CHIEF SAMUEL ADEBISI FALOMO

V.

1. OBAOMONIYIBANIGBE
2. THE ATTORNEY-GENERAL KWARA STATE
3. IFELODUNIIREPODUNIEKITI
   TRADITIONALCOUNCIL
4. IREPODUN LOCAL GOVERNMENT

SUPREME COURT OF NIGERIA

SC. 127/1995

SALIIHU MODIBBO ALFA BELGORE, J.S.C. *(Presided)*
IDRIS LEGBO KUTIGI. J.S.C.
MICHAEL EKUNDA YO OGUNDARE, J.S.C.
SYVESTER UMARU ONU. *I.S.C.*
ANTHONY IKECHUKWU IGUH. J.S.C. *(Read the Leading Judgment)*
FRIDA Y 5TH JUNE, 1998.

APPEAL - Entering of appeal - Effect of on jurisdiction of the appellate court.
COURT - Court determining interlocutory application - Duty on to refrain from prejudicing the substantive matter.
OURT - Court entertaining application for interlocutory injunction ~Power of to restrain both parties -When exercisable
COURT - Court of Appeal- Power of under section 16 *of the Court of Appeal Act and Order* 3 *rule* 23 *of the Court of Appeal Rules in determination of an appeal.*
INJUNCTION -Interlocutory injunction -Application for -Court entertaining - power of to restrain both parties - When exercisable.
INJUNCTION - Interlocutory injunction - Application for. Principles guiding grant of LEGAL PRACTITIONER - Counsel announcing appearance]Of {[*TJCl. Implication on his competence to conduct the case.*
*PRACTICEAND PROCEDURE- Court of Appeal- Power of leader section I6 of the CourtofAppealActandOrder*3 *rule*23 *of the court o f Appeal Rules determination of an appeal.*
PRACTICEAND PROCEDURE-Interlocutory application –Determination of trial court - Duty on court not to delve into issues prejudicial to the substantial cases.
PRACTICE AND PROCEDURE - Legal practitioner - Counsel announcing appearance for a party - Implication on his competence to conduct the case

1. Whether from the affidavit evidence before the trial court which that court considered in detail, the Court of Appeal was right to have held that the plaintiff made out a case deserving of an injunctive relief against the appellant and others in the circumstances of this case moreover when the reliefs sought in the application for injunction were in respect of concluded acts and the order of the Court of Appeal is not clear and equivocal.
2. Whether the Court of Appeal did not act without jurisdiction in hearing the appeal on 23rd January, 1995 when the case was for a motion to file respondents' brief out of time and whether this did not lead to a miscarriage of justice against the appellant.
3. Whether the Court of Appeal was right to have ordered a transfer of the case from the trial court when there was no legal basis for the order and none of the parties asked for it.
4. Whether the Court of Appeal was not in serious error by tampering with the trial court's exercise of discretion to restrain the appellant and the plaintiff from further parading themselves as the Olusin of Ijara/Iji Isio moreover when the learned senior counsel representing the plaintiff at the trial asked for same.

Facts:

The 1st respondent as plaintiff in situated an action against the appellant and the other respondents claiming as follows:

"(I) That the Olusin of Ijara-Iji Isin is not a recognised chief under the Chiefs Appointment and Deposition Law Cap 20, Laws of Kwara State (1963), Northern Nigeria Laws applicable to Kwara State and the appointment to that office does not require the approval of Kwara State Governor or Government.

(2) That under Ijara-Iji Isin native law and custom, a person cannot be appointed to the post of Olusin of Ijara-lji Isin until he is presented by the majority of the members of his royal house to the kingmakers (Ihafa) and the majority of the kingmakers has accepted the candidature after certifying the propriety of the candidate.
(3) That the plaintiff having been presented by his royal family, accepted by the Ihafa (the kingmakers) and has been properly approved by the Irepodun Local Government Area is the rightful Olusin of Ijara-Iji Isin.
(4) An injunction restraining the defendants from reviewing the appointment of the plaintiff as the Olusin of Ijara - Iji Isin.
(5) An injunction restraining the 1st defendant from parading and or pretending to be the Olusin of Ijara/Iji Isin and from advertising or sponsoring advertisements through his agents or servants that he is Olusin of Ijara- Iji Isin or doing any other acts in negation of the appointment of the plaintiff as the Olusin of Ijara Iji-Isin."
Thereafter the 1st respondent filed two applications one *ex parte* while the other is on notice both seeking an order of injunction restraining the appellant from parading himself as the Olusin of Ijara-Iji Isin and from sponsoring advertisements that he is the Olusin of Ijara/Iji Isin or doing of other acts in negation of the appointment of the 1st respondent as the Olusin of Ijara-Iji Isin. He also sought an order restraining the 2nd and 3rd respondents from reviewing the appointment of the plaintiff as the Olusin of Ijara/Iji Isin. The *ex parte* motion was granted pending the hearing of the motion on notice. From the affidavit evidence before the court, it is the case of the plaintiff that the stool of Olusin of Ijara Iji Isin became vacant on the demise of the late Olusin, Oba Jacob Olafioye Omiyale on the 14th day of July, 1992. The claim was that the stool of Olusin of Ijara Iji Isin was rotated between Ijara and Iji families. Each of the two families had its kingmakers and did not interfere with the other family when it was its turn to appoint an Oba. The plaintiff deposed that as it became the turn of Ijara Isin family, to which he belonged, to present a candidate for the vacant tool, his ruling house in 1992 duly nominated him in accordance with their addition and customary usages and forwarded his name to the kingmakers for approval. The kingmakers after due consultations ratified and accepted his domination as the Olusin of Ijara Iji Isin. The Ijara chiefs which included the kingmakers headed by the Baale, the Ijara Isin Development Council and the Irepodun Local Government duly approved the appointment of the plaintiff as the olusin of Ijara Iji Isin. Exhibits A and 2 were annexed to the plaintiffs affidavit proof of the various procedural stages and consultations the nomination of the plaintiff as the Olusin went through. Exhibit 3 was said to be the approval of the plaintiffs nomination and his appointment as the Olusin of Ijara Iji Isin by the Irepodun Local Government Council with effect from the 9th July, 1993. The plaintiff added that on the 20th July, 1993, the 1st defendant and/or his reporters carried radio and other advertisements to the effect that the plaintiff's appointment as Olusin of Ijara Iji Isin was null and void and congratulated the 1st defendant for his purported appointment as the Oba Ijara Iji Isin. On the 22nd July, 1993 the. 1st defendant and members of his family sang and danced round the town with the 1st defendant parading himself as the Olusin and addressed as "Kabiyesi" was then alleged that the said actions of the 1st defendant were causing untold confusion and tension to the entire community and embarrassment to the plaintiff hose letter of appointment, Exhibit 3, was neither revoked nor withdrawn.

The 1st defendant in his own counter-affidavit deposed that before the year 1911. Te title of Olusin of Ijara Isin belonged exclusively to his family. He stated that it was not until the year 1911 that some "meddlesome interlopers" from Okegunsin and Odo Ijara "snatched" the throne from his family. The 1st defendant claimed that he was installed traditionally as the Olusin of Ijara Isin on the 19th July, 1993. He described the installation of the plaintiff as a desecration of the native law and custom governing the Olusin chieftaincy After hearing arguments of parties the trial court dismissed the application for interlocutory injunction but however restrained both the 1st respondent and the appellant from parading themselves as the Olusin of Ijara-Iji Isin pending the determination of the suit.
Being dissatisfied the 1st respondent lodged an appeal to the Court of Appeal which in a unanimous decision allowed the appeal and issued an order of interlocutory injunction against the appellant ordering the case to be heard b) another Judge. Aggrieved with the decision of the Court of Appeal, the appealed to the Supreme Court contending *inter alia,* that
(i) the 1st respondent did not make out a case on the merits for grant of interlocutory injunction.
(ii) That the Court of Appeal ought not have ordered the case to be *heard by* another Judge of the trial Court.
(iii) That the Court of Appeal had no jurisdiction *to determine the appeal* because same was not fixed for hearing on the day it was heard. *How (Unanimously dismissing the appeal)*

1. *On Object of interlocutory injunction - Interlocutory injunction* is granted before the trial of an action and in primary object is to keep matters in *status quo ante be: unto* the *question at issue between the parties* can *be (usually* determined by the court, thus facilitating the administration of justice at the trial. Although it is we recognised that there are certain basic issues which the courts need to consider in deciding whether or not an interlocutory injunction should be granted the remedy must be kept flexible and discretionary and each case must be considered as a whole on the basis of fairness, justice and common sense.*(P.* 694, *paras. E-F).*

2 *On Principles guiding consideration of application for interlocutory injunction* -The important issues the courts usually consider before deciding whether or not to issue an order of interlocutory injunction are as follows:

(a) the applicant's real prospect of success in the right claimed;
(b) balance of *convenience;*
(c) maintenance of *status quo;*
(d) relative strength of the case of the parties;
(e) conduct of the parties;
(1) inadequacy of payment of damages.(*P.* 694, *paras.* G*H).*

3. *On Principles guiding consideration of application for interlocutory injunction -*
The court, on the question of the applicant's real prospect of success in the right claimed must, at the outset, be satisfied that the plaintiff's claim is not frivolous or vexatious and that there is a serious question to be tried at the earing of the substantive suit. This first ingredient is a fundamental requirement to be established by an applicant for an order of interlocutory injunction. Where the plaintiff fails to satisfy this basic requirement, this in effect will automatically bring to an end and defeat his application. *(Pp.* 694-695. *paras. H-A).*

