

An Analysis Of The Concept Of Injunction As A Remedy In The Nigerian Legal System

Bar. Anita Nnenna Oteh

Bar. Anita Nnenna Oteh -Faculty of law Nasarawa State University Keffi Nasarawa State

Abstract

It is clear manifestation that the law and practice of the equitable remedy of injunction occupied a very important terrain or place in the legal system of Nigeria. This is because besides, the fact that it transcends both the substance and adjectives or procedural laws, its ' impact as a strong and effective weapon in the practice of the law cannot tie over emphasized, most especially since it cuts across all branches of laws via constitutional and administrative laws, the laws of contract, tort and banking, the laws relating to, and the conduct of election in Nigeria etc. in this regard, one cannot easily forget the activities of the A.B.N. (Association for Better Nigeria). In the cases of ABIMBOLA DAVIES VS the national electoral COMMISSION (NEC) spear headed by Francis Arthur Nzenbe during the aborted third Republic in Nigeria in 1993. It can therefore be suggested quite rightly from the above that the reason for the choice of this topic is because of the pervasiveness of the aw and practice of injunction in all its ramification of ouj, law and the purpose of course is to analyze how consistent, effective and purposeful our courts and legal practitioners have granted the principle of injunction and its ultimate effect on our legal system and our society at large. This project is divided into five chapters in all. Chapter one is devoted wholly to indu introductory details, that is definition origin and "exception of legal principles of injunction. Next comes chapter two, which will contain the types of and scope 2f injunction in particular situation Next is chapter three, which deals with the application and effect of junction in Nigeria. In other words, this chapter deals with the practice and procedure of the law of injunction. In this regards, this chapter touches the mode of applying for injunction,-relevant civil procedure rule, the principle guiding the grant and the effect of injunction. The fourth chapter takes a clinical and analytical work at the topic: self. It touches on the delay and abuse of the principles of injunction Advantages and Disadvantages) and when injunction will be refused. The last which is chapter five, deals with conclusion of this work. It proffers suggestion by orders of injunction can be reduced d the beeriest minimum if not out rightly eliminated.

Introduction

An Injunction is an order of the court directing a person or persons to refrain from doing some particular act or thing or, less often, to do 'some particular act or thing. It is an equitable remedy which originally could only be obtained in the court of chancery or the court of Exchequer in

Equity'. An injunction is defined in Lexicon Webster' Encyclopedia Dictionary of the English Language² as a written order prohibiting someone from doing specified act or commanding someone to undo some wrong or injury. A prohibitive equitable remedy issued or granted by the court at the suit of a party complainant, or directed to a party) defendant in the action or to a party made defendant for that purpose, forbidding the latter from doing some act which he is threatening or attempting to commit or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff and not such as can adequately be addressed by an action at law.

An injunction is an order of court, which compels a party to do or refrain from doing an act⁵. Injunction was defined by KOLAWOLE J.C.A. in the case of PEREPIMODE VS MIEKORO⁴ as a judgment order to do or refrain from doing a particular thing. It is either (1) Interlocutory or Interim, i.e. an order until the hearing of the action or future order or (2) perpetual i.e. a judgement determining and concluding the right in litigation. It is also (a) restraining i.e. when inhibits the doing of anything or (b) mandatory, i.e. when it commands the doing or restoring of anything.

It is note worthy to mention at the onset that legal concept of injunction like many other legal concepts does not suffer from the problem of definition. Generally speaking, legal scholars and jurist internationally or otherwise are in absolute agreement as far as the definition of injunction is concerned.

The above notwithstanding, I would want to define injunction as a coercive pronouncement of a court directed at a person to perform or refrain from doing an act preserving the right and duties of individuals and institutions alike. As a result of the above sighted shortcomings associated with the common law and common law judges, the citizens began to look for alternative areas where they could obtain meaningful native areas where they could obtain meaningful and purposeful justice. Litigants who saw the king-in-council is their last resort via-a-vis the protection of the citizen's rights and duties, began to send petitions to the king-in-council for suitable and adequate reliefs. As time progressed, the enormous responsibilities of dealing with the petitions were transferred to the chancellor. Later litigants who could not obtain suitable and adequate remedy for instance, the remedy of the injunction in the common law court sent their petitions directly to the chancellor who after hearing their cases would order remedies, for example, injunction and specific performance which were alien to the Common law courts and judges. For instance, Mr. A. engaged himself in the continuous act of trespass on Mr. B's land during the 13th Century, the only remedy Mr. B could get when he sued Mr. A would be damage, but this would not be suitable and adequate remedy to this tort of continuous trespass. Mr. B would have to petition the chancellor for a suitable and adequate remedy is injunction (which Mr. B could not get at the common law courts) restraining Mr. A from his act of continuous trespass \^-

ORIGIN

Discussing the origin of injunction in Nigeria is like discussing the origin of equity, because injunction is only a fractional component of equity.

