PROFESSOR ALBERT FOLORUNSHO OGUNSOLA

V.

ALHAJI MOHAMMED ABIODUN USMAN

(For himself and other members of the Executive Committee of Kwara State branch of AH Peoples Party (APP))

COURT OF APPEAL

(ILORIN DIVISION)

CA/IL/54/2001

MURITALA AREMU OKUNOLA, J.C.A. *(Presided)*

PATRICK IBE AMAIZU, J.C.A.

WALTER SAMUEL NKANU ONNOGHEN, J.C.A. *(Read the Leading Judgment)*

THURSDAY, 27TH JUNE, 2002

APPEAL - Appeal against order of interlocutory injunction - Purport of.

APPEAL - Exercise of discretion - Exercise of discretion by trial court - Attitude of appellate court thereto - When it will interfere with - When it will not.

COURT - Decision of court - Whether can be overruled or set aside by court of co-ordinate jurisdiction.

COURT- Exercise of discretion - Exercise of discretion by trial court - Attitude of appellate court thereto - When it will interfere with - When it will not.

EVIDENCE - Affidavit evidence - Depositions in affidavit - How controverted - General denial - Whether sufficient.

INJUNCTION - Interlocutory injunction - Application therefor -Grant or refusal of- Discretionary nature of- How discretion exercised.

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INJUNCTION - Interlocutory injunction - Application therefor -Hearing of- Duty on court not to prejudge substantive suit in determining interlocutory injunction.

INJUNCTION - Interlocutory injunction - Application therefor - Status quo ante helium - Relevance of in the determination thereof.

INJUNCTION - Interlocutory injunction - Grant of - Rationale therefor - Guiding principles - What applicant must show.

INJUNCTION - Status quo ante helium - Meaning of.

JUDGMENT AND ORDER - Decision of court - Whether can be overruled or set aside by court of co-ordinate jurisdiction.

PRACTICE AND PROCEDURE - Affidavit evidence - Depositions in affidavit - How controverted - General denials - Whether sufficient.

PRACTICE AND PROCEDURE - Appeal - Appeal against order of interlocutory injunction - Purport of.

PRACTICE AND PROCEDURE - Applications - Interlocutory application - Hearing of - Duty on court not to prejudge substantive suit in determining interlocutory injunction.

PRACTICE AND PROCEDURE - Decision of court - Whether can be overruled or set aside by court of co-ordinate jurisdiction.

PRACTICE AND PROCEDURE - Exercise of discretion - Exercise of discretion by trial court - Attitude of appellate court thereto -When it will interfere with - When it will not.

PRACTICE AND PROCEDURE - Interlocutory injunction -Application therefor - Grant or refusal of- Discretionary nature of- How discretion exercised.

PRACTICE AND PROCEDURE -Interlocutory injunction - Grant of- Rationale therefor - Guiding principles - What applicant inns! show.

STARE DECISI - Decision of court - Whether can be overruled or set aside by court of co-ordinate jurisdiction.

WORDS AND PHRASES - Status quo ante helium - Meaning of

Issues:

1. Whether from (he affidavit evidence before the trial court, the respondent made out a case warranting the grant of an interlocutory injunctive relief against the appellant.
2. Whether the trial court was right in granting the order of injunction sought by the respondent notwithstanding the judgment of a court of co-ordinate jurisdiction as shown in exhibit PA01.

Facts:

The appellant and the respondent are members of a political party known as All Peoples Party (APP). The appellant was elected Chairman of the Kwara State branch of the party in the first week of September, 1998 and remained in that office until sometime in March, 2001 when he was purportedly removed by the National Secretariat of the party acting through the National Chairman and Secretary. Consequent upon his removal, a caretaker committee was set up to manage the affairs of the party in Kwara State.

Being dissatisfied with the action of the National Officers of the party, the appellant sued them at the High Court of the Federal Capital Territory, Abuja, while the other members of the elected Kwara State executive of the party also affected by the dissolution instituted their action in the High Court of Kwara State.

While the actions were pending, a congress of the party was held on 9th June, 2001, in which the respondent and other party members were elected as chairman and members of the executive committee of the Kwara Stale branch of the party.

On 3rd August, 2001, the High Court in Abuja delivered its judgment wherein it nullified the removal of the appellant as chairman of the party in Kwara Stale and the dissolution of the State executive committee of the party headed by him. The court also set aside all actions taken by the party in Kwara State from March till the date of the judgment.

As a result of the judgment of the High court in Abuja the appellant caused notices to be issued calling for meetings of the party in Kwara State for 6th August, 2001. The respondent. in response to the notice filed a suit against the appellant at tin High Coming of Kwara State, Ilorin in which he sought several declaration flic is in the- effect that the term of the appellant as chairman of Kwara Stall bunch of the party had expired; that the appellant's are summoning nice-lings of the party without his authority was ilk-gal, to the Constitution of the party and thnx-for *ultm vires* the power of the appellant and that the appellant could not and should not hold himself out as chairman of Kwara Stale branch of the party in the month of August 2001 having regard to the Constitution of the party. The respondent also sought for an order of perpetual injunction to restrain the appellant from holding any meeting in whatever form as chairman of the party or from describing or further describing himself as such.

Along with his writ of summons, the respondent filed a motion *ex-parte* and another on notice for an order of interlocutory injunction restraining the appellant from convening, presiding or holding any meeting as the Executive Chairman of Kwara Stale branch of the party, or any meeting of the party at all or from holding himself out as chairman of Kwara State branch of the party pending tin-determination of the respondent's suit.

The crux of the respondent's case as deposed in his affidavit in support of his applications for injunction is that the appellant was elected into office as chairman of the party in the first week of September, 1998 for three years less three months and that by the Constitution of the party, which he attached to his affidavit as exhibit "A", the appellant's term of office expired during the first week of June, 2001. The respondent specifically relied on Article 18(2) and *(3) ofthe Constitution of the party which* provides *that* an officer of" the party shall serve for a period of three years and that all officers of the party shall resign their position three months to the expiration of the term of their tenure.

