not be possible if the dispute is of fact, as affidavit evidence is unsuitable for such issues.*

The principal and fundamental purpose of an interlocutory injunction is to preserve the status quo while the rights of the parties contesting the subject-matter are to be established after the facts have been gone into in a full-blown trial. That is when the learned trial Judge might have rendered a decision in favour or against any of the disputing parties. In Snell’s Principles of Equity, 27th edition by The Hon. Sir. Robert Megarry, pages 636 to 637 also appears the following statement on interlocutory injunctions pending the determination of the substantive suit to wit:

*Interlocutory Injunctions:*

*1. General principles:- Though the proverbial delays of Lord Eldon’s chancellorship no longer exist, there is still an inevitable lapse of time between the commencement of* *an action and the trial. The injury being suffered by the plaintiff may be such that it would be unjust to make him wait until the trial for relief, and so in certain circumstances the Court will grant an injunction before trial with the object of keeping matters in status quo, or of facilitating the administration of justice at the trial; and in a proper case the plaintiff may even be given the whole of the relief which he would seek at the trial. Similarly, an injunction may be granted pending an appeal. The grant of interlocutory relief is always discretionary, and depends on the circumstances of each case. The following, however, are the more important considerations.*

The status quo to be kept or maintained pending trial would be dependent on the nature of the subject matter in dispute coupled with the kind of injury that if an interlocutory injunction is not granted may result to the detriment of the party that applied for the remedy by the time the rights of the parties were determined at the end of the trial. In Akapo vs. Hakeem-Habeeb (1992) NWLR (Pt.247) 266, Karibi-Whyte, JSC held where the dispute involved the rights of a family head in the administration of family property at pages 291 to 292 as follows:

*The status quo which the Court can by the granting of injunction maintain, is the restoration of the parties to the position they were before April, 1985, when respondents with force took over the management and control of the offices and property of the Ojora Chieftaincy family, hitherto under the control and management of appellants and the Family Council.*

The learned trial Judge has to consider whether the action of the party that applied for an interlocutory injunction is frivolous, or there are triable issues in granting or refusing an application for an interlocutory injunction. In Adenuga vs. Odumeru (2003) FWLR (Pt.158) 1288 at page 1304 paragraph “H” to page 1305 paragraphs “A”-“G” to wit:

*In an application for an interlocutory injunction, the plaintiff must show an existence of his right which needs to be protected in the interim. He must at the same time satisfy the Court that there is a real question to be tried in the substantive suit: Egbe vs. Onogun (1972) 1 All NLR 95 at 98.*

*This does not require the* *Court to determine the merit of the plaintiff’s entitlement to the claim. But it places on the plaintiff an initial burden. It is the burden of showing that there is a serious question to be tried upon the affidavit evidence (as well with averments in the statement of claim, if any has been filed): See Obeya Memorial Hospital vs. Attorney-General of the Federation (1987) 3 NWLR (Pt.60) 325.*

*It is necessary to emphasize that it is of vital importance for a plaintiff seeking an interlocutory injunction to adduce sufficiently precise factual affidavit evidence to satisfy the Court that his claim for a permanent injunction at the trial is not frivolous; or at any rate, based on the substantive claim, to produce affidavit evidence to satisfy the Court in justification of his application for an interlocutory injunction to maintain the status quo. It is only when this has been done that it will become necessary for the Court to proceed further with the application to consider the balance of convenience. Otherwise the application ought to be refused at the point the Court is not so satisfied. This is clear from the observation made by Lord Diplock in* *American Cyanamid Co. vs. Ethicon Ltd. (1975) 1 All E.R. 504 at 510 as to what should be the approach in considering an application for an interlocutory injunction. He said inter alia:*

*“It is no part of the Court’s function at this stage of the litigation to try to resolve conflicts of evidence of affidavit as to facts on which the claims of either party may ultimately depend not to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial so unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider**whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.”*

*It seems to me that even if there had been no cause for me to comment adversely on the complaints laid in the grounds of appeal and the issues set down for determination, this appeal stood no chance of succeeding. The* *likelihood that a plaintiff would have succeeded in establishing his right to an injunction if the action had gone to trial is a factor to be brought into the balance by the Judge in weighing the risks that injustice may result from his deciding the application for an interlocutory injunction one way rather than the other: See NWL Ltd. vs. Woods (1979) 3 All ER 614 at 626.*

Economic benefits a party has been deriving from the property before the alleged interference or invasion may be considered in granting or refusing an application for interlocutory injunction pending the determination of the rights of the parties. SeeAdesina vs. Arowolo (2005) FWLR (Pt.245) 1123 at pages 1140 to 1141 paragraphs F-G.