4. *On Principles guiding consideration of application for interlocutory injunction -*
Although there is no rule requiring a plaintiff to establish a *prima-facie* case before he can obtain an interlocutory injunction, the court must be satisfied that the plaintiffs case is not frivolous or vexatious and that there is a serious question to be tried. Once this requirement is established, the governing consideration must be balance of convenience. If the balance of convenience does not favour either party, then the preservation of the *status quo aute bellum* will be decisive *(P.695. paras. A-B).*

Per IGUH, J.S.C. at page 695, paras. C-G:

> "I think it ought to be mentioned that on an application for an interlocutory injunction in aid of a plaintiff's alleged right, the court, in appropriate cases may wish to consider the relative strength of the cases of the parties, the conduct of the parties and whether the applicant's case is so clear and free from objection on equitable grounds that it ought to interfere to preserve the property or *res* in issue without waiting for the right to be fully established. See *The Eastern Trust Co. v. Mckenzie. Mann and Co. Ltd.* (1915) A.C. 750. The one thing that is well settled in law, however, is that the grant or refusal of an order of interlocutory injunction is in the absolute discretion of the court, which discretion, however, like all other judicial discretions, must be exercised judiciously, having regard to all the facts and circumstances of each and every case. And as Lord Denning put it in *Hubbard v. Vosper* (1972)2 Q.B.84 at 96, the remedy of interlocutory injunction is so useful that it should be kept flexible and discretionary and must not be made the subject of strict rules. Said the learned Lord - 'In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence and then decide what is best to be done.
> Sometimes it is best to grant an injunction so as to maintain the *status quo* until trial. At other times, it best not to impose a restraint upon the defendant but leave him free to go ahead. For instance in *Frase-Evans* (1969) 1Q.B.349,althoughtheplaintiff the copy right, we did not grant an because the defendant might have a defence or to dealing. The remedy of interlocutory injunction *is* useful that it should be kept flexible and discretionary It must not be made the subject of strict rules."

5. *On Principle guiding consideration of application for inter locut injunction-*
It is not necessary that for a plaintiff to succeed in an application for interlocutory injunction, the court should find a case which would entitle the plaintiff to relief at all events. That is not the law. It *is* quite sufficient *if* the court finds a case, which shows as in the present case, that there is a substantial question to

be investigated, and that matters ought to be preserved in *status qli ante bellum* until the question can be finally disposed of. In the instant case, the *res* in issue in the substantive claim is to alleged appointment of the plaintiff as the Olusin and not talk throne itself. The plaintiff having established that his case ill this direction was not frivolous or vexatious and that he had a serious question to be tried, the Court of Appeal was right it holding that the trial court ought next to have proceeded consider the issue of balance of convenience. *[Kanno* v. R. (1986) 5 NWLR (Pt. 40)138; *Kufeji* v. *Kogbe* (1961)1 All *113;Ladunmiv.Kukoyi(1972)*1AIINLR33referredto.](Pp. *698. paras. H-B; Pp. 704-705,paras. G-E).*

Per IGUH, J.S.C. at page 698, paras. B-G:

"The view of the trial court was that the balance a.: convenience was not in favour of *the* plaintiff by *the* men fact that his appointment in issue as the Olusin was evidenced in writing per Exhibit 3, his letter of appointment: from the Irepodun Local Government. It is clear that to balance of convenience that will be protected, as submitted by the learned counsel for the appellant, cannot be an fancied ego or personal pride of an applicant but substantial right that is fit for legal protection. See *Vee*G, *(Nig.) Ltd. v. Contact (Overseas) Ltd.* (1992) 9 NWL:7 (Pt.266)503 at 515. What is in issue in the present case at the *appointment* of the plaintiff as the Olusin of Ijara/Isin. This, in my view, is a substantial issue fit in deserving of legal protection. Both courts below are agreement that the plaintiff's letter of appointment by the appropriate Local Government, Exhibit 3, remained until otherwise declared by the court. See *Governor of State v. Anosike* (1987) 4NWLR (Pt.66) 663. I respectfully endorse this view. In the face of this finding, it is difficult to appreciate how the learned trial Judge was able to hold that the fact that the plaintiff had his letter of appointment was not enough to hold that the balance of convenience in the present case was in his favour. In my view, the nature of the injury which the appellant, on the one hand, might suffer if the injunction was granted and he should ultimately turn out to be right would be far less than that which the plaintiff, on the other hand, whose evidence of appointment, Exhibit 3,was before the court would sustain if the injunction was refused and he should ultimately turn out to be right. After all, the plaintiff's Purported was not on1y au1y recognised by his appropriate Local Government and evidenced in writing, unlike the appellant's claim by which all he had been doing, in the words of the learned trial Judge, was merely "parading himself as the Olusin". It seems to me that having regard to all the facts and circumstances of this case as disclosed in the affidavit evidence before the court, the balance of convenience in the present application would appear to favour the plaintiff. One clear thing that is certain, however, is that the balance of convenience in the case, no matter how remotely, did not favour the appellant. Even in a situation where the balance of convenience does not clearly favour either party, and this is not the position in the present case, then the preservation of the *status quo ante bellum* will be decisive."

6. On When court can restrain both p0/1ies in an application for interlocutory injunction -
Where in an application for interlocutory injunction to restrain one party from doing an act, the parties concerned agree that the injunction may issue against all parties concerned or a definite case is made out that it is in the overall interest of justice that both parties ought to be restrained, the court would be entitled to issue such order. In the latter case, however, the court must clearly state the facts and circumstances which make it compelling and imperative to extend the order of injunction to both parties. This is because it is trite that a court must not grant to a party relief which he has not sought or which is more than he has sought. *[Ekpenyong v. Nyong* (1975)2 SC. 71; *Union Beverages Ltd v. Olowabi* (1988) 2 NWLR (Pt.68)128; *Makanjuola v. Balogun* (1989)3 NWLR (Pt.l08)192; *Olurotimi v. 1ge* (1993)8 NWLR (Pt.311) 257 referred to] *(P. 702.paras. F-H).*

Per IGUH, J.S.c. at pages 702-703,paras. H-A:

"In the present case, the order under attack was neither sought by the plaintiff nor made by the consent of the parties. The alleged circumstances, which compelled the trial court to issue the order, were nowhere stated in the ruling. The order complained of could in no way to described as a consequential order in view of the outright dismissal of the plaintiff's application in its entire) agree with the Court of Appeal that the learned that Judge exceeded his powers in the circumstances of this case by restraining the plaintiff as he purported to do in his ruling of the 11th January, 1994."

7. *On Duty on trial courts in deciding interlocutory application*

In deciding application for interlocutory injunction the trial *court* should as much as possible try not to delve into predetermine the issues to be tried in *the* substantive case. The courts in this type of situation do and must only confine themselves to those issues necessary for the disposal of the application without more. In the instant case the lower courts id not make any pronouncements on anything that will prejudice the main issues for determination in this case. *[Orji v. Zaria Industries Ltd.* (1992)1 NWLR (Pt.216)124; *Obeya Memorial Hospital v. A.-G Federation* (1987)3 NWLR (Pt.60) *325; Ogbonnaya and others v .Adapalm (Nig.)Ltd.*(1993)5NWLR (Pt.292)147 referred to] *(P.* 697, *paras. E-G).*

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8. *On Powers of the Court of Appeal -*

Section 16of the Court of Appeal Act, 1976empowers the Court of Appeal to exercise full jurisdiction over all matters before it and it may, *inter alia,* remit a case to the court below or the purpose of rehearing or may give such other directions as to the manner in which the court below shall deal with the case or in case of an appeal from the court below in that court's appellate jurisdiction, order the case to be reheard by a court of competent jurisdiction. Further Order 3 rule 23 of the Court of Appeal Rules 1981empowers the Court of Appeal to give any judgment or make further or other order as a case may require. These powers are exercisable by the Court in favour of all or any of the parties although such parties may have not appealed from or complained of the decision. *[Iyai v. Eyigebe*(1987)3NWLR(Pt.61) *523; IgbohoL* G.A.*v. BoundarySettlementCommissioner(1988)1* NWLR (Pt 69)189 referred to] *(P. 701,paras. F-H).*

Per IGUH, J.S.C. at pages 701-702,paras. H.B:

> "It is apparent from the decision of the Court of Appeal that the trial court on the issue on appeal did not exercise its discretion judicially and judiciously. The trial court having exercised its discretion wrongly, the Court of Appeal rightly allowed the appeal and, as it was entitled to do, remitted the case to another Judge of the Kwara State High Court for hearing and determination. This it did in accordance with the maxim that justice must not only be done but must manifestly be seen to be done. It is clear to me that it is not the constitutional right of any party to be heard by a particular judge. See *Aliyu v. Ibrahim* (1992)7 NWLR (Pt.253) 361 at 373 B-C. In my view, there is nothing wrong with this order of the Court of Appeal and issue 3 is hereby resolved against the appellant."