The appellant on his part caused a counter-affidavit to be filed in which he deposed that the depositions in several listed paragraphs of the affidavit in support of the respondent's affidavit including that in which the respondent deposed as to the expiration of his tenure of office were not true statements of facts but were designed to mislead the court. The appellant, however, did not specifically controvert the respondent's depositions other than to state that his tenure of office had not expired in March 2001 when the National officers of the party purported to dissolve the executive committee I headed by him and set up a caretaker committee to act instead. The appellant also relied on the judgment of the Abuja High Court whish he attached to his affidavit as exhibit PAO1.

The trial court granted the *ex-parte* application for interim injunction on 6 August, 2001, while it granted the application interlocutory injunction on 8lh October, 2001 in a considered ruling after hearing the parties.

The appellant was dissatisfied with the decision of the trial court and he appealed to the Court of Appeal.

Held *(Unanimously dismissing the appeal):*

1. *On Discretionary nature of grant or refusal of application for interlocutory injunction* -

   An application for interlocutory injunction raises the issue of exercise of discretion by the trial court. However, the discretion conferred on the court is not absolute as it is subject to its being exercised judicially and judiciously. Consequently, where a trial court has exercised its discretion in granting or refusing to grant an application for interlocutory injunction and an appeal is filed, the appellant is in effect saying that the trial court failed to exercise the discretion conferred on it by law, judicially and judiciously or in accordance with common sense and equity. *[Odusote v. Odusote* **(1971) 1 NMLR** 228 **referred** to.] *(P. 653, paras. E-H)*

2. *On Conditions precedent to grant of interlocutory injunction* -

   An applicant for an order of interlocutory injunction must first establish that there is a serious question to be tried at the hearing of the substantive suit. Where the applicant fails to satisfy this basic requirement, his application must fail; but once this requirement is fulfilled, the governing consideration must be a determination as to the balance of convenience and the inadequacy of damages between the parties to the application. If the balance of convenience does not clearly favour either party, then the preservation of the *status quo ante helium* **will be decisive. In the instant case, the respondent satisfied all the conditions for the grant of an interlocutory injunction in his favour.** *[Falomo v. Banigbe* (1998) 7 **NWLR (Pt.** 559) **679 referred to.]** *(Pp. 654-655, paras. D-B)*

3. *On Rationale for grant of interlocutory injunction* -**When an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be violation**

of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when hypothetically the existence of the right or the violation of it or both is uncertain until final judgment is given in the action. It is to mitigate the risk of injustice to the plaintiff during the period the uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction. *[Obeya Memorial, Hospital v. A-G., Federation* (1987) 3 **NWLR (Pt.60) 325 referred to.]** (Pp. 655-656, *paras. F-A)*

4. *On Duty on court not to prejudge substantive suit in course of hearing application for interlocutory injunction -*

In an application for a grant of injunction pending the determination of the substantive claim, the court is duty bound to ensure that it does not determine the same issues that would arise for determination in the substantive case. In the instant case, there was no way the trial court could have resolved the issue of the competing legal rights of the parties to the office of the chairman of the party without delving into a resolution of the substantive action at the interlocutory stage. The competing rights of the parties however established that one of the grounds for a grant of interlocutory injunction, that is a serious issue to be tried, exists in the suit. *[Fishing Industries Ltd. v. Coker* **(1990)** 7 **NWLR (Pt. 162) 265 referred to.]** *(P. 656, paras. A-D)*

5. On How to controvert depositions in an affidavit –

It Specific depositions of facts in an affidavit cannot! **controverted by sweeping or general denials it counter-affidavit. Consequently, where a party del depositions in an affidavit, he must depose to** which he wants the court to accept instead of denied. In the instant case, the respondent's gene, denial of the appellant's depositions that the respond was elected as chairman for a term of only three ye less three months in September, 1998 and that appellant's tenure of office expired in June, 2 without more was not sufficient to controvert respondent's depositions. *[Emegokwue v. Okadigl* (1973) 4 SC 113; *Thani v. Saibu* (1977) 2 SC 89 referr to.] *(Pp. 657, paras. D-E; 662, para. A)*

6. *On Meaning of "status quo ante bellum' - Status quo ante helium* means the state of affair before the beginning of hostilities. *[Akapo, Hakeem-Habeeb* (1992) 6 NWLR (Pt. 247) referred to.] *(P. 658, para. C)*

7. *On Status quo ante bellum relevant for determinatic of application for interlocutory injunction —*

The *status quo ante helium* that is relevant to consideration of an application for an order of interlocutory injunction is the one that existed before the act or conduct complained of by the applicant it the application. In the instant case, the trial court rightly found that the *status quo ante bellum* that relevant to the determination of the respondent), application is that which existed following the election of the respondent on 9th June, 2001. *[Atiku. v. Hakeem-Habeeb* (1992) 6 NWLR (Pt. 247) 2 referred to.] *(P. 658, paras. B-C)*

8. *On Determination of balance of convenience application for interlocutory injunction*- A resolution as to the balance of convenience if application for interlocutory injunction involves weighing of competing rights. In the instant case, the respondent wanted a return to the situation following the election of 9th June, 2001 following the provisions of Article 18(2) and (3) of the constitution of the party, that is, exhibit A while the appellant insisted on a return to a new situation created by the judgment in exhibit "PAO1" outside the Constitution of the

party. Since it was not shown that exhibit "PAO1" extended the tenure of the appellant beyond the lime limited therefor in exhibit A, neither was there evidence that the provision of exhibit A was considered by the court before it gave its judgment in exhibit PAO1, the balance of convenience lies in granting the order of interlocutory injunction sought by the respondent to maintain the *status quo ante bellum.* The trial court was therefore right when it so held and granted the injunction in favour of the respondent. *(Pp. 658-659, paras. G-B)*

9. *On Relevance, of inadequacy of damages in grant of order of injunction —* Where the type of loss alleged by an applicant for an order of interlocutory injunction cannot be adequately compensated for by an award of damages, an order of interlocutory injunction would issue in appropriate cases to await the determination of the substantive suit. In the instant case, there is no claim for damages. The respondent sought only declaratory reliefs as to his legal rights to the chairmanship of the party. In the circumstance, damages cannot adequately compensate the respondent if the order of interlocutory injunction sought was refused. *[Obeva Memorial Hospital v. A.-G., Federation* (1987) 3 NWLR (Pt. 60) 325; *Akapo* v. *Hakeem-Habeeb* (1992) 6 NWLR (Pt. 247) 266 referred to.] *(P. 659, paras. C-E)*