The facts in dispute are to be garnered from the pleadings filed and exchanged by the parties in the Court below. The case of Chief A.C.I. Mbanefo in the Court below is that he was duly and properly installed and initiated into the vacant seat of Odu Osodi of Onitsha in 1994 and is entitled to occupy that traditional office and hold the traditional rank of Ndichieume and Ndichie Ukpo for life according to the Onitsha Native Law and Custom hence the Chief sought the declarative reliefs in the Court below coupled with perpetual injunction in paragraph (d) of his claim. If at the end of the trial the Chief is able to prove his claim I think he would be entitled to the perpetual injunction claimed, if not the Court below would dismiss.

InHanbury and Maudsley Modern Equity (ante), page 69 the learned author explained the meaning of “perpetual injunction” as follows:

*“Perpetual and Interlocutory Injunctions:*

*Prohibitory or mandatory injunctions may be perpetual or interlocutory. Perpetual does not mean necessarily that the effect of the order must endure for ever; it means that the order will finally settle the present dispute between the parties, being made as the result of an ordinary action, the Court having heard in the ordinary way the arguments on both sides. But a plaintiff may not always be able to wait for the action to come on in the normal course; it may be that irreparable damage will be done to him if the defendant is not immediately restrained. If such is the case, the plaintiff will serve on him a notice that on the* *next motion day his Counsel will apply to the Court for an injunction. The service of this notice will enable the defendant’s Counsel also to be heard, if he wishes, but the hearing will not be a final decision on the merits of the case. If the plaintiff’s affidavit has made out a sufficient case, the Judge will grant an interlocutory injunction, which is effective only until the trial of the action.*

Again in Snell’s Principles of Equity (supra) page 626 appears the following write up on *perpetual injunction:*

*Perpetual Injunctions:*

*1. Damages an insufficient remedy:*

*“The very first principle of injunction law is that prima facie you do not obtain injunctions to restrain actionable wrongs for which damages are the proper remedy.”*

*Thus no injunction will be granted where an illegal act has been done in the past but there is no intention of repeating it, or where the injury can be adequately compensated by money. But an injunction may be granted if an award of damages would be useless, e.g. because the defendant is a pauper; and many wrongs, such as continuing nuisance or infringements of* *trademarks, demand more adequate relief than money. Moreover, a party to a contract has a right to its performance and not merely to compensation for breach, and hence an injunction will be granted to restrain breaches of negative contracts. If, however, the parties have specified a sum as liquated damages for breach of a negative contract, the plaintiff cannot both recover the sum and claim an injunction.*

The plaintiff founded his cause of action on the Native Law and Custom in Onitsha, Anambra State. In The Queen: Ex parte Adebo vs. Governor-In-Council, Western Region (1962) 1 All NLR 917, Charles, J., held in the High Court of Justice of the defunct Western Nigeria Region in a deposition of a Chief by the Governor-In-Council at pages 923 to 924 as follows:

*An office is not in the strict sense itself a right but it may be the subject of such a right. Thus, a person may have a right (in the strict sense) to be appointed to it or to hold it for a period of time. It may also have such rights appurtenant to it, such as a right to salary. In so far as deprivation of the office extinguishes such rights, a decision to deprive is a* *determination affecting the rights of the office holder. Under the Chiefs Law a recognized Chief has a right in the strict sense to hold office until he is deprived of it in accordance with Section 22, that is until the Governor-in-Council decides to depose him after being satisfied that any of the specified grounds exist. The satisfaction of the Governor-in-Council that such a ground exists is a condition precedent to the exercise of the power of deposition, so that the office of Chief is not held at the will of the Governor-in-Council but is one which the holder is entitled to retain until the Governor-in-Council is satisfied that one of the specified grounds for deposition exist. Further, it is a matter of judicial knowledge I think, that, as in this case, the office of Chief often, if not invariably, has appurtenant to it a right to salary and other rights. As Section 22 does not limit the power of deposition to chieftaincy offices which do not have appurtenant rights, if there are any such offices, it necessarily confers a power to make a determination which affects the right or right****s****, in the strict sense, of an individual.*