9. *On Effect of entering an appeal -*

Once an appeal is duly entered in an appellate court, it cannot be rightly suggested that such an appellate court is not seized of the appeal or that such an appellate court would have no jurisdiction to entertain the cause or matter.(*P. 701,paras. DE).*

10. *On Effect of counsel announcing appearance for a party -*

Once counsel announces his appearance in court, whether he is holding brief for another counselor not, the court takes it that he is fully mandated and/or authorised to conduct the case on behalf of his principal or his client. If, however, he is not in a position for any reason to do so, it is his duty to apply for an adjournment stating his reasons to the court for the application whereupon the court, upon a consideration of such reasons, shall decide whether or not the case should, in the interest of justice be adjourned, otherwise the court would proceed with the hearing of the cause or matter. In the absence of such an application, the court is entitled to assume that counsel is fully instructed and/or mandated to get on with the case. In the instant case, counsel for appellant sought no adjournment of the appeal but took full part in the hearing thereof, he cannot therefore be heard to complain.
[Shynon v. Asein (1994)6NWLR(Pt.353)670referred *to.](Pp.700-701,paras. H-B).*

11. *On Right of party to address court in appeals where briefs are filed-*

At the hearing of appeals where briefs of argument have been med, it is not a *sinequanon* that parties need proffer oral arguments or submissions in amplification of their respective briefs of argument. Any party, where he so desires, has the right of choice whether or not to offer oral submissions in amplification of his brief.(P. *701,paras. C-D)*

Nigerian Cases Referred to in the Judgment:
Ajewole v. Adetimo (1996)2 NWLR(Pt. 431) 391
Akapo v. Hakeen-Habeeb(1992)6 NWLR(Pt. 247) 266
Aliyu v. Ibrahim (1992)7 NWLR(Pt. 253) 361
Awote v. Owodunlli (No.2) (1987)2 NWLR(Pt. 57) 366
Ayoola v. Adebayo (1969) 1All NLR 159
Ekpenyollg v. Nyollg (1975)2 SC 71
Governor, Imo State v. Anosike (1987) 4 NWLR (Pt. 66) 663
Igboho LG,A .v .Bundal) Settlement Commissioner(1988)1NWLR189
Ajayi v. *Eyigebe* (1987) 3NWLR (Pt. 61) 523
Kanno v. Kanno (1986) 5 NWLR (Pt. 40) 138
Kufeji v. Kogbe (1961) 1All NLR 113
Ladwl1liv. Kukoyi (1972) 1All NLR 133
Makanjuola v. Balogun (1989) 3 NWLR (Pt. 108) 192
Obeya Memorial Hospital v. A.G. Federation (1987) 3NWLR (Pt. 60) 325
Ogbonnaya v. Adapalm (Nig.) Ltd (1993) 5 NWLR (Pt. 292) 147
Ogoyi v. Umagba (1995) 9 NWLR (Pt. 419) 283
Olatunji v. Adisa (1995) 2 NWLR (Pt. 376) 167
Olurotimi v. Ige (1993) 8 NWLR (Pt. 311) 257
Orji v. Zaria Industries Ltd (1992) 1NWLR (Pt. 216) 124
Shyllon v. *Asein* (1994) 6 NWLR (Pt.353) 670
UB.N Ltd Y. Ogboh (1995) 2 NWLR (Pt. 380) 647
Ugwu v. Aba (1961) I All NLR 438
Union Beverages v. Owolabi (1988) 2 NWLR (Pt. 68) 128
VeeGee (Nig.) Ltd v. Contact (Overseas) Ltd (l992)9NWLR(Pt.266 5

Foreign Cases **Referred to in the Judgment:**
American Cyanamid Co v. Ethicon Ltd (1975) AC 396
Donmar v. *Bart* (1967) I WLR 740
Eastern Trust Co. v. Mckenzie. Mamn & Co. Ltd (1915) AC 750
Harnn Pictures N.V. v. Osborne (1967) I WLR 723
Hubbard v. Vosper (1972) 2 QB 84
Jones v. Pacaya Rubber &Produce Co Ltd (1911) 1KB 455
Preston v. Luck (1884) 27 Ch. D. 497
Re Lord Cable (1977) I WLR 7.
Nigerian Statute Referred to in the Judgment:
Court of Appeal Act 1976,s. 16.
Nigerian Rules of Court Referred to in the Judgment:
Court of Appeal Rules 1981 as amended, 0.3 r. 23.
Appeal:
This was an appeal against the decision of the Court of Appeal, which reversed the decision of the trial court which had dismissed the 1st respondent's application for interlocutory injunction. The Supreme Court, in a unanimous decision, dismissed the appeal.
History of the Case:
Supreme Court
Name of Justices that sat on the appeal: Salihu Modibbo Alfa Belgore, J.*S.C. (Presided);* Idris Legbo Kutigi, J.*S.C.;* Michael Ekundayo Ogundare, J.S.C; Sylvester Umaru Onu, *I.S.C.;* Anthony Ikechukwu Iguh; J.*S.C. (Read the Leading Judgment).*
Appeal No.: SC/l27/l995

Date of Judgment: Friday, 5th June, 1998.
Name of Counsel: Yusuf.O. Alli, Esq. SAN (with him, AS. Oyinloye, Esq; M.O. Aminu, Esq; Sikiru U. Solagberu, Esq; M. A1abe1ewe, Esq and K. Orisankoko - *for the Appellant.*
Chief P.A.O. Olorunnisola, SAN *with* A. Aiyedun, Esq and S.O.

Jimoh Esq -*for the 1st respondent.*
M.A. Sanni Esq Attorney-General Kwara State *with* S.A.
Mohammed, Esq; Acting Director Civil litigation Kwara State –*for the 2nd and 3rd Respondents.*
Court of Appeal:
Division of the Court of Appeal from which the appeal was brought:
Court of Appeal, Kaduna *Names of Justices that sat on the appeal:* Maritala Aremu Okunola, J.C.A *(Presided and Read the Leading Judgment);* Mahmud Mohammed, J.C.A;Ibrahim Tanko Muhammad, J.C.A
Appeal No: CAIE/32/94.
Date of Judgment: Thursday, 6th April, 1995
Names of Counsel: Chief P.AO. Olorunisola SAN (with him, A
Aiyedun, Esq -*for the Appellant*
M.Y. Komolaye holds Yusuf Alli's brief -*for the 1st Respondent.*
Funsho D. Lawal (Mrs) Senior State Counsel, Ministry of Justice,
Kwara State -*for 2nd and 3rd Respondent*
J.S. Bamigboye -*for the 4th Respondent*
High Court:
Name of the High Court: High Court, Ilorin
Name of the Judge: Folashade Ojo, J.
Suit No: KWS/OM/24/93
Date of Ruling: Tuesday, 11th January 1994.
Names of Counsel: Chief P.AO. Olorunisola, SAN (with him, A
Aiyedun) -*for the Plaintiff/Applicant*
E.N. Nwakunna - *for the 1st Defendant/Respondent*
Kayode Adefila, State Counsel II -*for the 2nd and 3rd*
Defendants/Respondents.
Counsel:
Yusuf Alli, Esq. SAN (with him A.A. Oyinloye, Esq; M.O. Aminu, Esq;
Sikiru. U. Solagberu, Esq; M. Alabelewe, Esq. and K. Orisankoko - *for the Appellant.*
Chief P.AO. Olorunnisola, SAN *with* A Aiyedun, Esq and S.O. Jimoh Esq - *for the 1st respondent.*
M.A Sanni Esq. Attorney-General Kwara State *with* S.A Mohammed, Esq;

Acting Director Civil litigation Kwara State -*for the 2nd and 3rd Respondents.* IGUH, J.S.C. (Delivering the Leading Judgment): This is an appeal against the judgment of the Court of Appeal, Kaduna Division, which had on the 6th day of April, 1995 allowed the appeal by the defendants from the decision of Ojo, sitting at Ilorin in the High Court of Kwara State of the Federal Republic of Nigeria. The plaintiff had on the 27th day of July, 1993instituted an action against the defendants jointly and severally claiming as *follows:-*
"(I) That the Olusin of Ijara-Iji Isin is not a recognised chief under the Chiefs Appointment and Deposition Law Cap 20, Laws of Kwara State (1963), Northern Nigeria Laws applicable to Kwara State and the appointment to that office does not require the approval of Kwara State Governor or Government.
(2) That under Ijara-Iji Isin native law and custom, a person cannot be appointed to the post of Olusin of Ijara-Iji Isin until he is presented by the majority of the members of his royal house to the kingmakers (Ihafa) and the majority of the kingmakers have accepted the candidature after certifying the propriety of the candidate.
(3) That the plaintiff having been presented by his royal family accepted by the Ihafa (the kingmakers) and has been properly approved by the lrepodun Local Government Area is the rightful Olusin of Ijara-Iji Isin.
(4) An injunction restraining the defendants from reviewing the appointment of the plaintiff as the Olusin of Ijara - Iji Isin.
(5) An injunction restraining the 1st defendant from parading and or pretending to be the Olusin of Ijara-Iji Isin and from advertising or sponsoring advertisements through his agents or servants that he is Olusin of Ijara-Iji Isin or doing any other acts in negation of the appointment of the plaintiff as the Olusin of Ijara Iji-Isin."

The plaintiff on the same 27th day of July, 1993 filed two applications against the defendants. The first was an *ex parte* application of interim injunction restraining, *inter alia,* the 1st defendant from parading himself as the Olusin of Ijara Iji Isin, and the 2nd and 3rd defendants from reviewing the appointment of the plaintiff as the Olusin of Ijara Iji Isin pending the determination of the motion on notice for interlocutory injunction filed in the cause. The second application was the substantive motion on notice for an order of interlocutory injunction praying the court for the following orders, namely

"1. AN INTERLOCUTORY INJUNCTION restraining the 1st defendant from parading and or pretending to be the Olusin of Ijara/Iji Isin and from advertising or sponsoring advertisements through his agents or servants that he is the Olusin of Ijara Iji Isin or doing any other acts in negation of the appointment of the plaintiff as the Olusin of Ijara Iji Isin pending the determination of the substantive suit.
2. AN INTERLOC!JTORY INJUNCTION restraining the 2nd and 3rd defendants their agents or privies from reviewing the appointment of the plaintiff as the Olusin of Ijara Iji Isin pending the hearing of the substantive suit.
3. AND for such further or other orders as the honourable court in a deem fit to make in the circumstances of this case.