10. *On Whether decision or order of court can be overruled or set aside by court of co-ordinate jurisdiction -*

It is incompetent for a court to overrule the decision of another court of co-ordinate or concurrent **jurisdiction. Thus, in the absence of statutory authority, a court has no power to set aside or vary the order of another court of co-ordinate or concurrent jurisdiction. No court can, therefore, sit on appeal over its own decision or the decision of, courts of co-ordinate jurisdiction. In the instant case, the trial court did not sit on appeal over the judgment of a court of co-ordinate jurisdiction that gave the judgment in exhibit PAO1.** *[Nworgu v. Njoku* **(2001) 14 NWLR (Pt.** 734) **539 referred to.]** *(Pp. 660-661, paras. G-E)*

11. *On Attitude of appellate court to exercise of discretion by trial court -*

An appellate court would not interfere with an exercise of discretion by a trial court on the ground that it might have exercised it differently if it were in a position to do so. However, the appellate court is entitled to interfere with an exercise of discretion by a trial court if it is satisfied that it is in the interest of justice to do so. *[Sonekan v. Smith* (1967) 1 All **NLR** 329; *University of Lagos v. Aigom* **(1985) 1 NWLR (Pt. 1) 143;** *Ceekay Traders Ltd. v. General Motors Co. Ltd.* **(1992)** 2 **NWLR (Pt.** 222) 132; *Salu v. Egeibon* **(1994) 6 NWLR (Pt. 348) 23 referred to.]** *(Pp. 653-654, paras. H-A)*

Nigerian Cases Referred to in the Judgment:

Akapo v. Hakeem-Habeeb (1992) 6 NWLR (Pt. 247) 266
Anosike Bid & Comm. Co. Ltd. v. FCDA (1994) 8 NWLR (Pt.363) 421
Bolatito v. Sole Adm., Irepodun L.G. Kwara State (1986) 5 NWLR (Pt. 42) 496
Ceekay Traders Ltd. v. General Motors Co. Ltd. (1992) 2 NWLR (Pt. 222) 132
Emegokwue v. Okadigbo (1973) 4 SC 113
Falomo v. Banigbe (1998) 7 NWLR (Pt. 559) 679
Fishing Industries Ltd. v. Coker (1990) 7 NWLR (Pt. 162) 265
Ibenwelu v. Lawal (1971) 1 All NLR 23

Kpogban v. Ojirigho (2000) 1 NWLR (Pt. 640) 212
Missini v. Balogim (1968) 1 All NLR 318
Nnaji v. *Ede* (1996) 8 NWLR (Pt. 466) 332
Nworgu v. Njoku (2001) 14 NWLR (Pt.734) 539
Obeya Memorial Hospital v. A. -G., Federation (1987) 3 NWLR (Pt. 60) 325
Odusote v. Odusote (1971) 1 NMLR 228
Okereke v. Ejiofor (1996) 3 NWLR (Pt.434) 90
Otu v. Udonwa (2000) 13 NWLR (Pt.683) 157
Salu v. Egeibon (1994) 6 NWLR (Pt.348) 23
Sonekan v. Smith (1967) 1 All NLR 329
Thanni v. Saibu (1977) 2 SC 89
University of Lagos v. Aigoro (1985) 1 NWLR (Pt.l) 143
Vee Gee (Nig.) Ltd. v. Contract (Overseas) Ltd. (\ 992) 9 NWLR (Pt. 266) 503
Victory Merchant Bank Ltd. v. Pelfaco Ltd. (1993) 9 NWLR (Pt. 317)340

Appeal:

This was an appeal against the ruling of the High Court of Kwara State, Ilorin in which it granted an order of interlocutory injunction sought by the respondent. The Court of Appeal, in a unanimous decision, dismissed the appeal and affirmed the ruling of the trial court.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Ilorin
Names of Justices that sat on the appeal: Muritala Aremu Okunola, J.C.A. *(Presided);* Patrick Ibe Amaizu, J.C.A.; Walter Samuel Nkanu Onnoghen, J.C.A. *(Read the Leading Judgment)*
Appeal No.: CA/IL/54/2001
Date of Judgment: Thursday, 27th June, 2002
Names of Counsel: Yusuf AH, SAN *(with him,* K.K. Eleja, Esq. and S.A. Oke, Esq.) -*for the Appellant*

I. O. Olorundare, Esq. *(with him,* K. O. Fagbemi, Esq.) - *for the Respondents* High Court:
Name of the High Court: High Court of Kwara State, Ilorin
Name of the Judge: Ibiwoye, J. SuitNo.: KWS/l 22/2001
Date of Ruling: Monday, 6th August, 2001
Counsel:
Yusuf Ali, SAN (with him, K.K. Eleja, Esq. and S.A. Oke, Esq.) — for the Appellant
I. O. Olorundare, Esq. (with him, K. O. Fagbemi's, Esq.) -for the Respondents

ONNOGHEN, J.C.A. (Delivering the Leading Judgment):

This is an appeal against the ruling of the High Court of Justice of Kwara State sitting at Ilorin in suit No. KWS/122/2001 delivered by Hon. Justice J. A. Ibiwoye on 8th October, 2001 in which he granted an interlocutory order of injunction against the appellant,

From the evidence before the court, both parties are members of a political party known as All Peoples Party (APP), of Kwara State Branch. The appellant was elected Chairman of the Kwara
State branch of All Peoples Party (hereinafter referred to as APP) in the first week of September 1998 and remained in that office until sometime in March 2001 when he was purportedly

removed by the National Secretarial of the party acting through the National Chairman and Secretary. Consequent upon his removal a caretaker committee was set up to manage the affairs of the party in Kwara State.

Being dissatisfied with the action of the National Officers of the party, the appellant sued them at Abuja High Court vide exhibit PAO 1 while the other members of the elected Kwara State executive of the party also affected by the dissolution instituted their action in the Kwara Slate High Court of Justice sitting in Ilorin as evidenced in exhibit PAO2.

While the actions were still pending a congress of the party was held on 9th June, 2001 in which the respondent and other party faithfuls were elected as Chairman and members of the executive committee of the Kwara State branch of APP.