*With reference to the* *second question, whether the Governor-in-Council is bound to act judicially in making a determination under Section 22, it is important to recognize that there is a presumption that when the Legislature confers a power on an authority to make a determination affecting an individual in his property or person, it intends that the power shall be exercised judicially in accordance with the rule of natural justice that the individual affected must be given an adequate opportunity to be heard. That proposition was clearly recognized by the Privy Council in Smith vs. The Queen, (1878), 3 App. Cas. 614. In that case the Governor of Queensland had purported to cancel a lease under a statutory power which provided;-*

*If at any time during the currency of a lease it shall be proved to the satisfaction of the Commissioner that the lessee had abandoned his selection and failed in regard to the performance of the conditions of residence during a period of six months, it shall be lawful for the Governor to declare the lease absolutely forfeited and vacated.*

*The Privy Council allowed an appeal from an order of ejectment by the Supreme Court of* *Queensland because the forfeiture on which that order was based had not been lawfully made in that the Commission had not satisfied himself in a judicial manner of the grounds for it, since he had not given the lessee an adequate opportunity to be heard.*

Native Law and Custom recognizes the importance of chiefs or traditional rulers in the society coupled with the rights and privileges that may attach to their offices. In Nigerian Land Law by B.O. Nwabueze, 1982 Reprint, the learned author wrote at pages 149 to 152 concerning the importance of a Chief within a Community as follows:

*As the physical embodiment of his community, village or family, it is clear that the chief must occupy a central position in the whole system of communal tenure. The institution of chieftaincy is rather a unique one, so unique indeed that any attempt to describe it by reference to analogous English institutions is bound to mislead. Thus in the celebrated but cautious words of Rayner, C.J., which have been repeated and approved times without number in the cases, the chief is referred to as being “to some extent in the position of a trustees, and as such* *holds the land for the use of the community or family.” There is nothing sacrosanct about the idea of trusteeship nor is it necessarily a term of art, so that the description of the chief’s position by analogy to it may not be so terribly objectionable, once the essential differences between him and a trustee strictly so-called are clearly understood. Perhaps the most fundamental of these differences is that whereas a trustee of land has the legal title vested in him and is therefore the legal owner of it, the legal title to communal land is vested in the quasi-corporation, the community, village or family, and not in the chief individually. To describe him as an owner, even in a loose sense, is therefore misleading. This is not to say, however, that the position of the chief is merely one of “mere honour or dignity”. In Adanji vs. Hunvoo (1908) 1 NLR 74, the plaintiff who had sued to establish his right to the chieftaincy of the Fiyento of Badagry was non-suited on the ground that the claim related only to a position of mere honour or dignity, and did not raise any issue of a legal or equitable right. This decision, with respect, shows* *a lack of understanding of the true significance of chieftaincy in Nigeria. It is a position which by its own inherent force carries certain rights and powers under customary law, particularly in relation to land a fact which distinguishes the claim in Adanji vs. Hunvoo from that in the English case of Cowley vs. Cowley (1901) A.C. 450 upon which the decision purports to have been based. Fortunately, the Courts have in subsequent cases shown a correct appreciation of the true significance of chieftainship under customary law as a position importing certain rights and powers. Thus in Ademola vs. Thomas (1946) 12 WACA 81 the plaintiffs claimed a declaration that the installation by the first and second defendants of the third and fourth defendants as Oluwo and**Balogun of Iporo respectively was contrary to customary law, and an injunction restraining them from acting in those offices. It was argued that the Court could only have**jurisdiction in a suit respecting chieftaincy when the claim was for rights in property attaching to the chieftaincy, the issue of title being merely incidental, and not when the claim was for a declaration of right to a title and* *there was no claim for consequential reliefs in relation to pecuniary rights attached thereto. In rejecting this argument, the WACA observed:*

*“There is no question in this case of the titles claimed by the appellants being bare titles of honour or dignity such as was the case in Cowley vs. Cowley nor of it being uncertain whether these titles imply some rights in property and we do not think that this Court would be doing justice to the respondents’ claim were it to hold that, because there is in the writ of summons no specific claim in respect of the property rights attaching to the titles in question, therefore the claim was in respect of mere title to honour or dignity and, as such, outside the jurisdiction of the Supreme Court.*