" On the 28th day of July, 1993,the *exparte* application for interim injunction restraining the 1st defendant from parading himself as the Olusin of Ijara Iji Isin, and the 2nd and 3rd defendants from reviewing the appointment of the plaintiff as the 01usin of Ijara Iji Isin pending the determination of the said substantive motion on notice was granted as prayed. The substantive motion on notice was thereafter adjourned to the 30th July, 1993for hearing.
From the affidavit evidence before the court, it is the case of the plaintiff that the stool of 01usin of Ijara Iji Isin became vacant on the demise of the late Olusin, Oba Jacob Olafioye Omiyale on the 14thday ofJuly, 1992. The claim was that the stool of 01usin of Ijara Iji Isin was rotated between Ijara and Iji families. Each of the two families had its kingmakers and did not interfere with the other family when it was its turn to appoint an Oba. The plaintiff deposed that as it became the turn of Ijara Isin family, to which he belonged, to present candidate for the vacant stool, his ruling house in 1992 duly nominated him in accordance with their tradition and customary usages and forwarded his name to the kingmakers for approval. The kingmakers after due consultations ratified and accepted his nomination as the Olusin of Ijara Iji Isin. The Ijara chiefs which included the kingmakers headed by the Baale, the Ijara Isin Development Council and the Irepodun Local Government duly approved the appointment of the plaintiff as the Olusin of Ijara Iji Isin. Exhibits A and 2 were annexed to the plaintiff's affidavit in proof of the various procedural stages and consultations the nomination of the plaintiff as the Olusin went through. Exhibit 3 was said to be the approval of the plaintiff's nomination and his appointment as the Olusin of Ijara Iji Isin by the Irepodun Local Government Council with effect from the 9th July, 1993. The plaintiff added that on the 20th July, 1993, the 1st defendant and/or his supporters carried radio and other advertisements to the effect that the plaintiffs appointment as Olusin of Ijara Iji Isin was null and void and congratulating the 1st defendant for his purported appointment as the Oba Ijara Iji Isin. On the 22nd July, 1993the 1st defendant and members of his family sang and danced round the town with the 1st defendant parading himself as the Olusin and addressed as "Kabiyesi".

It was then alleged that the said actions of the 1st defendant were causing untold confusion and tension to the entire community and embarrassment to the plaintiff whose letter of appointment, Exhibit 3, was neither revoked nor withdrawn. The 1st defendant in his own counter-affidavit deposed that before the year 1911, the title of Olusin of Ijara Isin belonged exclusively to his family. He stated that it was not until the year 1911 that some "meddlesome interlopers" from Okegunsin and Odo Ijara "snatched" the throne from his family. The 1st defendant claimed that he was installed traditionally as the Olusin of Ijara Isin on the 19th July 1993. He described the installation of the plaintiff as a desecration of the native law and custom governing the Olusin chieftaincy.

At the conclusion of arguments, the learned trial Judge in a considered ruling on the 11th day of January, 1994 *dismissed* the application for interlocutory injunction. He however restrained both the plaintiff and the 1st defendant from parading themselves as the Olusin of Ijara Isin pending the determination of the suit. Dissatisfied with this ruling of the learned trial Judge, the plaintiff lodged an appeal against the same to the Court of Appeal, Kaduna Division. The Court of Appeal in a unanimous judgment on the 6th day of April, 1995 allowed to be appeal of the plaintiff and issued an order of interlocutory injunction against the defendants as prayed.

Aggrieved by this decision of the Court of Appeal, the 1st defendant now appealed to this court. I shall hereinafter refer to the 1st defendant in this judgment as the appellant, the plaintiff simply as the plaintiff and the 2nd, 3rd an 4th defendants as the respondents respectively. The appellant against this decision of the Court of Appeal filed fourteen grounds of appeal. It is unnecessary to reproduce them in this judgment. I suffices to state that the parties pursuant to the rules of this court filed an exchanged their written briefs of argument. The four issues distilled from the appellant's grounds of appeal set out or his behalf for the determination of this appeal are as follows-

"1. Whether from the affidavit evidence before the trial court which that court considered in detail, the court below was right to have held that the plaintiff made out a case deserving of an injunctive relief against the appellant and

others in the circumstances of this case, moreover when the reliefs sought in the application for injunction were in respect of concluded acts and the order of the court below is not clear and equivocal.
2. Whether the court below did not act without jurisdiction in hearing the appeal on 23rd January, 1995 when the case was for a motion to file respondents' brief out of time and whether this did not lead to a miscarriage of justice against the appellant.
3. Whether the court below was right to have ordered a transfer of the case from the trial court when there was no legal basis for the order and none of the parties asked for it.
4. Whether the court below was not in serious error by tampering with the trial court's exercise of discretion to restrain the appellant and the plaintiff from further parading themselves as the Olusin of Ijara/lji Isin moreover when the learned senior counsel the representing the plaintiff at the trial asked for same. The plaintiff and the respondents, for their parts, severally adopted the four issues as formulated by the appellant for the determination of this appeal.
At the oral hearing of the appeal before us, all three leading learned counsel for the parties adopted their respective briefs of argument and proffered additional submissions in amplification thereof. The main argument of learned leading counsel for the appellant, Y. O. Alli Esq., S.A.N. on issue I was that having regard to the affidavit evidence in support of the plaintiffs application, the order of interlocutory injunction granted by the court below was unjustifiable. In this regard, he called in aid the decision in *Ajewole v. Adetimo* (1996)2 NWLR (Pt.431) 391 at 400 - 40 I and 404. Learned counsel submitted that the existence of a legal right, maintenance of the *status quo* balance of convenience, conduct of the parties, inadequacy of damages and the relative strength of the case of the parties are the crystallized ingredients that an applicant *or interlocutory injunction must satisfy the court upon. He argued thaI* the foregoing six ingredients must co-exist and be established by an applicant and that where a single one of them is not proved, the court must dismiss such application for interlocutory injunction. He contended that the applicant, from his affidavit evidence, failed woefully to establish any of the said ingredients. Relying on the decisions in *Governor of Imo State v. Anosike* (1987)4 NWLR (Pt.66) 663 and *Ogbonnaya v. Adapalm (Nig.) Ud.* (1993)5 NWLR (Pt.292)147at 158, he submitted that the reliefs claimed in the motion paper being in respect of concluded acts, there was nothing for the court to restrain by an order of interlocutory injunction. Learned counsel further submitted that the plaintiff was unable to show that the balance of convenience was on his side. He attacked the order of interlocutory injunction issued by the court below which, he claimed, merely restrained the defendants, as vague, equivocal and general in terms an therefore unenforceable.

On issue 2 it was learned Senior Advocate's contention that the court below lacked the jurisdiction to hear the appeal on the 23rd January, 1995 on which date the matter was only fixed for the hearing of an application for extension of time within which to file the respondent's brief of argument. He submitted, with regard to issue 3, that the court below was in error when it ordered the transfer of the case to another Judge in the absence of any application to that effect. On issue 4, learned counsel contended that it is not in all cases where an application for interlocutory injunction is dismissed that the court becomes unable to restrain both sides from committing the act complained of. He argued that the court below was in error by interfering with the trial court's exercise of discretion to restrain the plaintiff and the appellant from further parading themselves as the 01usin of Ijara Iji Isin, particularly when the plaintiffs learned counsel at the trial applied for the same relief. He urged the court to allow the appeal.

Learned leading counsel for the plaintiff, Chief P. A. O. Olorunnisola S.A.N., in his reply maintained that the trial court laboured under a mistake of law and failed to consider relevant affidavit evidence before it. It was his view, therefore, that the court below rightly reversed the exercise of discretion by the trial court which dismissed the plaintiffs application but issued interlocutory injunction against both the plaintiff and the appellant. He pointed out that both the trial court and the Court of Appeal were in agreement that the plaintiff had a legal right to protect as per his letter of appointment as the Olusin of Ijara Iji Isin by the Irepodun Local Government. He also stressed that the appellant's acts of parading and advertising himself as the Olusin was a continuing conduct capable of being arrested at any point in time by an interlocutory injunction. He submitted that the 1st respondent established a clear case for the issue of an interlocutory injunction, having regard to the essential ingredients that needed be proved. On issue 2, learned counsel's submission was that the substantive appeal was on the 17th day of July 1994 adjourned to the 23rd January, 1995 for hearing. He argued that no question of want of jurisdiction on the part of the court below to hear the appeal arose as the cause was duly entered in that court before the appeal was heard, It was finally pointed out that all the parties were represented by counsel at the hearing of the appeal and, again, that no question of a miscarriage of justice against the appellant arose at the hearing. On issue 3, learned counsel referred to section 16 of the Court of Appeal Act, 1976 and to the provisions of Order 3 rule 23 of the Court of Appeal Rules, 1981 and submitted that the Court of Appeal had the power to order the transfer of the suit to another judge for hearing in the particular circumstances of the case to ensure that justice was not only done but was seen to be done to all the

parties. On issue 4, finally, it was the contention of learned counsel that the Court of Appeal acted lawfully when it held that the order of the trial court restraining the plaintiff and the appellant by an order. of interlocution injunction was invalid as no one asked for it was further submitted that the all order could not be described as a consequential order since the main or principle relief claimed by the plaintiff had been *dismissed* by the trial court urged this court to resolve all four issues in favour of the respondents and dismiss the appeal as unmeritorious. .