Towards the end of the 13th Century. The administration of the common law had become very rigid and technically oriented in the common law courts by the common law judges. This was chiefly caused by the over bearing emphasis that common law judges were placing on forms of action or existing writs. Thus, if a litigants claim did not fit into any of the existing and acceptable writ, he would be denied remedy. For example, the interest of a beneficiary under a trust was not recognized or accommodated at common law. This difficult restrictive and retrogressive attitude of the common law judges in administrative of justice received legislative approval in the provision of OXFORD 12585. This provision of Oxford made it impossible for the chancery from either issuing a writ for a new cause of action or adopting an existing writ to accommodate a new cause of action which was the position. Before the 13th Century, the unfortunate result was the unbearable hardship the litigants were forced to face.

In order to ameliorate this hardship the litigants were made to face, there was a parliamentary intervention by virtue of the passage of the **STATUTE OF WESTMINSTER 11 12856**.

This legislation authorized the chancery to modify the existing writs to accommodate new cases but had no power to create new writs.

The improved position notwithstanding, the chancery could only register minimal success because of the rigid and uncompromising attitudes of the common law judges who have developed or evolved a very rigid writ system and which was used as a yardstick in the would therefore use it as a basic to quash any write that did not conform with the existing writs. The rigid position of the common law judges in administration of the common law produced untold hardship and injustice; many injuries could not be redressed because they did not fit into the existing form of action. In many cases, where the common law purported to give remedies, such as remedies were inadequate and therefore could not serve the end of justice.

By the end of 13th century, the dispensation of justice via the common law by the common law judges had developed a system that was fundamentally and absolutely opposed to justice. At best it was a system that epitomized an unperfected legal system is capable of protection and it is important to mention that a limited power to grant injunction was first given to the common law court by the **PATENT LAW AMENDMENT ACT 1853** and then by the **COMMON LAW PROCEDURE ACT**

1853 the common law court were given so wide a jurisdiction to grant injunctions in all cases of breach of trust or other injury that as BEGGAIAY L.J. observed in QUARTZ HILL CONSOLIDATION GOLD MINING VS BEALL that they had a more extensive jurisdiction as regards the granting of injunctions than the court of chancery itself.

These statutes have been repealed and the Judicature Acts have transferred to the High Court all the jurisdiction including the jurisdiction to grant injunction previously exercised both by the court of chancery and the common Law Courts. The jurisdiction may, of course be exercised by every division of the high court, through in practice most application for an injunction are made to the chancery division. It is also important to state that if a right of property which is created or confirmed by statute is infringed, it is settled that the fact that a particular remedy is provided for an infringement of that right by statute does not oust the jurisdiction of the court to grant an injunction. Even though statutory remedy may be the only remedy available for the past infringement, the court may grant an injunction to prevent further infringement in the future as was held in the case of **STEVENS VS CHOWN¹¹** unless the statute expressly or by implication provides to the contrary.

None the less, conflict did arise in the sixteenth Century as the chancellor extended and consolidated his jurisdiction and the dispute centered on what became known as "Common Injunction?" issued by the chancellor restraining parties to an action at common law either from proceeding with their action at law or having obtained judgment from enforcing it, the disputes finally came to an end under James 1, when Coke was Chief Justice and Ellesmere Lord Chancellor. The validity or, invalidity of injunctions would help to determine the question if it was recognized, whether legal supremacy was vested in the common law courts or the chancery. The matter was referred by the king to Bacon the Attorney General and other counsel, and in due course he accepted the advice that the injunctions were valid, and in 1616, accordingly issued an order in favour of the chancery. This proved to be a final settlement of the dispute although it was not fully accepted by the common law lawyers until the end of that century.

