EVALUATING INJUNCTION AS AN INDISPENSABLE REMEDY IN TORTIOUS ACTIONS IN NIGERIA

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Abstract

Applications made for injunctions are by far the most poignant and most highly contested interlocutory proceedings in modern day civil litigation.This article considers how injunctions have been readily granted as remedy by Nigerian Courts in connection with torts committed against persons and property. By exploring Case law and Statutory law on the remedy of injunction, and by appraising the body of existing literature on the remedy, this paper highlights the nature of injunction, and its relevance as a foremost equitable remedy. The article finds that the remedy of injunction has immense potentials to effectively complement the shortcoming of the common law remedy of damages particularly in the torts of passing off, libel, nuisance, trespass, and other torts. The article recommends that each case should be considered with regards to the circumstances surrounding it and caution must always be the watchword when an injunctive order is being considered.

Keywords*:* Injunction, equity, tort, court, Nigeria.

1. Introduction

The remedy of injunction is about the oldest equitable remedy. It started with the common injunction by which was used by chancery[1] to restrain the enforcement of the judgments obtained in a common law court on the ground either that the judgment was oppressive or it was devoid of conscience. *The Earl of Oxford's Case*[2], which brought about the conflict between the Chancery and the Common Law Courts arose from a common injunction granted by Land Ellesmere against the enforcement of judgment obtained in a common law court. The facts of case are straightforward- Merton College, Oxford, had granted a lease of Convent Garden for 72 years at 9 Pounds a year, and some 50 years later, the college retook possession of part of it on the ground that a Statute of Elizabeth prevented the sale of ecclesiastical and college lands so that the conveyance made to the Earl was void. The Earl brought an action to eject the college from the land, and the common law judges foundin favour of the college saying that they were bound by the statute. The Earl filed a bill in equity for relief, and Lord Ellesmere granted it, stating that the claim of the college was against all good conscience. This brought law and equity into open conflict, which was resolved during the reign of King James I by Lord Bacon who was the Attorney General and later, Lord Chancellor.[3]

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[1]A High Court of Equity in England and Wales with common-law functions and jurisdiction over causes in equity.

[2](1615)1Ch Rep.

[3]Niki Tobi; Sources of Nigeria Law (6th ed), p.41, MIJ Ibadan 1996.

From common injunctions, the Court of Chancery moved on to grant the species of injunction still being granted by the courts today. Injunctions are often granted to the plaintiff to prevent the harmful occurrence he alleges against the defendant. In *Leslie F.Tate v. the Senior Immigration Officer*[4], the plaintiff applied for and was granted an injunction to restrain the defendant from deporting him before the determination of the plaintiff's substantive action.

Nigeria being a colony of England received the principle of equity through local legislations and applied them as they were applied in England[5]. Among the principles of equity received into Nigeria was the remedy of injunction. As noted by the Supreme Court in *lbidapo v. Lufthansa Airline*[6], all received English laws, multilateral and bilateral agreements concluded and extended to Nigeria (unless expressly repealed or declared invalid by a court of law or tribunal established by law) remain in face subject to the provision of Section 315 (1) of the Constitution of Nigeria, 1999 dealing with existing laws. The remedy of injunction is part of the English law subsisting in Nigeria.

Perhaps the earliest Nigerian case in which the remedy of injunction was applied is *Bakare v. Ishola*[7] where an injunction was granted in a defamation action. This case was followed up by the case of *Awo v. West African Pilot*. [8]Other notable old cases include *Kufeji v Kogbe*[9] where interim injunction was granted in a land matter; and *John Holt Nig. Ltd. & 1 or v. Holts African Workers Union of Nigeria &Cameroon*[10] where injunction was granted in a labour dispute.