Learned leading *counsel* for *the* 2nd and 3rd respondents, M. A. Sanm *Esq* Attorney-General and Commissioner for Justice, Kwara State, in his own reply issue 1 submitted that the grant or refusal of interlocutory injunction depend~ entirely on the discretion of the court which must *be* exercised *judiciously* and up the facts and circumstances of each case. The arguments proffered on behalf of the 2nd and 3rd respondents synchronized with those advanced on behalf of the plaintiff and it is unnecessary to recount them all over again. It suffices to state the learned Attorney-General with regard to issue I rounded up by submitting from all the available facts, the Court of Appeal rightly found that the trial court failed to consider relevant matters deposed to by the plaintiff in his affidavit in support of the application and thereby erroneously misapplied the law. On issue 2, learned counsel submitted that the appeal was properly adjourned on the 7th July, 1994 to the 23rd January, 1995 for hearing. He argued that no question of jurisdiction arises in the case as the appeal was duly entered in the court below and fully argued by counsel for all the parties on the said 23rd January, 1995. He was in agreement with the submissions on behalf of the plaintiff with regard to issues 3 and 4 and he urged the court to dismiss this appeal.

I think it will be necessary before I proceed to consider the issues that arise for determination in this appeal to examine, briefly, the more important general principles of law that govern the grant or refusal of an interlocutory injunction. In the first place, an interlocutory injunction is granted before the trial of an action and its primary object is to keep matters in *status quo ante bellium* until the question at issue between the parties can be finally determined by the court, thus facilitating the administration of justice at the trial. Although it is well recognised that there are certain basic issues which the courts need to consider in deciding whether or not an interlocutory injunction should be granted, the remedy must be kept flexible and discretionary and each case must be considered as a whole on the basis of fairness, justice and common sense. See *Hubbard* v. *Vosper* (1972)2 Q. B. 84.

The more important of the issues the courts usually consider before deciding whether or not to issue and order of interlocutory injunction are as follows
(i) Applicant's real prospect of success in the right claimed.
(ii) Balance of convenience.
(iii) *Status quo.*
(iv) Relative strength of the case of the parties.
(v) Conduct of the parties.
(vi) Inadequacy of payment of damages.
See *American Cyanamid Co.* v. *Ethicon Ltd.* (1975) A.c. 396 at 407 - 409.

The court, on the question of the applicant's real prospect of success in the right claim must, at the outset, be satisfied that the plaintiff s claim is "not frivolous or vexatious" and that "there is a serious question to be tried at the hearing of the substantive suit." This first ingredient is a fundamental requirement to be established by an applicant for an order of interlocutory injunction. Where the plaintiff fails to satisfy this basic requirement, this in effect will automatically bring to an end, and defeat, his application. See *Re Lord Cable* (1977) 1 W.L.R. 7.

Although there is no rule requiring the plaintiff to establish *a prima fade* case before he can obtain an interlocutory injunction, the court must be satisfied that the plaintiffs case is not frivolous or vexatious and that there is a serious question to be tried. Once this requirement is established, the governing consideration must be balance of convenience. See *American Cyanamid Co. v. Ethicon Ltd. (supra)* at 407. If the balance of convenience does not clearly favour either party, then the preservation of the *status quo ante bel/um* will be decisive. See *Harman Pictures N. V. v. Osborne* (1967) 1W.L.R. 723 and *American Cyanamid Co. v. Ethicon Ltd.(supra).*

I think it ought to be mentioned that on an application for an interlocutory injunction in aid of a plaintiff s alleged right. the court, in appropriate cases, may wish to consider the relative strength of the cases of the parties, the conduct of the parties and whether the applicant's case is so clear and free from objection on equitable grounds that it ought to interfere to presene the property or *res* in issue) without waiting for the right to be fully established. See *The Eastern Trust Co. v. ckenzie, Mann and Cu. Ltd.* I 19151 A.C ~5u. The one thing that is well settled in law,

however, is that the grant or refusal of un order of interlocutory injunction is in the absolute discretion of the court, which discretion. holder like all other judicial discretions, must be exercised judiciously, having regard to all the facts and circumstances of each and every case. And as Lord Denning put it in *Hubbard v. Vosper(* 1972) 2 Q. B. 84at 96, the remedy of interlocutory injunction is so useful that it should be kept flexible and discretionary and must not be made the subject of strict rules. Said the learned Lord .

> "In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also to the strength of the defence and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the *status quo* until trial. At other times, it is best not to impose a restraint upon the defendant but leave him free to go ahead. For instance in *Fraser v. Evans* (1969) I Q. B. 349, although the plaintiff owned the copy right, we did not grant an injunction, because the defendant might have a defence of fair dealing. The remedy of interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."

Having briefly disposed of the general principles of law that govern the grant or refusal of an order of interlocutory injunction, I will now consider the issues formulated by the parties for determination in this appeal against the iI background of the said general principles of law and the facts of this case. Issue I poses the question whether the Court of Appeal was right to have held that the plaintiff made out a case deserving of an injunctive relief against the appellant when the relief sought in the application was in respect of concluded acts and the order of the court below was not clear and unequivocal. The totality of the affidavit evidence of the plaintiff before the trial court was that the said plaintiff *was by Exhibit* 3 appointed the Glusio or Ijara Iji lsio 00 the ~th July, 1993. Thus letter of appointment was issued to the plaintiff after he had been nominated and duly recommended by *his* ruling house. It wasafter the plaintiff had received his said letter of appointment that the appellant allegedly started to sponsor advertisements to the effect that the plaintiffs appointment was null and void and that it was the said appellant that was the Olusin of Ijara Isin. The appellant had claimed in *his* own counter-affidavit that he had been duly nominated by his family and that he had been installed by the Eesa of Pamo in accordance with their tradition.

In this regard it must be pointed out that both the trial court and the court below were in agreement that the plaintiff had a legal right to protect by dint of Exhibit 3, his letter of appointment as the Olusin of Ijara Iji Isin with effect from the 9th day of July, 1993This letter which is reference No. *IRLG/CA/S/13/S/321*1/95 is dated the 9th July, 1993 and reads thus in reply please quote *Ref.No.IRLG/CA/S/13/S/32/1/95*
Number and Date
IREPODUN LOCAL GOVERNMENT
Telegram Loradmin Personal Department
Omu-Aran P.M.B. 1005
Your Ref. No Omu-Aran via Ilorin
Kwara State, Nigeria
Date 9th July, 1993
His Royal Highness,
Oba Ominiyi Banigbe,
(The Olusin of Ijara/
Iji-Isin.
Your Highness
APPOINTMENT AS OLUSIN OF IJARA/lJI-ISIN
I wish to inform your Royal Highness that after due consideration with the Irepodun lIfelodun/Ekiti Traditional Council and on further investigation by the Irepodun Local Government Council, I hereby approve your appointment as the Olusin of Ijara/Iji-Isin. The appointment takes effect from 9th July, 1993.

Your Highness it is my sincere hope that this appointment would spur you to great heights in the service of the Government and people of Irepodun Local Government in general and your own people in particular. Please accept my heartfelt congratulations.

(CHIEF JOSEPH TEJUMOLA ADEYEMI)
Chairman Irepodun Local Government. There were also Exhibits A and 2 which respectively indicated various

stages of nominations, consultations and alleged traditional and *lor* customary A moves which culminated in the letter of appointment, Exhibit 3. Of Exhibit 3, the learned trial Judge observed as follows –

"In the instant case, the subject matter of the application is the Olusin throne The plaintiff/applicant's claim is that he has been appointed by the Irepodun Local Government. His letter of appointment dated 9th July, 1993 and signed by the Chairman of the said Local Government is exhibited in this application. The1st defendant/respondent has no such letter of *appointment The letter of appointment of the plaintiff/applicant remains valid until otherwise declared by this court. (Italics supplied for emphasis).* The Court of Appeal for its own part endorsed the above finding of the trial court, holding as follows

"The pertinent question to ask here in the light of the prevailing circumstances in this instant case is whether there is a legal right to protect *via* injunction. I would answer that since the lower court had held that Exhibit 3 is valid and in the light of the uncontroverted affidavit evidence of the right to be protected in Exhibit 3 *via* injunction. *See Akapo v.Habeeb (supra)* pages 288 - 290. It is my view that there are triable issues at the trial of the main suit. In effect I hold that requirements for the granting of injunction had been satisfied in the instant case. See also *Anosike Building & Comm. Co. v. FCDA* (1994) 8 NWLR E {Pt.363)421.