Reception of Injunction Into The Nigerian Legal System

Like the Christians received Christianity into Nigeria (Mostly Southern Nigerian) with the coming of colonialism in Nigeria, so the concept of injunction which is part and parcel of the law of equity was received into Nigeria by Nigerians. The only difference between the reception of Christianity and injunction is that while the latter was received through various legislations the former was not. It is noteworthy to mention that injunction was received through the enactment of local legislature¹². The

starting point was in 1863 when the first of such enactment or legislation was made or passed¹³. Section 1 of Ordinance No. 3 of 1863 introduced English laws ant. statutes, which were in force on January 1, 1863. It is noteworthy to mention that English laws include the laws of equity, which embraces the remedy of injunction. The ambiguity in the 1863 ordinance was clearly erased in the Supreme Court Ordinance 1876¹⁵. In the said 1876 Ordinance, the doctrine of equity was clearly and formally introduced as part of the English law. Section 14 of 1876 Ordinance provides that.

The common law, doctrine of equity and the statutes of general application which were in force in England at the date when the colony obtained a local legislative, that is to say on the 24th day of July 1974 shall be in force within the jurisdiction of the court".

The 1876 Legislation or Ordinance was repealed by Ordinance NO. 3 of 1908. This latter ordinance re-enacted the provision of the 1876 Ordinance. Ordinance No. 3 of 1908 remained in force until it was superseded by the Supreme Court Ordinance of 1914, which became applicable to the whole Nigeria by virtue of the Ordinance. This 1914 Ordinance introduced into the whole country the rules of English common law, the doctrines of equity and the statutes of general application which were in force in England on the 1st day of January 1900. As earlier stated, remedy of injunction is an integral part of the doctrine of equity section 45.

Mandatory In Junction

This is an order of court by which a person is directed or compelled to perform an act or duty. The essence of mandatory injunction is to compel a party to restore things to the status quo in which they were at the time the plaintiff's complaint was made as was held in the case of *Isenberg V East India House* or before the defendant committed the act complained of. For example, if the servants, agents or workmen of Power Holding Company of Nigeria (PHCN) unlawfully cut electricity supply to Mr. A's House, though his counsel, he can file an action in a court and pray for a mandatory injunction compelling PHCN to restore electricity supply.

Prohibitory Injunctions

Prohibitive or Restrictive injunction is an order of court by which a person is directed or compelled to refrain from doing or continuing to do an act, or it can be defined as an order restraining a person from doing an act. For example, if Miss Brown deposits building materials on Miss Black's land in preparation for the erection of a building in the said land, Miss Black will quickly contact a legal practitioner who will file the necessary paper to restrain Miss Brown from building pending the hearing of the motion on notice or the substantive case depending on the situation at hand. In the case of **ODUNTAN V GENERAL OIL LTD**² a restraining order was ordered against the appellant."

As a result of the alertness of litigants in contemporary African society in General and Nigeria in particular, coupled with the reason of the story and convenience, the grant of Prohibitory injunction is more rampant in our judicial system than mandatory injunction. In keeping with equitable maxim which says that equity aids the vigilant and not the act. For example, if Miss Brown deposits building materials on Miss Black's land in preparation for the erection of a building in the said land, Miss Black will quickly contact a legal practitioner who will file the necessary paper to restrain Miss Brown from building pending the Hearing of the motion on notice or the substantive case depending on the situation at hand. In the case of **ODUNTAN V GENERAL OIL LTD**² a restraining order was ordered against the appellant."

Another reason why prohibitive injunction is more rampant is that "the remedy of injunction is essentially restrictive and easier to restrain a Party from doing an act than to compel him to perform a positive act, since the court of equity will not grant a remedy, the enforcement of which will require the supervision of the court. This general restrictive character of injunction and the drastic effect of mandatory injunction in particular favours the disinclination of the court to grant mandatory injunction. Caution is exercised, and for a long period of time, a mandatory injunction was always granted on negative- terms when it was obvious that its effect was positive. The case of *Smith V Smith*³ is in authority to the above position of

was even doubted at a time whether the court had jurisdiction to grant a mandating injunction as was held in *Lane V New Digate*⁴. However in the case of *Jackson V Normanby Brick Co.*⁵, the court of appeal granted an injunction to restrain the defendant from building on the land in dispute. Lindley M.R delivering the judgment of the court said;

The plaintiff is entitled to an order in the terms of the notice of motion. The registrar has called out attention to the form in which orders of this kind have hitherto been made namely, restraining the defendant from allowing the buildings to remain on the ground, but in future it will be better for the court to say in the plain terms what

It means and in direct words to order the buildings to be pulled down and removed".