However, on the 3rd day of August, 2001 the Abuja High Court delivered a considered judgment in which it nullified the removal of the appellant as Chairman of APP in Kwara Slate and dissolution of the State executive committee of the party headed by him and set aside all actions or steps taken by the party in Kwara State from" March 2001 till date of judgment - sec exhibit PAOI.

Following exhibit PAOI, the appellant caused notices to be issued calling for meetings of the party as the Chairman of the party in the State for 6th August, 2001. Consequent upon the publication of the notices of meetings the respondent caused an action to be instituted at the Kwara State High Court of Justice silting at Ilorin claiming the following reliefs:-

"1. Declaration that by virtue and under the Constitution of All Peoples Party (hereinafter referred to as "APP") the term of office of the defendant, as Chairman of Kwara State Branch or chapter of APP, has expired.

2. Declaration that the act of the defendant in summoning meetings of Executive Committee and general meeting of Kwara State Branch or chapter of APP in August, 2001, without the consent, authority or directives of the plaintiff is illegal and contrary to the Constitution of APP, and, therefore, ultra vires the power of the defendant, null and void.

3. Declaration that the defendant cannot and should not hold himself out as Chairman of Kwara State Branch or Chapter of APP in the month of August 2001 having regard to the Constitution of APP.

4. An order of perpetual injunction restraining the defendant by himself, his agents, privies or assigns, howsoever called from holding any meeting in whatever form as Chairman of APP or from describing or further describing himself as such."

Along with the writ of summons the respondent filed a motion ex parte and another on notice for:

"An order of interlocutory injunction restraining the defendant by himself, his agent, servants, privies, assigns or however called from or from further convening, presiding or holding any meeting of Executive Committee of Kwara State Branch or chapter of All Peoples Party (hereinafter referred to as "APP"). Any committee or any meeting at all of APP or from holding himself ' (i.e. Professor Albert Folorunsho Ogunsola) out in anyway as Chairman of Kwara State Branch of APP pending the determination of the substantive suit."

The ex parte application was granted on 6th August, 2001, while the interlocutory one was granted in a considered ruling on 8th October, 2001. The appellant is dissatisfied with the said ruling hence this appeal in which the appellant filed three grounds of appeal - see pages 131 -133 of the record out of which learned counsel for the appellant, S. U. Solagberu, Esq., in his brief of argument filed on 28th November, 2001 and adopted in argument on 22/5/02 formulated

two issues for the determination of the appeal. The issues are as follows:

"1. Whether from the affidavit evidence before the trial court, the respondent made out a case deserving of being granted an interlocutory injunctive relief against the appellant in the circumstances of this case.

2. Whether the court below was not in serious error by granting injunctive relief in favour of the respondent in view of the judgment of a court of co-ordinate jurisdiction on the matter as shown in exhibit PA01."

On the other hand, learned counsel for the respondent, L. O. Fagbemi, Esq., SAN. in his brief of argument deemed filed on 16/4/02 submitted a single issue for determination namely:

"Whether the plaintiff made out a case for interlocutory injunction and whether the trial Judge would have been right to decline injunction having regard to exhibit PA01."

It is my considered view that both issues are the same and they arise from the three grounds of appeal filed. I will however adopt the issues formulated by learned counsel for the appellant in dealing with this appeal since it separates the principles governing a grant of interlocutory injunction from the effects of exhibit PA01 on such an application.

In arguing issue number 1 learned counsel for the appellant submitted that though a grant or refusal of an application for interlocutory injunction is subject to the discretion of the trial court, that discretion is exercisable subject to certain principles of law which include the existence of a legal right that is worthy of legal protection by the court. That the legal right must be threatened by v the other party. That from the record particularly exhibit PAOI it is clear that as at 3rd August, 2001, rightly or wrongly the said exhibit PAOI had restored the appellant to his position as the Chairman of APP in Kwara State. Thai by 6lh August, 2001 when the respondent ,' went to court, he had no legal right to protect as Chairman of APP in Kwara Stale.

That the defendants in exhibit PAOI being:

(a) The All Peoples Party (APP) itself.

(b) The National Chairman of the party and,

(c) The National Secretary of the party;

all the members of the APP arc bound by the decision in exhibit PAOI as long as they claim from or through the party. For this learned counsel cited and relied on the following cases: Gouriet v. Union Post Office Workers (1977) 3 All ER 70; Koloye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419; Akapo v. Rakecm-Rabeeb (1992) 6 NWLR (Pt. 247) 266 at 289 and Otu v. Udomva (2000) 13 NWLR (Pt. 683) 157 at 179.

Secondly learned counsel submitted that there must be a status _ quo ante bellum that has to be protected and that it is the duty of the l respondent to prove that there can be no return to the status quo ante, bellum if the application is refused.

Learned counsel then submitted that the status quo that should be maintained is the period immediately before the institution of the case on 6th August, 2001 and since the judgment in exhibit PAOI restored the appellant as the Chairman of APP in Kwara State with effect from 3rd August, 2001, the appellant had the power to summon the meeting of 6th August, 2001. That by restoring the appellant as Slate Chairman of the party exhibit PAOI also removed the respondent from the office. That the learned trial Judge was therefore in error when he held at page 114 of the record that the status quo to be protected is the one that existed on 9/6/2001. That an order of injunction cannot be used to protect a state of affairs that was not existing before the institution of an action.

Thirdly learned counsel submitted that the respondent did not prove that the balance of convenience is in his favour. That the trial Judge did not state what constitutes the

balance of convenience in this case. That it is better for the court to protect the interest of the appellant who has an extant judgment in his favour, and who was still being recognized by those who matter as the Chairman of the Party as evidenced in exhibits PA03, PA04, PA05 and PA06. Learn counsel then cited and relied on Vee Gee (Nig.) Ltd. v. Contract (Overseas) Ltd (1992) 9 NWLR (Pt. 266) 503 at 575; Kpogban v. Ojirigho (2000) 1 NWLR (Pt. 640) 2 1 2 at 2 1 9.

Fourthly, learned counsel submitted that a general reading of the totality of the case reveals that the present suit was filed on the first working day after the delivery of exhibit PA01 in favour of the appellant thereby confirming that the action was designed to stultify the enjoyment of the fruit of exhibit PA01 by the appellant particularly as the respondent was aware of the cases in PA01 and PA02. That the respondent being an agent in law of the defendants in exhibit PAO 1 cannot hide under the cloak of ignorance to undo or sidetrack the judgment in exhibit PA01. That the conduct of the respondent was most undeserving of an order of injunction. For this learned counsel relied on Victory Merchant Bank Ltd. v. Pelfaco Ltd. (1 993) 9 NWLR (Pt. 3 1 7) 340 at 354.