No remedy is more potent for advancing the cause of justice than injunction. Courts make orders of injunction to protect rights and prevent wrongs. Its usefulness therefore can never be overemphasized, as the granting or refusal of an injunction will often be determinative of the whole dispute. A judgment that cannot be realized either because the res (subject matter of litigation) has been destroyed or the status quo has been irreversibly altered before the conclusion of the substantive trial is an empty judgment. It is a perfect example of time, money and energy wasted with mission unaccomplished. Obviously, failure to put the remedy of injunction to optimal use in a case may result in a situation where a litigant may leave the court victorious on paper but a disastrous failure in reality. A close look at the nature of cases daily filed in our courts attests to the importance of

[4] an English case which was decided in 1962.
[5]Asien, J.O; Introduction to Nigerian Legal System (2nd ed) p.98.
[6](1997) 4 NWLR 124.
[7](1959) WNLR 106.
[8] (1961) All NLR 866.
[9](1961)I All NLR 113.
[10](1963) All NLR 383.

injunctions, as almost forty percent of cases filled in courts have to do with injunctions and or enforcement of orders.[11]

2. Nature of Injunction

The remedy of injunction flows from the concurrent jurisdiction of equity. Indeed, the maxim *equity will not suffer a wrong to be without a remedy* evolvedpartly from the remedy of injunction. As a judicial remedy, injunction is largely preventive and not curative. It is usually granted to prevent harm from happening. The case of *7up Bottling Co. Ltd v. Abiola and Sons Ltd*[12]demonstrates the preventive character of injunction.

Like other equitable reliefs. Injunction is discretionary in nature. Granting or refusing to grant the remedy depends on the discretion of the judge before whom the remedy is sought. Thus in *Fielden v. Cox,*[13] the court refused an injunction against lepidopterists who had committed a technical trespass to land but had desisted on request. Also in *Radford v. Campbell*[14] an injunction was refused where its real object would have been to gratify the pride of Nottingham Forest Football Club by restraining the defendant from playing for Blackburn Rovers Football Club. The courts have a broad discretionary jurisdiction to grant any sort of injunction in all cases in which it appears to the court to be just and convenient to do so. The order may be made unconditionally or on such terms as the court thinks just. There is however, an overriding requirement that the applicant must have a cause of action in law entitling him to substantive relief. Thus in *Cowley v. Cowley*[15] the Lord of Cowley failed to obtain an injunction restraining his ex-wife after her remarriage from continuing to call herself 'Countess of Cowley'. Similarly, in *Thorne v. British Broadcasting Corporation*[16] it was held that an individual could not obtain an injunction restraining the BBC from broadcasting anti-German programmes.

Again, like other discretions of the court, the discretion to grant injunction must be exercised judicially, judiciously and according to common sense. Where thediscretion to grant or refuse an order of injunction is perversely exercised, such order is liable to be set aside on appeal.[17]Two important considerations led to the evolution of the remedy of injunction. The first consideration is that money cannot pay for every harm done to a litigant and therefore, if a harm money cannot pay for is allowed to be inflicted on a party, the court cannot compensate such a party by an award of damages at the end of the case. If the court cannot compensate a litigant with an award of damages at the end of litigation, it means such a party will go home without a satisfactory relief and that means

[11]Afe Babalola, Injunctions and Enforcement of Orders, OAU Press Ltd, Ile Ife, 2002.
[12](1995) 3 NWLR (pt.383) 257
[13](1906) 22T.L.R 411.
[14](1890) 6 T.L.R 488.
[15](1901) AC 450.
[16](1967) I WLR 1140.
[17]Karama v. Asalemi (1983) 4 WACA 15O.

a wrong is being suffered to be without a remedy. Since equity will not suffer a wrong to be without a remedy, the remedy of injunction was evolved to meet the justice of cases where money cannot pay for the damage suffered by the party seeking the remedy of injunction.

The law of equity, through the use of the remedy of injunction ensures equality of outcome in individual cases so that there is fairness between litigants. Human beings crave order and are fearful of chaos. In a world that is fundamentally chaotic, equity permits sufficiently flexible claims and remedies to address this chaos. Injunctions are a particularly significant remedy in almost all areas of law and therefore require special attention[18]. An injunction is not a cause of action like a tort or a breach of contract but a remedy. Sometimes, the injunction forms a part of the relief sought by one or other parties in a parallel claim for damages and other remedies, whereas at other times an injunction is the sole remedy required by the claimant.

2.1 Classification of Injunctions

An injunction being an order of the court may be mandatory (positive) or prohibitive (restrictive). Generally, a mandatory order is phrased in the positive, with the reverse being the case for a prohibitory order.