Interim Injunction

This is an order of injunction made to last for a short time that is pending the hearing and determination of the motion on notice which will contain the same prayer as the motion *ex parte* except for the duration." interim injunction is granted via a motion *ex parte* that is the only way the application event emergency when irreparable or incalculable damage is imminent or could be done if such an interim order is not made as was the decision of the court in **Woluchem V Wokoma**⁶. No other injunction except interim injunction can be granted via an *ex parte* motion Because of the

provision of the 1999 constitution of the Federal Republic of Nigeria' which provides that every person shall be entitled to fair hearing in the court of law before any order which, is capable of affecting his right is made.

And interim injunction will also be granted to preserve the res (that s) that subject matter of the suit. It will also be granted where there is "real impossibility of serving the other party on time as was held in the case of *Kotoye V Central Bank of Nigeria and Ora*.

It is not worthy to mention at this stage that interim injunction will be granted more often than not, upon the satisfactory. Undertaking by the applicant to pay damaged.

Interlocutory Injunction

*American Cynamid Co. Ethicon Ltd*⁹, Lord Diplock explained the rationale of interlocutory injunction as follows:

"When an application for an interlocutory injunction restrain a defendant from doing acts alleged to be in violation of the plaintiffs led right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesis is the existence of it, or both is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period. Before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction the object of the interlocutory injunction is to protect the plain.' :ff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trials.'

As to the practice of the court Jessel M.R in *Smith V Peter* stated;

"There is no limit to the practice of the court with regard to interlocutory applications so far as they are necessary and reasonable applications ancillary to the due performance of its functions namely, the administration of justice at the hearing of the case whether they are or not to be granted must of course depend upon special circumstances of the case".

Interlocutory injunction is an order of court compelling a respondent to do or, restraining a respondent from doing a particular act pending the hearing and determination of the substantive suit. It is normally granted via a motion on notice. In other words, that other party (the respondent), will be put on notice's Though on very rare occasions, interlocutory injunction may be granted ex pat uj if the court is satisfied that frantic efforts have been made but to no avail, and further delay in the proceedings would cause irreparable damaged is granted to protect a legal right which is in existence, the case of *Chief T.A.I. Akapo V Alhaji H.A. Hakeem - Habeeb*¹¹ is in support of this

position of law, the appellant was recognized chief and head of Ojora Chieftaincy Family. The family has a constitution of settlement dated 17th December 1964 and filed in suit No LD/20/56. That constitution established a family council, which is headed by the appellant. The 1st, 2nd, 3rd and 4th defendant/respondents were among the original members of the family council. The plaintiff and the council are under the terms of settlement charged with the collection of rents and management of Ojora family property. Sometime in April, 1985, the defendants and their servants/agents broke into family's office under the control of the plaintiff and forcibly and illegally took possession of same. Plaintiff/Appellant filed, an action in court with an application for injunction. The Lagos High Court refused the application for interlocutory injunction the plaintiff/Appellant appealed to the court of appeal, which affirmed the decision of the trial court. The appellant further appealed to the Supreme Court, the Supreme Court held that the court of Appeal was wrong to have affirmed the decision of the trial court, the Supreme Court therefore set aside the judgment of the trial court.

The supreme court in coming to the above decision held inter alia that the plaintiff appellant has a legal right over the subject matter and that the defendant respondent was threatening that right and that the court ought to protect it.

With the object of keeping matter in status quo until the question in issue between the parties are determined the case of *Daniel v Ferguson*¹² is an authority to that effect. In that case, suit had been brought to restrain the defendant from building so as to darken the plaintiff's height, notice of motion for a temporary injunction to be made upon a designated date was served on the defendant. After receiving notice, the defendant put on a large number of men and proceeded with his building running a wall up to a height of about 39 feet from the ground before the injunction was granted. The court without regard, to the ultimate rights of the parties held that the wall thus run up by the defendants should be turned down at once.