"The vital point that needs be stressed at this stage is that the two courts below by their observations could not be said to have made any pronouncements on anything that would tend to prejudice the main issues for determination in the substantive suit at the trial. In deciding applications of this nature, the trial court should, as much as possible, try not to delve into or predetermine the issues to be tried in the substantive case. See *Orji v. Zaria Industries Ltd.* (1992)1 NWLR {Pt.216)124, *Obeya Memorial Hospital v. Attorney-General of the Federation* (1987)3 NWLR {Pt.60)325. The courts in this type of situation do and must only confine themselves to those issues necessary for the disposal of the application without more. It is for this reason that I, too, am conscious not to make any pronouncement on any issue that will be prejudicial to the main questions for determination at the trial of the substantive suit. See *Ogbonnaya and others v. Adapalm (Nig.) Ltd.* (1993)5NWLR(Pt.292)147. All I need state from the above observations of the courts below is that it seems to me plain that the plaintiff claim can by no stretch of the imagination be described as frivolous or vexatious or that there is no question to be tried in the substantive action. This is the first hurdle the plaintiff, as an applicant for an order of interlocutory injunction, must clear.

I As already observed, it is not necessary that for the plaintiff to succeed, the court in an application for interlocutory injunction should find a case which would entitle him to relief at all events. That is not the law. It is quite sufficient if the court finds a case which shows, as in the present case, that there is a substantial question to be investigated and that matters ought to be preserved in *status quo ante bellum* until that question can be finally disposed of. See *Preston v. Luck* (1884) 27 Ch.497 C.A. *Jones v. Pacaya Rubber and Produce Co. Ltd.* (1911)1 K.B. 455 a. 459. I agree with the finding of the court below that the *res* in the issue in the substantive claim is the alleged appointment of the plaintiff as the Olusin and not the throne itself. The plaintiff, having thus established that his case in this direction was not frivolous or vexatious and that he had a serious question to be tried, the court below was right in holding that the trial court ought next to have proceeded to consider the issue of balance of convenience.

The issue of balance of convenience did not appear to have engaged the attention of the court below. The view of the trial court was that the balance of convenience was not in favour of the plaintiff by the mere fact that his appointment in issue as the Olusin was evidenced in writing per Exhibit 3, his letter of appointment from the Irepodun Local Government. It is clear that the balance of convenience that will be protected, as submitted by the learned counsel for the appellant, cannot be any fancied ego or personal pride of an applicant but a substantial right that is fit for legal protection. See *Vee Gee (Nig.) Ltd. v. Contact (Overseas) Ltd.* (1992)9 NWLR(Pt.266)503 at 515. What is in issue in the present case is the *appointment* of the plaintiff as the Olusin of Ijara Iji Isin. This, in my view, is a substantial issue fit and deserving of legal protection. Both courts below *9re* in *9greeJDenlln.91*Ihe plaintiff's letter of appointment *by* the appropriate Local Government, Exhibit 3, remained valid until otherwise declared by the court. See *Govemor of lmo State v. Anosike* (1987)4NWLR (Pt.66)663. I respectfully endorse *this view. In the face of this finding, it is difficult to appreciate how the learned trial* Judge was able to hold that the fact that the plaintiff had his letter of appointment that the balance of convenience in the present ease was his favour. In my view, the nature of the injury, which the appellant, on the one hand, might suffer if the injunction was granted, and he should ultimately turn to be right would be far less than that which the plaintiff, on the other hand, whose evidence of appointment, Exhibit 3, was before the court, would sustain if the injunction was refused and he should ultimately turn out to be right. After all, the plaintiffs purported appointment was not only duly recognised by his appropriate Local Government and evidenced in writing, unlike the appellant's claim by which all he had been

doing, in the words of the learned trial Judge, was merely "parading himself as the Olusin". It seems to me that having regard to all the facts and circumstances of this case as disclosed in the affidavit evidence before the court, the balance of convenience in the present application would appear to favour the plaintiff. One clear thing that is certain, however, is that the balance of convenience in the case, no matter how remotely, did not favour the appellant. Even in a situation where the balance of convenience does not clearly favour either party, and this is not the position in the present case, then the preservation of the *status quo ante bellum* will be decisive. See *American Cyanamid Co. v. Ethicon Ltd.* And *Harman Pictures N. V. v. Osborne (supra).* I will now dispose of the issue of *statu quo ante bellum.*

It is trite law that the court in an application for interlocutory injunction will consider the preservation of the *status quo ante bellum.* In *Akapo v. Hakeem -Habeeb* (1992) 6 NWLR (Pt. 247) 266 at 311C Ogundare, J.S.C. defined the phrase, *status quo aute bellum* to mean the situation or position prevailing before the defendants' conduct complained of by the plaintiff.
" The next question, naturally, must be what the prevailing situation or position was before the appellant's conduct complained of by the plaintiff. The answer seems to me clear. As the court below put it – "

It is my considered view that in the instant case, the *res* is the appointment and not the throne. The application for injunction here is being made by a person who believes he has been appointed and wants to restrain the other from causing a breakdown of law and order and I so hold. See *Governor of Lagos State v. Ojukwu* (1986) 1NWLR (Pt.18)621 page 624-626 (Holding 26) page 645 to 647. See also *Akapo v. Habeeb (supra)* 3] 1 - 3]2. I need to emphasise here that I have used the phrase 'a person who believes that he has been appointed' since this is the issue for determination in the substantive suit. I have taken this precaution since this is an appeal against an interlocutory injunction and taking into consideration also the fact that one of the reliefs claimed in the writ of summons in the substantive suit pending at the court b) the appellant is a relief for perpetual Injunction restraining the respondents, their servants parties and agents from further acts related to the chieftaincy stool. I am fully aware in consequence that I have to confine myself these uses only necessary for disposing of the appeal. It is for this reason ihaI I am conscious not to make any pronouncement on anything this will present the main issues of the case pending at the trial court.

" I think the Court of Appeal was right in the above observation. In my life heprevailing position before the appellant's conduct complained of was the fact of the plaintiff s appointment as the Olusin of Ijara Iji Isin. It is this appointment that the appellant now seeks to challenge. As I have already pointed out earlier on in this judgment, the trial court in its ruling decided that the plaintiff s letter of appointment, Exhibit 3, is valid until otherwise pronounced by the court in the substantive suit. It is significant that the appellant herein did not appeal against this finding of the trial court which was affirmed by the Court of Appeal. In my view, it is this appointment of the plaintiff as the Olusin that is the *res* to be preserved on the particular facts of the instant case pending the final determination of the substantive suit and I so find. On the rest of the issues for consideration as to whether or not an order of interlocutory injunction may go, it is clear on the question of the relative strength of the case of the parties that the plaintiff's case, as I have already pointed out, can by no means be regarded as frivolous or vexatious. He has, on the pleadings, clearly established that he has a *prima facie* case and a serious question to be tried in the substantive suit. There is also no allegation of any conduct which in any way suggests that the plaintiff's case is not free from objection on equitable grounds that the court ought not to interfere to preserve the *res* in issue without waiting for the right to be fully established. See *Eastem Trust Co. v. Mckenzie Mann and Co. Ltd. (supra).* I cannot, myself, conceive the adequacy of any payment of damages or compensation to the plaintiff by the appellant, no matter how high the quantum thereof, in respect of the injury the plaintiff would sustain or suffer if the injunction was refused and he should ultimately turn out to be right. It seems to me that the Court of Appeal took pains to consider the entire arguments before the trial court before it came to the conclusion that the ruling of the learned trial Judge be justified from the available facts of the case. I think the court below was perfectly right when it held that. this is a proper case for the grant of interlocutor; injunction as prayed. Learned counsel for the appellant did submit that the relief claimed in the motion paper being in respect of concluded acts, there was nothing for the court restrain by an order of interlocutory injunction.
On this point, I need only state that what was sought by the plaintiff against the appellant before the trial court was thee restrain the appellant from "parading and/or pretending to be the Olusin of Ijara Iji Isin and from advertising or sponsoring advertisement through his agents or servants that he is the Olusin of Ijara Iji Isin or doing any other acts in negation of the appointment of the plaintiff as the Olusin " There is also paragraph 31 of the plaintiff s affidavit in support of the application which deposes as follows -

"31. That the 1st defendant is continuing in his parade as Oba of Ijara Iji Isin when no kingmakers appointed him as one and his activities are polluting our tradition and causing disharmony in the town."

It is thus clear that the acts of the appellant complained of were *continuing acts* and not *concluded acts* as erroneously submitted by learned counsel for the appellant. There is next the submission of learned appellant's counsel to the effect that the order of the Court of Appeal was vague. In this regard, it is not disputed that the terms of the interlocutory injunction applied for are clear. This application, the trial court dismissed. The Court of Appeal, upon a calm consideration of the decision of the trial court, found this to be erroneous and concluded thus

" In effect, I hold that the requirements for the granting of injunction had been satisfied in the instant case."

It then proceeded to allow the appeal, set aside the decision of the learned trial Judge and granted the plaintiffs application. It is clear to me that upon a consideration of the decision of the court below in its totality, the order of injunction granted was as prayed for by the plaintiff. Issue I must therefore be resolved against the appellant. On issue 2, learned counsel for the appellant contended that the court below lacked the jurisdiction to hear the appeal on the 23rd January, 1995on which date the matter, according to him, was only fixed for the hearing of a motion for extension of time within which to file the respondents' brief of argument. With respect to learned counsel, amenable to accept that this submission is either sound or well founded. The record of proceedings shows that the appellant on the 12th April, 1994 moved a motion for stay of proceedings after which the ruling was reserved. The said ruling was delivered on the 7th July, 1994. It is on record that immediately after the ruling was delivered, the main appeal was adjourned to the 23rd January, 1995 for hearing. Learned appellant's counsel was therefore in error to suggest that the appeal was not fixed for hearing on the 23rd January, 1995 on which date the appeal was duly heard and all the parties concerned were duly represented by counsel. The appellant, in particular, was represented at the hearing of the appeal on that date by one M. 1. Komolafe Esq. who announced himself as holding brief for Mr. Yusuf AlIi, the appellant's present counsel before this court.