Injunctions can further be classified by the time period by which they remain in force. A permanent (also called final or perpetual) injunction is a final judgment granted after trial on the merits. It may be the only component to the final judgment or it may be one ingredient in a more robust decision. A claimant will be required to establish the existence of a justiceable right and the infringement of that right (or, in appropriate cases, imminent threat of infringement). On the other hand, an interlocutory injunction, which is temporary, is issued at any time during the pendency of litigation for the short-term purpose of preventing irreparable injury to the plaintiff prior to the time that the court will be in a position to either grant or deny permanent relief on the merits (this has often been referred to as keeping matters in status quo until a final determination of issues at trial). Interlocutory injunctions are limited in duration to some specified length of time, or at the very onset, to the conclusion of the case on the merits. Within the category of interlocutory injunction there are two types which must be considered individually. The first is generally referred to as a preliminary injunction, and includes any interlocutory injunction granted after the respondent has been given notice and the opportunity to participate in a hearing on whether or not the injunction should issue. The second is referred to as a temporary restraining order, and differs from a preliminary injunction primarily in that it is issued ex-parte, with no evidence or opportunity to be heard granted to the defendant. Temporary restraining orders supply the need for relief in those situations in which the petitioner will suffer irreparable injury if relief is not granted

[18]Allastair Hudson, Equity and Trusts (4th Ed), Cavendish Publishers London, 2005,p 919.

immediately and time simply does not permit either the delivery of notice or the holding of a hearing. In this arena, interlocutory injunctions may be granted as an aid to preservation of evidence especially in patent and breach of confidentiality cases[19] or as an aid to enforcement[20].

Lastly an injunction may be brought prior to the legal right of the claimant having been infringed, and in some circumstances, prior to pleadings. This type of injunction is referred to as obtaining relief quia timet, meaning literally "because he fears." The discretion for this type of injunction is rooted in the belief that, "…to prevent the jurisdiction of the courts being stultified equity has invented the quia timet action, that is an action for an injunction to prevent an apprehended legal wrong though none has occurred at present."[21] In this case, an order is made that includes injunctive relief without evidence of actual harm to a plaintiff.

3. Power of the Courts to Grant Injunctions

The authority to grant injunction in Nigeria and other forms of equitable reliefs is found in the Constitution of the Federal Republic of Nigeria 1999 which confers on the Federal or State High Courts a wide jurisdiction to grant injunctions on such terms as it thinks fit and where it is just and convenient to do[22]. The Constitution provides specifically for appeals as of right in such circumstances from decisions of the High Courts to the Court of Appeal and onward to the Supreme Court. Section 241(1) of the 1999 Constitution, provides that an appeal shall lie from decisions of the Federal High Court or a State High Court to the Court of Appeal as of right in the following situation – "where an injunction or the appointment of a receiver is granted or refused." Any party may make an application for an order of injunction to an action before or after the trial of an action, whether or not a claim for injunction was included in the party's action[23].

The phrase "whether or not a claim for injunction was included in the party's action appears to suggest that an interlocutory or temporary injunction can be granted to a party who has not claimed the relief of injunction. It however appears to be the general trend of the law that an interlocutory injunction will hardly be granted to a party who has not

[19] Anton Pillar orders originate from the matter *Anton Pillar K.G v Manufacturing Processes (1976) 3 All ER 779* (C.A). The basis of the order is preservation of evidence by requiring the defendant to permit entry to its premises for the purpose of searching for and removing documents, or other items relevant to litigation.

[20] Mareva Injunctions originate from the matter *MarevaCompania Naviera S.A v International Bulkcarriers Ltd. (1975) 2 Llyod's Rep. 509 (C.A). "Mareva, or Freezing Orders"*, enjoins the defendant from dealing with his property prior to trial to ensure that such property is not dissipated in advance of judgment. This injunctive relief is an exception to the prohibition of "execution before judgment."