*So also in Owa-Ale of Ikare vs. The Olukare of Ikare where both the Supreme Court and the WACA declined jurisdiction on the authority of Adanji vs. Hunvoo to entertain a claim by the plaintiff to the headship of Ikare and to the exclusive right to wear the crown and to enjoy all the other privileges attaching thereto, on the ground that that claim was no more than one to establish title to a* *position of mere precedence, the Privy Council held that, apart from the claim of exclusive right to wear the crown which is not a recognized legal right, the precise nature of the claim to the headship of Ikare should have been investigated with a view to finding what rights, powers and privileges, if any, attach to it, and that as it was not, the case must be retried.*

*It has been suggested that the rights and powers inherent in the position of a chief are merely those of a “caretaker”. While it is true that the chief is not a trustee/owner of the land of his community in the strict sense in which that term is normally understood, it is equally not true that he is only a caretaker. In a case where a member of a family who was not its head acted as caretaker of the family property, Kingdon, C.J., observed that perhaps the term “caretaker” is strictly speaking, a misnomer, but it is a term which is commonly used in this country to mean the member of the family, not necessarily the head, who acts as agent for the family in conducting its affairs. In strictness a caretaker is only a licence with nothing like the amplitude of* *the rights and powers possessed by the chief over communal land. Besides the Courts have sometimes distinguished between the rights of the chief and an ordinary member who acts as caretaker of communal land, casting upon the later the duty to account to each individual member for any income from the land while relieving the former from it. Nor can the chief be regarded, merely as an agent of his community, village or family, for, as will presently be shown, his authority is inherent in his office and does not derive from any agency or mandate given by the members; the members are therefore quite incompetent to abrogate or restrict the chief’s rights and powers in relation to communal land without his consent. The true position appears to be that, as the physical alter ego of his community, village or family, the chief is the proper person to exercise the ownership rights of the community, village or family, subject to the individual rights of the members. He represents the family with respect to the exercise of these rights. Once**the title of ownership is clearly separated from the exercise of the rights and powers to which it gives rise, the position of* *the chief can then be perceived in its true perspective; the former is vested in the community, village or family as a quasi-corporation while the latter belong to the chief. Thus, in Onitolo vs. Bello the plaintiff was granted a declaration that, as head of the Onisemo Family in Lagos, he was the person entitled to the management of all the properties of the family, to the possession of all such properties and of all monuments of title relating thereto. If a label is needed for the position, it is that of a manager or director which best fits it, though even this is not definitive enough nor altogether accurate. “Plainly,” said Bairamian, JSC, delivering the judgment of the Supreme Court in Akano vs. Ajuwon “in common parlance people speak of the land of X, the head of the family; and if the members of the family themselves do so, they cannot complain if strangers do. From a lawyer’s point of view it may not be precise; but a lawyer, too, would find it hard to discover an English term by which to describe the position of the family head. In strictness he is not the owner; some think it is unwise to call him the trustee and import* *English ideas of trusts; perhaps manager is nearest but this term does not altogether fit either. The truth is that the position of the chief in relation to communal land is a pecuniary unique one, a uniqueness which is borne out by the fact that without the active participation of the chief, no outright alienation of the land can be validly made, notwithstanding that all the other members desired and approved of it. “It follows,” observed Harragin, C.J., in Agbloe vs. Sappor, “that it is quite impossible for land to be legally transferred and legal title given without his consent.” Indeed, while his consent suffices to validate a grant of occupancy right in the case of an outright grant of the land itself it is not enough for him merely to consent; he must be a party to the grant or conveyance for it to be effective to pass the title of ownership.*

Section 68 (1), (2) and 70 of the Evidence Act, 2011 provides yet the importance of traditional rulers, chiefs or traditional title holders within their communities by providing as follows:

*68(1) When the Court has to form an opinion upon a point of foreign law,* *customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.*

*(2) Persons so specially skilled as mentioned in Subsection (1) of this section are called experts.   
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*70. In deciding questions of customary law and custom, the opinions of traditional rulers, chiefs or other persons having special knowledge of the customary law and custom and any book or manuscript recognized as legal authority by people indigenous to the locality in which such law or custom applies, are admissible.*

In my humble opinion, whether the selection, appointment or installation of the respondent under Onitsha Native Law and Custom was right or wrong that has to be determined after the learned trial Judge has heard the case to completion and rendered a decision either in favour of the respondent or the appellant as the case may be. As an interim measure the respondent was entitled to an interlocutory injunction in order that the status quo ante may be maintained pending the determination of the rights of the parties.