Fifthly, learned counsel dealt with the issue of inadequacy of damages. In that respect counsel referred the court to paragraph 7(i), (ii) and (iii) of the reply to counter-affidavit in which the respondent deposed to the fact that the only thing the appellant would loose and which the party was capable of paying were his salaries and emoluments and submitted that what is good for the goose is good for the gander. Learned counsel then cited and relied on Ibenwelu v. Lawal (197 1) 1 All NLR 23 at 26 - 27; Anosike Building & Conun. Co. Lid. v. FCDA (1994) 8 NWLR (Pt. 363) 421 at 432 - 433.

On the sub-issue of the relative strength of the applicant's case, learned counsel submitted that even though the respondent is not expected to make out a complete case as in a full trial, he has the duty to demonstrate that on the balance, he could have judgment in his favour. That contrary to the finding of the trial court at page 112 of the record to the effect that the appellant did not deny the averments in paragraphs 23 and 24.of the supporting affidavit, the appellant did expressly deny them in paragraphs 2 and 4 of the counter-affidavit. That this error by the trial Judge resulted in his not coming to the conclusion that the case of the respondent is quite weak when compared to that of the appellant. Counsel then cited and relied on American Cyanamid Co. v. Ethicon Ltd. (1975) 1 All ER 504.

Learned counsel then submitted that an application for an order of interlocutory injunction must satisfy all the conditions listed above before the order can be granted. That where an applicant, as in this case fails to do so his application should be dismissed and urged the court to do so. Counsel then cited and relied on Obeya Memorial Hospital v. A-G., of the Federation (1987) 3 NWLR (Pt.60) 325; Missini v. Balogun (1968) 1 All NLR 318 at 315 and 316.

He then urged the court to resolve the issue in favour of the appellant.

On his part, learned counsel for the respondent L. O. Fagbemi, Esq., SAN submitted that the primary object of an order of interlocutory injunction is to maintain the status quo ante helium pending the determination of the issues in controversy between the parties. For this learned SAN relied on Falomo v. Banigbe (1998) 7 NWLR (Pt. 559) 679 of 694.

The learned SAN then agreed with his learned friend that a grant of an order of interlocutory injunction is an exercise of the discretionary powers of the court and that the principles of law that have emerged over the years following consideration of applications for an order of interlocutory injunction arc the applicant's real prospect of success in the right claimed; balance of convenience; status quo', relative strength of the case of the parties; conduct of the

parties; and inadequacy of payment of damages. Learned SAN " then submitted that in considering an application of this nature, the court is not allowed to go into the merits of the substantive case relying on the ease of Globe Fishing Industries Ltd. v. Coker (1990) 7NWLR(Pt. 162) 265 at 277.

On the sub-issue of the appellant's real prospect of success in the right claimed learned counsel stated that the respondent is the State Chairman of APP having been so elected at a congress of the Party held on 9th June 2001. That it is the case of the respondent that the appellant is the erstwhile Stale Chairman of the Party who had since served out his term of office. That under Article 18(2) of the Constitution of the party, a State Chairman is entitled to a term of office of three years but that by Article 18(3) of the said party Constitution, the Chairman and other members of the executive Committee must resign their offices three months to the expiration of their term. That the appellant was appointed State Chairman of the party in the 1st week of September 1998. That by Article 18(3) of the said Constitution he ought to have resigned his appointment by 1st week of June 2001. That the appellant did not deny these facts as deposed in the affidavit in support of the application for interlocutory injunction in his counter-affidavit. That the learned trial Judge did find as a fact that the appellant did not deny these crucial facts.

Learned SAN went on to state that notwithstanding the election of the respondent as State Chairman of the party, the appellant went R on to hold himself out as the Chairman of the party and even issued out insinuation or notice convening meetings of the party thereby usurping the powers of the respondent as Stale Chairman of the party. That the appellant claims to have done these by virtue of a judgment in suit No. FCT/HC CV/483/2001 to which the respondent was not a party.

Learned SAN then submitted that the argument of learned counsel for the appellant that the appellant did deny the facts deposed to in paragraphs 23 and 24 of the affidavit in support of the application contrary to what the learned trial Judge found, in paragraphs 2 and 4 of the counter-affidavit is not correct since in law, a sweeping denial is not a denial since the party denying must give account of his own story which, according to learned SAN, the appellant failed to do in this case, relying on Okereke v. Kjiofor (1996) 3 NWLR (Pt. 434) 90 at 94.

The learned SAN further submitted that having regards to the conflicting affidavits as regards the issue of the legal rights of the parties a triable issue arises and the trial Judge, is right in granting the application so as to maintain the status quo pending trial. For this learned SAN cited and relied on Obeya Memorial Hospital v. p A.-G., Federation (1987) 3 NWLR (Pt. 60) 325 at 338; Bohitito v. Sole Administrator Irepodun Local.Govt. Kwara State (1986) 5 NWLR (Pt. 42) 496 at 500 and Globe Fishing Indus/. Ltd. v. Coker (supra) at 281 -282.

That there was no way the trial Judge would have interpreted ,-, exhibit PA01 without delving into the merit of the substantive case which is not permitted by law. Thai the learned trial Judge is right by not allowing himself to be drawn into the controversy of the substantive suit at that stage of the proceedings.

On the sub-issue of balance of convenience learned SAN staled y that the respondent by his affidavit demonstrated what he would suffer if the application was not granted by stating that the action of the appellant can lead to a break down of law and order; the APP may lose the confidence it enjoys from party faithful; the party would he factionalized; no monetary award would be adequate to compensate the respondent for any loss that might be occasioned by a refusal lo grant the application etc.

That on the other side of the scale of justice is the appellant's only concern that he will

not be able to enjoy exhibit PA01. That the dial Judge rightly held that the balance of convenience is in favour of granting the application.

Next, the learned SAN considered the sub-issues of status quo and submitted that status quo goes together with legal right which is lied to the election on the 9th June, 2001 which resulted in his being elected the Stale Chairman of the party and that the learned trial Judge is right in so holding.