A like situation was presented in the case of *Von Joel v Hornsey*¹³ in that case, the evidence showed that the defendant had repeatedly evaded attempts to serve him with process, and in the meantime had gone on with the building that was erected, This case was cited with approval in the case of *Military Governor of Lagos State v Chief Emeka Odumegwu Ojukwu*¹⁴.

The facts of the above case were that on 10th October 1985, an ex parte application was filed at the Lagos State High Court by the military Governor of Lagos State, the commissioner of Police, Lagos State and the Attorney - General Lagos State, from effecting him and members of his family from No, 29 Queen Drive, Ikoyi, Lagos State. The trial judge granted the interim order for injunction on the grounds of the plaintiff/respondent's ownership of the house and impending threat to evict him.

When the matter came up at the trial court for the interlocutory injunction, the plaintiff/respondent then concluded that the said property at No. 29 Queen Drive, Ikoyi belongs to Ojukwu Transport company owned by his late father.

The learned trial Judge refused to grant the equitable relief (interlocutory injunction) against the Lagos State Government on the ground that the property is an abandoned property and that the plaintiff/respondent had failed to show that he has a legal right to or interest in the property. The plaintiff/respondent appealed to the court of Appeal against the decision of the trial court. While the appeal was pending, the Lagos State governor resorted to self help and evicted the respondent. The court of Appeal therefore held that the right of self help fringed when the issue was turned over to the courts and therefore ordered the re-instatement of the respondent to the property. The Lagos State government refused to comply with this order and instead appealed to the Supreme Court on the ground that the remedy of 'interlocutory injunction is not available for an act which has been concluded. The supreme court held inter alia that while the contempt of the court of Appeal by the applicant is still subsisting, it would be inequitable to give consideration to the application or appeal of the applicant/appellant. The case of *Obeya Memorial Hospital V A.G of Federal*¹⁵, is also an authority to the effect that injunctions are discretionary court orders meant to keep the parties in status quo.

Perpetual Injunction As the name implies, it has an effect in perpetual it takes effect from the date of judgment if the party seeking for it succeed, Perpetual injunction is an order granted by a court after the rights of the parties have been established in a suit in which both sides have been fully heard. In other words, perpetual injunction is made after pleadings have been settled by the parties, evidence led where necessary, addresses made by course on both side and judgment delivered by the court. It is intended to settle finally the relation between the parties in connection with the matter in dispute, so to relieve the plaintiff from the need to bring a series of actions as his rights are from time to time infringed by the defendants.

Perpetual injunction takes effect in perpetuity except by an act of Appellate Court. In support of this is the case of *Adeniran v Alao*¹⁶, the effect of perpetual injunction does not necessarily mean that the order is to remain in perpetuity. It all depends on the nature of the right that is being claimed.

It is important that an interim injunction lapses with the determination of the motion of interlocutory injunction while an interlocutory injunction lapses with the determination of t 3 substantive suit.

Perpetual injunction takes effect in perpetuity except by an act of interference of an appellate court as was in *Adeniran vs Alao* (supra)

Quia Timet Injunction -Although an injunction is directed to the future it is in general based on some infringement or in the case of an interlocutory injunction, alleged infringement of the plaintiff's right, it is however possible to obtain injunctions, on an injury by the defendant which is merely threatened or apprehended, although no infringement of the plaintiff's right has yet occurred. Thus, Quia Timet injunction is an order issued to with the matter in dispute, so to relieve the plaintiff from the need to bring a series of actions as his rights are from time to time infringed by the defendants.

Critical Appraisal Of The Grant Of Injunction

Mode Of Enforcing Order Of Injunction

The mode of enforcing order of injunction is provided in our laws and rules of court. And the mode is by committed proceedings. Committal proceedings are provided for in Order 42 of the Uniform Procedure Rulers¹ and Section 72 of the Sheriff and Civil Process Act² and order 1X rules 13(1), 13(2) 3 of the Judgment (Enforcement) Rule³.

Order 42 Rule 1(1)⁴ provides that the power of the court to punish for contempt of court may be exercised by an order of committal.

Order 42 Rule 2(2)⁵ provides that an order of committal may be made by the court where contempt of court:

- a. Is committed in connection with;
 - i. Any proceedings before the court
 - ii. Criminal Proceedings
 - iii. Proceedings is an inferior court
- b. Is committed in the face of the court, or consist of disobedience to an order of the court, or a breach of an undertaking to the court or
- c. Is committed otherwise than in connection with any proceedings.