No citizen is to take laws into their hands. Courts of Justice do not encourage self-help. Grievances should be submitted to the Courts of law and equity for determination. InThe Military Governor of Lagos State & Ors. vs. Chief Ojukwu & Ors. (1986) All NLR 233, Oputa, JSC held at page 247 as follows:

*“I have had the privilege of a preview of the lead reasons for ruling just delivered by my learned brother, Eso, JSC. I am in complete agreement with him that the applicants’ prayer for a stay of execution should be refused. I also agree with his sound reasoning and valid conclusions. But as the issues raised in this application affect radically and fundamentally the concept and practice of the Rule of Law in our country; the Protection of the Individual Citizen from an Abuse of Executive Power; and the Role of our Courts in the Preservation of Law and Order in our society; it is in my humble view, necessary that the fullest expression be given to the views of individual Justices of this Court at least to further* *emphasize the points so ably made in the lead Reasons for Ruling.*

*Admittedly, the country is now governed by military regime but it is to the external credit of all the military governments in Nigeria in general and the present military regime in particular, that each pledged itself to observe and to be bound by the basic principles of the rule of law. This is highly commendable for where the rule of law is forced to abdicate the rule of force is automatically enthroned. And this is why, and where, certain features of this application are rather disturbing.”*

In my humble opinion the learned trial Judge exercised a judicial discretion to grant the interlocutory order of injunction pending the determination of the substantive suit to meet the justice of the case. The power the Court of Appeal may exercise upon the hearing of an appeal is circumscribed by the requirements of the provisions of Order 4 Rules 9(1)-(5) of the Court of Appeal Rules, 2011 which provides as follows:

*9(1) On the hearing of any appeal, the Court may, if it thinks fit, make any such orders as could be made in pursuance of an application for a new trial or to set* *aside a verdict, finding or judgment of the Court below.*

*(2) The Court shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court some substantial wrong or miscarriage of justice has been thereby occasioned.*

*(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court that any such wrong or miscarriage of justice as is mentioned in Paragraph (2) of this Rule affects only part of the matter in controversy or one or only some of the parties, the Court may order a new trial as to the party only, or as to that party or those parties only, and give final judgment as to the remainder.*

*(4) In any case where the Court has power to order a new trial on the ground that damages awarded by the Court below are excessive or inadequate, the Court may in lieu of ordering a new trial:-*

*(a) Substitute for the sum awarded by the Court below such sum as appears to the Court to be proper;*

*(b) Reduce or increase the sum awarded by the Court below by such amount as* *appears in the Court to be proper in respect of any distinct head of damages erroneously included or excluded from the sum so awarded.   
But except as aforesaid, the Court shall not have power to reduce or increase the damages awarded by the Court below.*

*(5) A new trial shall not be ordered by reason of the ruling of any judge of the Court below that a document is sufficiently stamped or does not require to be stamped.*

The onus of showing that the decision of the learned trial Judge in granting the interlocutory injunction pending the determination of the substantive suit was substantially wrong or led to a miscarriage of justice for this Court to interfere with the decision has not been discharged by the appellant.

I resolve issues (ii)-(iv) against the appellant.

There is no merit in this appeal which I hereby dismiss. I award N50,000.00 cost to the 1st respondent.

**RITA NOSAKHARE PEMU, J.C.A.:**

I have read before now, the lead judgment just delivered by my brother, Hon. Justice JOSEPH TINE TUR, JCA. I agree with his reasoning and opinion. There is no merit in this appeal and I hereby dismiss same.

I abide by the consequential order made as to costs.

**MISITURA OMODERE BOLAJI-YUSUFF, J.C.A.:**

I had the opportunity of reading before now the lead judgment of my learned brother, HON. JUSTICE JOSEPH TINE TUR, JCA. I agree with his conclusion that this appeal has no merit. I too dismiss the appeal. I abide by the order for costs made therein.