On the matter of the conduct of the parties learned SAN submitted that the conduct of the respondent is not reprehensible. That a grant of an interlocutory injunction being an exercise of judicial discretion, this court will not disturb the exercise even if it would have come to a different conclusion once it is satisfied that the principles applicable have not been disregarded relying on Globe Fishing Indust. Ltd. v. Coker (supra). That the issue of relative strength of the respondent's case and inadequacy of damages have been subsumed in the discourse on triable issue and balance of convenience and urged the court to resolve the substantive issue in favour of the respondent.

I have gone through the record of proceedings and the briefs of argument filed and adopted by both counsel in this appeal. It is trite law that an application for interlocutory injunction raises the issue of exercise of discretion by the trial court. However, the discretion conferred on the court is not absolute as it is subject to its being exercised judicially and judiciously see dusote v. Odiisole (1971) NMLR228at 231.

It follows therefore that where a trial court has exercised its discretion in granting or refusing to grant an application for interlocutory injunction in particular or lo exercise its discretion in general, resulting in an appeal, the appellant is in effect saying that the lower court failed to exercise the discretion conferred on it by law, judicially and judiciously or in short, in accordance with common sense and equity. In such a situation it is the law that the appellate court should not make it a practice lo interfere with the exercise of that discretion on the ground that it might have exercised it differently if it were in a position to do so. However, the appellate court is entitled lo interfere if it is satisfied that it is in the interest of justice lo do so - see Sonekan v. Smith (1967) 1 AILNLR 329 at 333;" University of Lagos r. Aigoro (1985) 1 NWLR (Pi. I) 143; Ceekay Traders Ltd. v. General Motors Co. Ltd. (1992) 2 NWLR (Pi. 222) 132 at 147; Sain v. Egiabon (1994) 6 NWLR (Pi. 348) 23 at 41 etc. In the present appeal, both learned counsel agree that the principles guiding grant of interlocutory injunction are:

(a) The legal right of the applicant.
(b) The status quo ante helium:
(c) Relative strength of the applicant's case;
(d) Balance of convenience:
(e) Inadequacy of damages and
(f) Conduct of the parties and have addressed the court extensively on them.

However, it is my view that the above stated principles can be subsumed under three principles to wit:

(1) Whether there is a serious question to be tried at the hearing of the substantive suit.
(2) Balance of convenience and:
(3) Inadequacy of damages.

When the above is adopted it becomes easy lo see that the principle of" whether there are serious questions to be tried has within it the sub- issue of the legal right of the applicant; the

relative strength of the case of the parties and status quo ante belium. In Falomo v. Banigbe (1998) 7 NWLR (Pt. 559) 679 at 694 - 695 the Supreme Court staled the position inter alia, as follows: per Iguh, J.S.C.

> "The court, on the question of the applicants' real prospect of success in the right claimed must, at the outset, be satisfied that the plaintiff's claim is "not frivolous and 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. Sec Re: Lord Cable (1977) 1 WLR 7. Although there is no rule requiring the plaintiff to establish a prima facie case before he can obtain an interlocutory injunction, the court must be satisfied that the plaintiff's ease 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 clearly favour either party, then the preservation of the status quo ante bellum will be decisive."

I intend to consider issue No. 1 under the three broad principles or conditions stated above.

Both parties agree that an applicant for an order of interlocutory injunction must possess a legal right which is threatened to be violated by the oilier party. Both parties however claim the right to the chairmanship of the APP in Kwara State. While the applicant claims through an election in a congress of the Party held on 9th June.. 2001 the respondent claimed through exhibit PA01. a judgment of the High Court of the Federal Capital Territory. Abuja. Which restored him to that position as at 3rd August, 2001. It is also the applicant's case that by the operation of Article 18(3) of the APP Constitution the respondent had lost his office of chairman of APP Kwara State by the lime the applicant was elected on 'Mb June. 2001 having regards to the provisions of Article 1 8(2) of the said APP Constitution - which is exhibited to the affidavit in support of the application. On the other hand the appellant contends that by 6th August, 2001 when the present suit was filed exhibit PA01 had nullified the election of the respondent since it nullified the appellant's removal and set aside all steps taken by the Caretaker Committee which includes the said election of the respondent. So we find ourselves confronted by the competing legal rights claimed by the parties. It is therefore obvious that the facts are contested seriously. In a situation like this, the Supreme Court in Obeya Memorial Hospital v. A-G., Federation (1987) 3 NWLR (Pt. 60) 325 at 338 per Obaseki. J.S.C. slated the position of the law as follows:

"When an application for an interlocutory injunction lo restrain a defendant from doing: acts alleged to be violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a lure when hypothesis the existence of the right or the violation 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 The uncertainly could be resolved that the practice arose of granting him relief by way of interlocutory injunction."

The rationale behind this principle becomes clear when one realises the fact that in an application for a grant of injunction pending the determination of the substantive claim, The Judge is duty bound to ensure that the docs not determine the same issues that would arise for determination in The substantive case - see *Globe Fishing Industries Ltd. v. Coker* (1990) 7 NVVLR (Pi. 162) 265, (1990) II SCNJ56al7I.

It is my considered view that there is no way by which the learned trial Judge could have

resolved the issue of the competing legal rights of the parties to the office of the chairman of the party without delving into a resolution of the substantive- action at the interlocutory stage. That apart, the fact that (here is a serious dispute as to the proper person to occupy the office of chairman of the party between the parties shows that there is a serious question to be tried. That apart, The learned trial Judge also found as a fact that "the averments contained in paragraphs 23 and 24 of the affidavit in support of the motion quoted above are not denied. It seems to me however that paragraph 3 of the counter-affidavit points to the same fact." - sec page 112 of the record.

In reaction of the above passage of the ruling of the learned trial Judge, learned counsel for the appellant has submitted that the said paragraphs are denied expressly by paragraphs 2 and 4 of the counter-affidavit.

Now paragraphs 23 and 24 of the supporting affidavit deposed to the following fads.1

"23. That The defendant as The erstwhile chairman of the party in Kwara Stale was elected into office in the 1st week of September, 1998 for 3 years less 3 months. That by the Constitution of the party, defendant's term of office expired 1st week of June, 2001. Attached herewith as exhibit A is the copy of The said Constitution."