It seems to me necessary at this stage to stress that once counsel announces his appearance in court, whether he is holding brief for another counselor not, the court takes it that he is fully mandated and/or authorised to conduct the case on behalf of his principal or his client. If however, he is not in a position for any reason to do so, it is his duty to apply for an adjournment, stating his reasons to the court for the application whereupon the court, upon a consideration of such reasons, shall decide whether or not the case should, in the interest of justice, be adjourned, otherwise the court would proceed with the hearing of the cause or matter. In the absence of such an application, the court is entitled to assume that counsel is fully instructed and/or mandated to get on with the case. See *Shynon v. Asein (1994)6* S.C.N.J. 287; (1994) 6 NWLR (Pt. 353) 670. In the present case, learned counsel for the appellant sought for no adjournment of the appeal but took full part in the hearing thereof. Briefs of argument were du}.y filed by learned counsel on behalf of the parties. The appellant's brief of argu~ent, in particular, was settled and signed by Yusuf O. Alli Esq., the learned Senior Advocate who appeared before us on behalf of the appellant. At the hearing of the appeal on the 23rd January, 1995 learned counsel for the appellant, Mr. Komolafe duly adopted the brief filed on behalf of his client.

He urged the court to dismiss the appeal. In this regard, it has to be pointed out that at the hearing of appeals where briefs of argument have been filed, it is not a *sine qua non* that parties need proffer D oral arguments or submissions in amplification of their respective briefs or argument. Any party, where he so desires, has the right of choice whether or not to offer oral submissions in amplification of his brief. I therefore think that the complaint of the appellant under this issue is without any legal justification.

Finally on issue 2, it is not in dispute that the appeal had been *entered* in the Court of Appeal before that court on the 23rdJanuary heard it, 1995. Once an appeal is duly entered in an appellate court, it cannot be rightly suggested that such an appellate court is not seized of the appeal or that such an appellate court would have no jurisdiction to entertain the cause or matter. In my view, no question of jurisdiction arises in this appeal and issue 2 must be resolved against the appellant.

Issue 3complainsof the order of transfer of the substantive case by the Court of Appeal to another Judge of the Kwara State High Court for hearing and determination when no party applied for it. In the first place, there is section 16 of the Court of Appeal Act, 1976whichempowerstheCourt of Appeal to exercise full jurisdiction over all matters before it and may, *inter alia.* remit a case to the court below for the purpose of rehearing or may give such other directions as to the manner in which the court below shall deal with the case, or, in case of an appeal from the court

below in that court's appellate jurisdiction, order the case to be reheard by a court of competent jurisdiction. See *lyaji v. Eyigebe* (1987)3NWLR (Pt.61) 523 at 530 E.-G; *19boho. lrepo LG.A. and another v. The Boundary Settlement Commissioner* (1988)2 S.C.N.J. 28; (1988) I NWLR (Pt. 69) 189 etc.

There is also the provision of Order 3 rule 23 of the Court of Appeal Rules, 1981 which, *inter alia.* empowers the Court of Appeal to give any judgment or make such further or other order as a case may require. These powers are exercisable by the court in favour of all or any of the parties although such parties may not have appealed from or complained of the decision. It is apparent from the decision of the Court of Appeal that the trial court on the issue on appeal did not exercise its discretion judicially and judiciously. The trial court having exercised its discretion wrongly, the Court of Appeal rightly allowed the appeal and, as it was entitled to do, remitted the case to another Judge of the Kwara State High Court for hearing and detennination. This it did in accordance with the maxim that justice must not only be done but must manifestly be seen to be done. It is clear to me that it is not the constitutional right of any party to be heard by a particular judge. See *Aliyu v. Ibrahim* (1992)7 NWLR (Pt.253) 361 at 373 B-C. In my view, there is nothing wrong with this order to the court below and issue 3 is hereby resolved against the appellant. B J Issue 4 deals with the restraint of both the plaintiff and the appellant by the trial court in the application for interlocutory injunction in issue. In this regard it has to be recalled that the trial court dismissed the plaintiff s application for interim injunction against the appellant. The court however proceeded to restrain both the plaintiff and the appellant from parading themselves as the Olusin of Ijara Iji Isin pending the detennination of the substantive suit. Inspite of the fact that the trial court had held that
"there is also no evidence before me that there has been any break down of law and order in the area since the chieftaincy dispute started.", It nevertheless went to the state - "In view of the circumstances of this case and in the interest of justice and peace, I hereby restrain both the plaintiff and the 1st defendant from parading themselves as the Olusin of Ijara Iji Isin pending the detennination of this suit."

The learned counsel for the plaintiff has described the order in question as "strange" and I think, with the greatest respect, that I am inclined to agree with him. The "circumstances of this case" alluded to by the learned trial Judge as a result of which the unsolicited order under attack was made were in no way stated. Learned counsel for the appellant had submitted that the order is justifiable as he claimed it was incidental to and flowed from the prayers sought by the plaintiff. With respect, I find it difficult to accept this submission as well founded, particularly in view of the fact that the application itself had been found to be without substance and accordingly dismissed by the trial court. I fully endorse the decision of the Court of Appeal that the learned trial Judge was in definite error by restraining the plaintiff and the appellant as he did when nobody applied or asked for such an order and after the application itself had been refused on its merits. Without doubt, where in an application for interlocutory injunction to restrain one party from doing an act, the parties agree that the injunction may issue against all the parties concerned or a definite case is made out that it is in the overall interest of justice that both parties ought to be restrained, the court would be entitled to issue such an order. In the latter case, however, the court must clearly state the facts and circumstances which make it compelling and imperative to extend the order of injunction to both parties. This is because it is trite that a court must not grant to a party a relief which he has not sought or which is more than he has sought. See *Ekpeyong v. Nyollg* (1975)2 S.c. 71 at 81 - 82; *Union Beverages Ltdv. Olowabi* (1988)2 NWLR (Pt.68)128 at 133; *Makanjuola v. Balogull* (1989)3 NWLR (Pt.108)192 at 206; *Olurotimi v. Ige* (1993)8 NWLR (Pt.311)257 at 271 etc.

In the present case, the order under attack was neither sought by the plaintiff nor made by the consent of the parties. The alleged circumstances which compelled the trial court to issue the order was no where stated In Its order complained of could in no way be described as a consequential order of the outright dismissal of the plaintiff s application in its entirety the Court of Appeal that the learned trial Judge exceeded his circumstances of this case by restraining the plaintiff as he purported to do ruling *of* the 11th January, 1994. Issue 4 is accordingly resolved against the appellant.

On the whole, this appeal lacks merit and it is hereby dismissed with costs to the plaintiff/1st respondent against the appellant which I assess and fix at N10,000.00.

BELGORE, J.S.C. In chieftaincy matters, it is in the interest of public good to avoid confusion in the community as confusion can lead to breakdown of law and order. In the instant case the plaintiff after going through some formalities - traditional and statutory - was appointed the Olusin of Ijara Isin by Ifelodun/Irepodun/Ekiti Traditional Council and was given a letter to that effect which is Exhibit 3. From that day he received Exhibit 3 -we shall not for

the moment know whether rightly or wrongly -he has had a vested interest to protect and the balance of convenience is on his side to maintain *status quo ante bellum.* Until Exhibit 3 is declared null and void the presumption is that it is in order because it emanated from rightful source. Pending the determination of the substantive suit, the plaintiffs right under Exhibit 3 must be protected.

The plaintiff has got a serious issue of law to be decided, to wit, whether Exhibit 3 is valid or not; if it is valid he is the Olusin, if not ,his appointment is null and void. But these are matters to be decided in the substantive action which his still begging to be heard at the trial court.

I see no merit in this appeal and I dismiss it in agreeing with the judgment of my learned brother, Iguh, J.S.c. I awardN10,000.00as costs to the respondents against the appellant.
KUTIGI, J.S.C.: I read in advance the judgment just delivered by my learned brother, Iguh, J.S.C. I agree with his conclusion that the appeal is without substance and ought to be dismissed. It is accordingly dismissed with Nl0000.00 (Ten thousand Naira only) costs against the 1st defendant/appellant and in favour of the plaintiff/respondent only.

OGUNDARE, J.S.C.: I agree entirely with the judgment of my learned brother Iguh, J.S.C just delivered. He has, in his usual characteristic clarity, dealt with all the issues canvassed in this appeal. I adopt his reasoning and conclusions as mine and, like him too, I dismiss the appeal with costs as assessed by Iguh.

ONU, J.S.C: Having been privileged to read before now the judgment just delivered by my learned brother Iguh, J.S.c., I am in entire agreement with him that the appeal lacks substance and it is accordingly dismissed by me.

My learned brother has so meticulously dealt with the facts and the law (principles) applicable to the grant or refusal of interlocutory injunctions such as the one in hand, that my task here is made all the more lighter by my venturing the following brief comments.

The four issues submitted by appellant from his fourteen grounds of appeal as arising for our determination are as follows:-

"1. Whether from the affidavit evidence before the trial court which that court considered in detail, the court below was right to have held that the plaintiff made out a case deserving of an injunctive relief against the appellant and others in the circumstances of this case, moreover when the reliefs were in respect of concluded acts and the order of the court below is not clear and equivocal.
2. Whether the court below did not act without jurisdiction in hearing the appeal on 23rd January, 1995, when the case was for a motion to file respondents' brief out of time and whether this did not lead to a miscarriage of justice against the appellant.
3. Whether the court below was right to have ordered a transfer of the case from the trial court when there was no legal basis for the order and none of the parties asked for it.
4. Whether the court below was not in serious error by tampering with the trial court's exercise of discretion to restrain the appellant and the plaintiff from further parading themselves as the Olusin of Ijara-Iji Isin moreover when the learned senior counsel represented the plaintiff at the trial asked for same.