Order 42 2(1)⁶ of the same rules provide that an application for a main order of committal shall be made to the court by m6:i:ion on notice supported by an affidavit and shall state the ground of the application

Order 42 rules 2(2)⁷ of the same rules provides that the notice of 'motion, affidavit and grounds shall be served personally on the person sought to be committed, provided that court may dispense with personnel services where the justice of the case so demands. -

While Order 42 rule 38 of the same rules provided that nothing in the foregoing provisions of these order shall be taken as affecting the power of the court to make an order of committal of its own motion against a person guilty of contempt of court.

Section 72 of the Sherrifs and Civil Process Act: "If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgement debtor guilty of the misconduct defined in paragraph (f) of section 66 of the Act, may order that

he be committed to prison an detained in custody until he has to obeyed the order in all things that are to be immediately performed, and given such security as the court thinks fit to obey the other parts of the order, if any at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such times until he has paid such fine as the court directs". Furthermore Order 1X rule 13(1) of the Judgment (enforcement)

provides that:

"When an order enforceable by committal under Section 72 of the act has been made, the registrar shall, if the order was made in the absence of the judgment debt or and is for the delivering of goods without the option of paying then value or is in the nature of an injunction, at the time when others drawn up, and in any other case, on the application of the judgment creditors, issue as copy of the order endorsed with a notice in form 48, and the copy so endorsed shall be served on the judgment debtor in like manner as a judgment summons". Finally, Order 1X rule 13(3) provides that:

"On the day named in the notice of the court, on being ratified that the judgment debtors has failed to obey the order and, if the judgment debtor does not appear

a) That the notice has been served on him and

b). If the order was made in his absence, that the-endorsed copy thereof has also been served on him, may order that he be committed to prison and that a warrant of committal may be issued An injunction being an order of court is bound to be obeyed by the party against whom it is made that is to say, the respondent. The said respondent has no choice in the matter other than to obey the order, whether or not in the respondent's opinion the said order is worthless or illegal he must obey the order while he pursuit his constitutional remedy of appeal.

If the respondent fails to obey the said order or he obeys it partially, the applicant in order to compel him to obey commence committal proceedings against him.

Committal proceedings is quasi-judicial process, as such all the processes must be served on the respondent to enable him have an opportunity to show case why he should not be committed to prison and fine as the case may be. 4.2

The Attitude Of The Court In The Grant Of Injunction

As stated in one of the earlier chapters, the grant of injunction is discretionary, but in the exercise of its discretion, a court must act both judiciously and judicially.

As a result of these, courts are flexible in the exercise of their discretion.

I wish to submit that besides the legal principle considered in chapter 3 which a court takes into account before granting injunction a court can easily be influenced by some extraneous consideration such as religion, political and personal consideration in the grant of injunction.

Speaking generally, the attitude of our courts in the grant of injunction is not only positive but has been fairly consistent and predictable. Even during the military era, when the military interference was not only rampant but also intimidating our courts stood their grounds. Examples are numerous where courts in Nigeria issued or made injunction restraining the executive power vis-a-vis the citizens of this country. A good example is the case of Ojukwu U Military Governor of Lagos State (Supra).

Besides scoring our courts very high despite various odds working against the, one is tempted to say that there are situations where our courts have performed dangerously very low in the exercise of their discretion, in the grant of an injunction. A good example is the notorious case of Abimbola Davis of the Association for better Nigeria (ABN) VS The National Electoral Commission (NEC)⁹

The brief facts of this case are that in 1993, when Nigeria was preparing for their presidential election, some Nigerians filed an action at the Abuja High Court restraining NEC from conducting the election on account of some irregularities. Despite the fact that preparation for the conduct of the election on 12th June 1993 has reached the advanced stage and the state "of the law¹⁰ which was in favour of the conduct of an election. Justice Bassey Ikpeme on the 10th of June, 1993 between 9am and 10am gave the controversial ruling that states:

"I am convinced that I have jurisdiction to here this matter, NEC is not to determine to stable stage for democracy but only to conduct elections and the decree cited by NEC does preclude me but encourages NEC to disregard any ruling... NEC is hereby restrained from conducting the presidential election pending the determination of the substantive suit before the court".