In paragraphs 2, 3 and 4 of (he counter affidavit, the appellant deposed as follows:

"2. That1 have read the affidavit deposed to by one Alhaji Mohammed Abiodun Usman in support of the application dated The 6th day of August, 2001 and I know as a fact that paragraphs 4. 7. 9. 10, 1 1 , 15, 17, 18. 20, 21. 23. 24, 25. 26, 28, 29. 30. 3 1. 32. 33, 34. 36 and 37 *thereof do not represent the true position of the fads deposed to thereon hut are designed to mislead the court.*

3. That 1 know as a fact that I was elected with others into the state executive committee of the APP in Kwara State in 1998 individually and into different offices.

4. That I know as a fact the terms of my office as the State Chairman of the APP has not been completed at the time the national officers of the party purported lo dissolve the executive headed by me and set up a care- taker Committee in March 2001 to usurp my office."

(emphasis supplied by me).

It is now trite law that for the purpose of controverting dispositions in an affidavit, it is not sufficient for the deponent to. make sweeping or general denials. See *Emegokwue* v. *okadigbo* (1973) 4 SC 113: *Thanni* v. *Saibu* (1977) 2 SC 89. It is my view-that paragraphs 2 and 4 of the counter-affidavit relied upon by learned counsel for the appellant contain general denials which are not sufficient for controverting paragraphs 23 and 24 of (he supporting affidavit. Apart from that paragraph 2 of the counter-affidavit stated *inter alia* that the said paragraphs 23 and 24 thereof do not represent the true position of the facts deposed to therein but are designed lo mislead the court without going further to state the true position of the facts which he wants the court lo rely on. Il is the duly of The appellant to have gone further lo depose to the true fads if he did not want the court to rely on those facts as deposed to in the paragraphs in question. The said, paragraphs 23 and 24 are very crucial lo the application for interlocutory injunction in that they tend to show that the appellant has no legal claim lo the office of State Chairman of APP. That apart, the appellant's counsel has not challenged the finding by The learned trial Judge that paragraph 3 of the counter affidavit also admits paragraphs 23 and 24 of the supporting affidavit. Now if the appellant was elected with others into the Kwara State Executive Committee of The party in 1998 as deposed

to in paragraph 3 of (he counter affidavit and if Article 18(2) of the party Constitution - exhibit A - provides that the appellant is to hold the office for 3 years is it not probable that the office expires sometime in 2001 as contended by the respondent?

I will however return to this issue when I consider the effects, of any of exhibit PA01 on the rights of the respondent when considering issue No. 2.

From The findings made by the lower court and confirmed by this court as stated earlier in this judgment, it is very clear that the *status quo ante helium* that is relevant to the consideration of the application for an order of interlocutory injunction is the one that existed following (he election of the respondent on 9th June, 2001. This is so because the issue of *stains quo ante helium* is closely tied to the existence of the legal right sought to be protected by an order of interlocutory injunction. In *Akapo v. Hakeem-Habeeb* (1992) 6 NVVLR (Pt. 247) 266 at 303 the Supreme Court defined the *status quo ante helium* as the state of affairs before the beginning of hostilities.

It is my considered opinion that when we say that the parties must be returned to the *stains quo ante helium,* we simply mean that they arc to return to the situation or position prevailing before the defendants conduct complained of by the plaintiff. It is true that the appellant has argued forcefully that the *status quo ante helium* is that which existed following the judgment in exhibit PA01 restoring him to office as chairman of the party. That cannot be particularly as (he respondent contends that he is no party to the said exhibit etc. If one is lo resolve the issue of the status of exhibit PAOI one will be falling into the trap of deciding the substantive matter in an interlocutory stage of the proceedings which is not allowed by law. That apart, there is the question whether the restoration of the appellant to that office equally extended his term of office beyond what is provided for in Article 18(2) of the Constitution of the party - exhibit A. In fact there are more questions than answers if one were to consider this contentious matter at the stage of the proceedings.

Now the question of the balance of convenience is a matter between competing legal rights. It is very obvious from the analysis of (lie competing legal rights of the parties in this action that whereas the appellant wants lo return to the situation following the election of 9th June, 2001 following the provisions of Article 18(2) and (3) of the Constitution of the party, the respondent insists on a return to a new situation created by a judgment of the court outside the Constitution of the party. The appellant contends that he is not bound by exhibit PAOI - the judgment - for many reasons while the respondent insists that he is. This is an issue to be properly resolved at the trial. Meanwhile it is my view that since it has not been shown that exhibit PAOI extended the tenure of the appellant beyond the time allowed by Article 18(2) and (3) (if exhibit A neither is there any evidence that that provision was ever considered by the court in that case, the balance of convenience lies in the granting of the interlocutory injunction to maintain the *status quo ante helium.* The learned trial Judge is therefore right in holding that the balance of convenience tilts in favour of the respondent.

Turning now to the sub-issue of inadequacy of damages it is the law that where the type of loss alleged by an applicant for an order for interlocutory injunction cannot be adequately compensated for by an award of damages, an order of interlocutory injunction should issue in appropriate cases to await the determination of the substantive suit – sec O*beya memorial Hospital v. A-G. of the Federation (supra), Akapo* v. *Hakeem-Habeeb (supra)* etc.

In the present action there is no claim in the reliefs reproduced earlier in this judgment where the respondent is claiming for damages from the appellant, the reliefs arc substantially declaratory

in nature. The reliefs therefore involve declaration of legal rights and not damages for breach of such rights. Can one say Iron the affidavit evidence before the court that the respondent can be adequately compensated by award of damages if at the end of the trial it is found that as at the time of the delivery of exhibit PAOI i.e. 3rd August, 2001, the respondent had ceased to be the chairman of the party by operation of Article 18(2) and (3) of the Constitution of the party? 1 don't think so.

That being the case it is my considered view that issue 1 be and is hereby resolved in favour of the respondent.