"It is trite law from numerous and consistent judicial pronouncements in this country, that an applicant for an interlocutory injunction has the onus of proof; " theburden whereof lies on him throughout" (per Ungoed - Thomas, J.) in *Donma Productions Ltd v. Bart* (1967) 1 WLR 740 at 742, cited with approval by Coker, J.Se. in *Ladunni v. Kukoyi* (1972)1 All NLR 133 at 137. In the instant case where Exhibit 3 -the letter of appointment of the plaintiff by the Irepodun Local Government as OIusin of Ijara- Iji Isin - forms the cornerstone of the plaintiff s rights, such rights unless shown to be frivolous or vexatious, ought to be protected by way of interlocutory injunction. An interlocutory injunction being a discretionary relief will only be granted by the trial judge acting judiciously or will be granted upon triable issues on substantial question to be investigated at the trial of the main suit or of matters which ought to be preserved in *status quo ante bellum* until the main suit is finally disposed of at the trial thereof.
In this regard, what is the *res* in the case in hand is not the throne of Olusin which is tangible but the appointment of the plaintiff as Olusin of Ijara-Iji Isin by the Irepodun Local Government.

Thus, in *Mrs. Monica Ego Kanno v. Mr. Banigo 19bani Kanno & 2ors.* (1986) 5 NWLR (PtAO) 138, it was held *inter alia* that "It is for the applicant to show or satisfy the court that the action is neither frivolous nor vexatious." See also Coker, J. (as he then was) in *Simplicio Kufeji v. Kogbe* (1961)1 All NLR 113. At page 114 of *Kufeji's case (supra)* Coker, J. went on to enunciate thus:

> "In an application for interim relief by way of injunction it is not necessary that a plaintiff or applicant should make out a case as he would do on the merits, it being sufficient that he should*ers* that there is a *substantial issue* to be tried at the hearing"

As Akpata, JCA (as he then was) further put it in *Kanno v. Kanno* "In an application for an interlocutory injunction the applicant and must establish a probability or strong *prima facie* case that he is entitled to the right of whose violation he complains and subject to this being established, the governing consideration is maintenance of the *status quo* pending the trial."

On balance of convenience, upon weighing the materials placed before the trial court as well as the court below, most especially Exhibit 3 and the affidavit evidence, the balance of convenience seems to favour or weigh more on the side of the plaintiff than on the side of appellant for, it is the plaintiffs appointment as Olusin and not the throne *per se,* that constitutes the *res* to be preserved on the facts disclosed herein pending the final determination of the substantive suit. The plaintiff would therefore appear clear to me to have established a *primafacie* case.

For, as held by this court in *Ladulli v. Kukoyi* (1972)3SC 31 at 34 or (1972) I All NLR 133 at 137:

> "What is required to be made out is a *prima facie* case and not a *prima facie* title to the land and depending on the circumstances of each case and in particular the circumstances necessitating or compelling the application for an interim injunction. the court must bring to bear on the whole matter its own discretion maintaining an equilibrium as between two warring parties. It must however be borne in mind that at all times the burden of establishing such as indeed that of *balance of convenience,* rests always on the applicant for the order."

I am in agreement with learned counsel for the 1st plaintiff/respondent when he submitted that the plaintiff made out a *prima facie* case for the interlocutory injunction. See *Obeya Memorial Hospital etc Ltd. v. A.G. of the Federation* (1987)3NWLR(Pt.60)325 in which the notion of establishing a triable issue in the context of interim injunction was analysed in considerable detail. Similarly, I agree with the court below when it held *inter alia* that :

> "I have examined the records of the trial court paragraph 18at page 18of same which shows that the appellant having been appointed as the Olusin became the agent of the Local Government for tax collection and maintenance of peace in the appellant's community where he is living atthe expense of his legal practice *vide* paragraph 30page 20of the records. At paragraph29of the same page 20 there is also uncontroverted affidavit evidence that the appellant was being paid by the Irepodun Local Government for his duties as appointee of the said Local government This is evidence of payment of salary to the appellant. In my view, the learned trial Judge was in error when he stated at page 191. lines 5-8 of the records that the appellant did not depose to the fact that he has been performing any duties as the Olusin of Ijaral/ji Isin."

Later down in the judgment, the learned Justices observed thus:-

"It was also observed that 1st respondent advertised and sponsored advertisements on Radio Kwara and Radio Oyo that he is the ** even when he had no letter of approval. *It* is my *considered view, that in the instant case the res* is (he appointment and not the throne. The application for injunction here is being made by a person who believes he has been appointed and wants to restrain the other from causing a break down of law and order and I so hold. See *Governor of Lagos State v. Ojukwu* (1986) INWLR (Pt.l8)621 at 624-626 (Holding 25) 645-647. See also *Akapo v. Habeeb (supra)* pages 311- 312. I need to emphasise here that I have used the phrase 'a person who believes that he has been appointed' and not a person who has been appointed since this is the issue for determination in the substantive suit. I have taken this precaution since this is an appeal against an interlocutory injunction and taking into consideration also the fact that one of the reliefs claimed in the writ of summons in the substantive-suit pending at the lower court by the appellant is a relief for perpetual injunction restraining the respondents, their servants,

privies and agents from further acts related to the chieftaincy stool. I am fully aware inconsequence that I have to confine myself to those issues only necessary for disposing of the appeal.

It is in the light of the foregoing that the conclusion arrived at by the trial court that both parties be restrained by injunction could not be justified in the face of the available facts and circumstances. *Afortiori,* I hold the firm view that the court below was perfectly right when it held that this is an appropriate fact for the grant in the plaintiffs favour the interlocutory injunction prayed. As per paragraph 31 of the plaintiffs affidavit, since the appellant was H shown *"as continuing* in his parade as Oba of Ijara-Iji Isin when no kingmakers appointed him as one," the question of the reliefs claimed being for concluded acts for which there was nothing for the court to restrain by an order of interlocutory injunction, it will suffice for me to say shortly that the submission is totally misconceived. I therefore have no hesitation in jettisoning it. Indeed, as the order made by the trial court granting the interlocut or injunction in the plaintiff favour is peremptory (not minding the grant of the same order in appellant's favour which in my view was gratuitous and not a relief supplicated by him *vide* the cases of *Ekpenyong v. Nyong* (1975)2 Sc. 71; *Olatunji v. Adisa* (1995)2NWLR (Pt.376) 167; *Ogoyi v. Umagba* (J 995)9 NWLR (Pt.419)283 and *V.B.N. Ltd. v. Ogboh* (1995)2 NWLR (Pt.380) 647, there can be no vagueness in its purport.

Issue I is thus resolved against the appellant. On appellant's complaint under issue No.2 to the effect that the court below lacked jurisdiction to hear the appeal on 23rd January, 1995, that is to say, on a date the matter was only fixed for the hearing of a motion for extension of time within which to file the respondents' brief, this argument having proceeded from a faulty premise and a misconception, is outrightly discountenanced by me for its unsoundness and untruth. I have myself perused the records of proceedings and I find that the case was fixed to 23rd January, 1995 for hearing - direct and to the point but not otherwise. The appellant was represented by counsel who partook in the proceedings of the court. He cannot now, late in the day, turn round to argue something different. Besides, the appeal having been entered in the court below at the time of the hearing, there was nothing to bar the hearing of the appeal as at 23rd January, 1995 since not only was it already duly entered, the appellate court was effectively seized of the matter. This issue is also resolved against the appellant. The grouse in issue 3 is that the order of transfer of the substantive case by the court below to another High Court Judge of the Kwara State High Court for hearing and determination was wrong when no party applied for it. By the combined effect of the provisions of section 16 of the Court of Appeal Act, 1976, Cap. 75 Laws of the Federation of Nigeria, 1990 and Order 3 rule 23 of the Court of Appeal Rules, 1981, as amended, while in the former section the Court of Appeal exercises wide and varying powers which include "full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as a court of first instance and may re-hear the case as a whole or in pan or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case the latter rule makes provisions as to how "these powers may be exercised by the court, notwithstanding that the appellant may have asked that pan only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not) have appealed from or complained of the decision" See *Ugwu v. Aba* (1961) I All NLR (Pt. 1)438; *Ayoola v. Adebayo* (1969)1 All NLR 159 and *Awote v. Owodunni (No.2)* (1987) 2 NWLR (Pt.57)366 at 378. I have no hesitation also in resolving this issue against the appellant. On issue 4 which deals with the restriction of both the plaintiff and the appellant, I think my treatment of Issue No.1 more than adequately covers same. Suffice it to add, however, that the remark of the court below that that order was "strange" was fully justified and I so hold. The court below was therefore right, in my view, to set aside the restraining order wrongly imposed on the plaintiff when nobody applied or asked for such an order and after the application itself had been refused on its merits. I therefore adopt all I have said under issue I in my consideration of this issue.

It is for these reasons and the fuller ones set out in the leading judgment of my learned brother Iguh, JSC that I too dismiss the appeal. I abide by the consequential orders made in the leading judgment inclusive of costs.

Appeal dismissed