All events that happen after this historic ruling are now history. It was clear that the judge was under the immense influence of the military under the leadership of General Babangida who wanted to hold on to power because the said ruling was against all the cardinal principles for the grant of injunction. But one would have thought that a High Court) judge that worth his salt have resisted all temptation

from the military and demonstrated some boldness and therefore delivered that historical ruling according to the dictates of the military.

Advantages For The Grant Of Injunctions

The main advantage is that it maintains the status quo pending the hearing and determination of the motion on notice or the substantive suit. The reason is to protect the existing legal right or recognizable right of a person from unlawful invasion by another. Thus, the claim of an injunction is won and lost on the basis of the existence of competing legal rights and as such the court has no power to grant an injunction where the applicant has not established a recognizable legal right.

In the case of *Ezehilo Vs Chinwuba*¹¹, "Status quo" was defined as the previous position in which things were before, unchanged position. It is worthy to mention here that the subject matter e.g. land will not be improved, altered or tampered with beyond the situation it was when the injunction was granted by all parties to the action, this is the implication of maintaining status quo. The rationale behind this is that it will prevent or stop the parties to the action from taking the laws into their hands. E.g. fighting and killing themselves over the ownership and possession of the land pending the final determination of the case

Disadvantages, Abuse and Disobedience Of Order Of Injunction

In a legal system like ours where most lawyer and vigilants are not sincere, the grant of injunction could lead to inordinate delay in the prosecution or conclusion of a case. More often than not, after obtaining an interim or interlocutory injunction, because the litigant and his lawyer have a temporary advantage over their opponent, they will now go to sleep or adopt all forms of tricks and technicalities to delay the case to their advantage. No wonder in our courts today, there are cases where interim injunction has been lingering on for more than one year, and interlocutory injunction for more than five years. And in such situations litigation is very expensive.

Another area of abuse is the aspect of gross disobedience of orders of injunction by litigants. This is very rampant because the only way to compel obedience is through the committal proceeding which are highly technical. And because of its high technicality! most legal practitioners make blunder in an attempt to prosecute an alleged contempt nor fails to observe one of its technical rules or principles, the action will be struck out, and if the applicant is still interested, he will have to start all over again.

Also, committal proceedings being a *quari judicium* matter, the applicant must prove the act of disobedience of the respondent beyond

reasonable doubt which may take long process.

These contribute to the difficulty in punishing those who breach the orders of injunction in our courts.

When Injunction Will Be Refused

1. The court will not grant an injunction however strong the applicant's case may appear to be where the damages in the measures recoverable at common law would be adequate and the respondent would be in a financial position to pay. The case of *Orji Vs Zaria Industries Ltd*¹² supports this.

2. Mere inconvenience without a proprietary right in the subject matter of the complaint is not enough to entitle an applicant to buttress this point as in the case of *Akapo Vs Hakeen Habeeb*¹³.

3. A trespasser cannot by trespass acquire the title of the owner of the land whether he is a tenant or absolute owner. The case of *Mohammed Ojomu Vs Salami Ajao*¹⁴ enlightened this point graphically. Thus, no court will grant an injunction to allow a trespasser continue in his act of trespass. As envisaged in the case of *Thompson Vs Park*¹⁵.

4. Injunction will be refused where to grant it will amount to a condemnation of illegality, and such actionable wrong of trespass and nuisance.

"Law and lawlessness are strange bed fellows under the rule of law".

Under the rule of law, everything is presumed against the law breaker, and against the person, who asserts superior right, the law does not give its protection to a trespasser.

We cannot surrender the machinery of the law to aberration of the lawlessness, whereas law and lawlessness are strange fellows under the law.

5. Injunction will be refused if the strength of the applicant's case is weak *Ogbonanya Vs Adapalm*¹⁶

*6. An application for injunction will be refused where if granted opportunity will be given to the grantee to see all the land away, and alter its character as observed in *Igwe Vs. Kalu*¹⁷.

An injunction will be refused if an order for accelerated hearing is given whenever it is possible to accelerate the hearing of a case instead of invading through massive affidavits and the hearing of lengthy arguments on interlocutory injunction, they should accelerate the hearing, and decide finally on the rights of the parties. As seen in *Nigeria Civil Service Union Vs. Essien*¹⁸.