On issue No. 2 learned counsel for the appellant submitted that a court has a Constitutional duly to give el led to The judgment of other courts relying on *Nnaji* v. Ede(1996) 8 NWLR (Pt. 466) 332. That exhibit PAOI ought to have been given effect lo by The learned trial Judge. That The learned dial Judge ought not to have granted the interlocutory injunction in view of exhibit PAOI. That exhibit PAOI is a class action which binds all persons that are represented thereon. That the respondent is bound by exhibit PAOI notwithstanding the fact that he was not a party thereto since the judgment is in *rem* and not in *personam:* that The respondent is a member of APP which is the 1st defendant in exhibit PAOI. That since the respondent is a registered member of APP he is bound by the judgment which was delivered against APP. That an agent is: bound by a decision given against his principal. That the effect of the ruling of the lower court is to suspend and side tract exhibit PAOI. Relying on the case of *Nwtrgu v. Njoku* (2001) 14 NWLR (Pi. 734) 53') al 546 learned counsel submitted that trial courts are warned not to sit on appeal on the ruling or judgment of *a* court of co-ordinate jurisdiction as in this case and urged the court lo resolve the issue in favour of the appellant and allow the appeal.

On his part learned counsel for the respondent submitted that the respondent is not bound by exhibit PAOI since he was never a party thereto and that there was no way the learned trial Judge would have interpreted exhibit PAOI without delving into the merit of the substantive case. That the trial Judge would have been forced to pronounce on the issues whether the plaintiff who is not a party to exhibit PAOI is bound by it; whether the state executive committee which is independent of the national body by the party's constitution is bound and/or affected by the said exhibit PAOI; whether the plaintiff had notice of exhibit PAOI; and. whether the plaintiff can rightly hold himself out as the Chairman of the party in view of the said exhibit PAOI. That the trial Judge was right in refusing to be drawn into the controversy of the substantive suit by not reviewing or interpreting the said exhibit PAOI at that stage of the proceedings for which counsel cited and relied on *Obeya Memorial Hospital v. A'(l., of the federation (supra)*- Counsel then urged the court to resolve the issue against the appellant and dismiss the appeal.

It must be noted that much of this issue has been dealt with while considering issue No. 1 particularly as the learned counsel for the respondent treated this issue as a sub-issue to issue No. I. I however hasten to say that I agree with the statement of the law as stated in the case of *Nworga v. Njoku* (2001) 14 NVVLR (Pi. 734) 539 at 546 and 550 - 551 as cited and relied upon by learned counsel for the appellant where the Port Harcourt division of this court staled the position *inter alia* thus;

> "It is not competent for a court to over-rule the decision of another court of co-ordinate jurisdiction. Thus, in absence of statutory authority, a court has no power to set aside or vary the order of another court of co-ordinate or concurrent jurisdiction

No court can, therefore, sit on appeal over it own decision of courts of co-ordinate

jurisdiction …… thus in the instant case it was wrong for the Chief Judge to have declared that the order made by the presiding Judge was without jurisdiction and therefore null and void and of no effect the same having been made after the former had given an order for the latter to stay proceedings in the matter pending the final determination of the motion on notice……

In the realms of jurisdiction and having regards to the nature of our judicial set up it is heretical fora Judge to purport lo sit on appeal and hiding under one subterfuge or (he other lo quash the decision of another exercising no less of equal power and authority. It is only a Judge who is full of malcontent or unbridled prejudice that would seek to subjugate a fellow Judge by usurping the powers of an appellate court. Indeed il is asinine to say the least."

However, in the present case the learned trial Judge did not. neither did he attempt lo sit on appeal over the judgment of his learned brother Judge of co-ordinate jurisdiction even though learned counsel for the appellant subtly invited him to do so by ostensibly calling on him to apply the judgment in exhibit PAOI despite the facts of the case and the stage of the proceedings, it is my considered view that in view of the fact that it is the respondent's case that by the time he was elected slate chairman of the party on 9th June, 2001 the appellant had ceased to be an occupant of that office by operation of Article 18(2) and (3) of the party Constitution, coupled with the respondent's G 10 further contention that he was no party lo exhibit PAOI, being the judgment in issue etc, to give effect to that judgment will y nilly will surely result in injustice when at the conclusion of trial it is found that the said exhibit PAOI which was given on 3rd August, 2001 did not extend the tenure of office of the appellant beyond the three years allotted by Article 18(2) of the party Constitution.

That apart, resolving the controversies surrounding the applicability of the said exhibit PAOI to the case at the interlocutory stage of the proceedings would amount to deciding the merits of the case in view of the declaratory reliefs sought by the respondent and reproduced earlier in this judgment; which is not permitted by law.

Another point to be noted is the fact that the trial Judge found as a fad which this court has earlier confirmed in this judgment, that the appellant did no! deny the depositions contained in paragraphs 23 and 2-1 of the affidavit in support of the application for an order of interlocutory injunction. That being the case, it is my view that this issue be and is hereby resolved in favour of The respondent

In conclusion I find no merits in this appeal which is accordingly dismissed. However, in view of the fact that the parties belong to the same political party and in order to encourage the spirit of , reconciliation which is desirable under the circumstance. I will make no order as to costs.

It is further ordered that the ruling of J. A. Ibiwoye, J., in suit No. KWS/I22/2001 delivered on 6th August, 200J be and is hereby affirmed.

OKUNOLA. J.C.A.: I have had the privilege of reading in draft the leading judgment just read by my learned brother Onnoghen, JCA. My learned brother had succinctly reviewed the facts of this case and covered all the issues raised and canvassed in this appeal.

I agree with his reasoning and conclusion (hat this appeal lacks merit and same should he dismissed.

1 too dismiss the appeal and abide by the consequential orders contained in the leading judgment including the order made as to costs.

AMAIZU, J.C.A.: I have been privileged to read before now, the lead judgment just delivered by my learned brother, Onnoghen, JCA. I agree with his reasoning and conclusion.

Under Article 18(2) of the Constitution of API', an officer serves for a period of three years. Article 18(3) on the other hand, provides-

"Notwithstanding the term of office of members as provided for in 2 above, all officers of the party shall resign their position 3 months to the expiration of the term".

From the affidavit evidence before the lower court, the appellant was elected Chairman of the State Party in September, 1998. The action before the lower court was instituted on 6lh August, 2001.

In my respectful view, the relief sought is equitable in nature. On the face of the affidavit evidence before the lower court, the respondent was therefore entitled to The grant of the interlocutory injunction.

For the above reason, and other ably marshaled in the lead judgment, I also dismiss the appeal.

I abide by the consequential others made in the said lead judgment, including the order as to cost

Appeal dismissed