Conclusion and Recommendations

From proceeding chapters, it is manifesting clear that the equitable remedy of injunction occupies a very important place in our legal system. No doubt, but for this remedy many litigants would have been exposed

to irreparable damage in actual fact, this is one of the cardinal principle of that a court must take into consideration in ascertaining whether to grant or not to grant an injunction. Thus, the court observed in the case of Saraki Vs. Kotoye¹ thereof that:

"The plaintiff must also as a rule be able to show that an injunction until hearing is necessary to protect him against irreparable convenience is not enough".

Another important point that can be drawn by way of summary is that, the law of injunction outcourage's and or, frowns at self-help. This point was emphasized in the recurrent case of Military Governor Lagos State and Ors vs Chief Emeka Odumegwu Ojukwu. In this case, while matters were pending before the court of appeal, to the knowledge of the state government restored into what they termed self-help and evicted Ojukwu. The Lagos state government used "one hundred and fifty armed men" to evict Ojukwu. Even when his suit was pending in the High Court and his application was before the court of appeal Ojukwu then filed another application at the Court of Appeal praying the court for a mandatory injunction compelling and, or, to restore the applicant (Ojukwu) to the residence at NO. 29 Queen's drive Ikoyi Lagos, and restraining, the respondent (Lagos State Government and all other officers, Servants, agents or functionary) from evicting or taking any steps to evict the applicant from his residence pending the determination of the appeal.

The court of Appeal after condemning the military's lawlessness and resort of self help embarked upon by the Lagos state government granted the injunction.

Rather than comply with this simple but positive order, the Lagos state government not only appealed to the Supreme Court, but also filed an application for stay of execution of the ruling of the court of Appeal granting the Lagos state government. To this application for stay of execution, Ojukwu's counsel chief F.R.A. Williams filed a notice of preliminary objection.

"I think it is a very serious matter for anyone to flout a positive order of court and proceed to taunt the court further by seeking a remedy in a high court while still in contempt of the lower court. It is more

"After a defendant has been notified of the pendency of a suit seeking an injunction against him, even though a temporary injunction be not granted, he acts at his peril and subjects to the power of the court to restore the status wholly irrespective of the merits as may be ultimately decided".

The case of Edward Jones Vs Security and Exchange Commission² supports this view.

The simple implication of the above principle of law is that, if a plaintiff files an action praying the court for an injunction or not, immediately the processes are served on the defendant, as a matter of law should restrain or otherwise, from tempering or, further tempering or interfering many ways with the subject matter pending the determination of the suit. If he fails to comply he does so at his detriment. In support of this are the cases of Daniel Vs Ferguson (supra) and Agbor Vs Metropolitan Police Commissioners³.

It is without doubt that the Ojukwu's case demonstrated the height hardness of the executive department and how the legal tool of injunction was used by the court to ameliorate the hardship, it would have had on the concerned litigants.

The practice of injunction in Nigeria would have attained greater height but for the abuses associated with it. In order for the law and practice of injunction in Nigeria to attain a lofty height, the general attitudes of lawyers must change in the way and manner they pursue applications for interim and interlocutory injunction.

Delaying tactic adopted by lawyer after getting the relief of interim or interlocutory injunctions which make substantive cases to last for donkey years or for many years should be frowned at, and if the delaying tactic is very apparent and elongated, provision should be made in our rules of court or other legislator for lawyers involved to be sanctioned. This is the only way the maxim Justice delayed is Justice denied would not be part of our legal system.

In the administration of justice, the role of Justices and, or Judges cannot be over emphasized. As a result, only those who are bold, courageous, honest and upright should be appointed as judges. It is only judges of these calibers who can give unbiased ruling on injunction irrespective of the person department or organ of government that is involved. It is only through this way that the frontier of the benefits of injunction can be felt by all litigants who turn matters over to the court for proper adjudication.

From the foregoing, I submit without doubt that the law and practice of injunction is a worthy legal concept despite the shortcomings associated with it. And if the few recommendations or suggestions proffered above are taken into consideration and affected, the concept of injunction will attain its lofty pinnacle in our country (Nigeria), and in our society. Further, the abuse of the order of injunction will be reduced to the barest minimum if not outright elimination.

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