[21] As aptly captured by Lord Upjohn in *Redland Bricks Ltd. v Morris (1970) AC 652.*

[22] *See generally the High Court of FCT (Civil Procedure) Rules 2004 and the High Court Act of FCT, Abuja. See also Federal High Court Rules, Court of Appeal Rules, and the Supreme Court Rules.*

[23] *Order 33 Rule 1(1) HCR.*

claimed the relief of injunction in his writ of summons or statement of claim. In *Ladoke v Olabayo*[24] the Court of Appeal held that an interlocutory application should be based on specific reliefs sought in the substantive action.The Federal High Court (Civil Procedure) Rules 2000 makes similar provisions as the State High Court (Civil Procedure) Rules with regards to the application and grant or refusal of interlocutory injunction or temporary injunction[25].

An injunction carries the sanction of contempt of court if it is disobeyed therefore, it must be clearly expressed. As was aptly put in a Scottish case in 1874, cited by Lord Hope in *Attorney General v Punch Limited*[26]'… if an injunction is to be granted at all, it must be in terms so plain that he who runs may read.' Once an injunction is granted it remains in force and must be obeyed until the court discharges it, however stale the litigation and even if the order ought not to have been given in the first place.[27]

3.1 Scope of the Remedy of Injunction

As earlier noted, an injunction is granted either to prevent the doing of a thing; or to compel the doing of a thing; or that something already done should be undone. Prohibitory injunction is unlike specific performance because while the latter has a narrow base of application (applying essentially on executory contracts involving land), the former has a broader application base. The remedy enjoys application in practically all types of cases brought before the courts including breach of contract, abuse of confidential information, breach of trustee duties, environmental matters, constitutional matters, chieftaincy matters, and matrimonial causes. It is also invoked in cases of the torts of libel, nuisance passing off and trespass. Thus, this article is centered on the response of Nigerian courts towards applications for the grant of injunctions in tortious cases.

4. Injunction as a Remedy under the Law of Torts

The word "tort" means "wrong". Any unjustifiable interference with the right of another person may be a tort. As a part of civil law, the purpose of the law of tort is to prohibit a person from doing wrong to another person, and where a wrong is done, to afford the injured party, right of action in civil law, for compensation, or other remedy, such as an injunction directing the wrongdoer who is known as a tortfeasor to stop doing the act specified in the court order and so forth. The essential aim of the law of torts is to compensate persons harmed by the wrongful conduct of others[28]. Thus, the purpose of the

[24] *(1992) 8 NWLR (pt.261) 605.*
[25] *Temporary injunction as defined above refers to that type of injunction sought to prevent imminent and irreparable injury to the party applying and of such urgency that it is applied for and granted exparte without any notice served on the respondent.*
[26] *(2003) 1 AC 1044.*
[27] *Johnson v Walton (1990) 1 F.L.R 350*
[28] National Open University Course Guide (2018), Law of Tort 1, NOUN<www.nou.edu.ng>accesssed 18/09/2020.

law of tort is to prohibit torts, and where a tort is committed the law of tort provides a remedy for it, by an award of damages or other appropriate relief. The substantive law of tortsconsists of the rules and principles which have been developed to determine when the law will and when it will not grant redress for damage suffered. Such damage takes several different forms such as physical injury to persons; physical damage to property; injury to reputation; and damage to economic interests. The law of torts requires every person not to cause harm to others in certain situations, and if harm is caused, the victim is entitled to sue the wrongdoer for damages by way of compensation[29].

Monetary damages are the normal remedy for a tort. But there is another important remedy, -injunction, which is a court order forbidding the defendant from doing or continuing to do a wrongful act. Whether the plaintiff is claiming damages or an injunction, he must first prove that the defendant has committed a tort, for the law of torts does not cover every type of harm caused by one person to another. The mere fact that A's act has caused harm to B does not necessarily give B a right to sue A for remedy in tort, unless B can show that A's act was of a type which the law regards as tortuous, that is, actionable as a tort[30].

The law of tort deals with a wide variety of wrongs, related and unrelated. Thus, the law of tort enforces rights and liability and provides remedy in the areas covered by the law of tort which includes the following: Trespass to person (assault, battery and false imprisonment) Malicious prosecution ; Trespass to chattel and land; Negligence; Nuisance; Strict liability offences; Defamation ; Deceit ; Passing off ; and Economic torts, such as, injurious falsehood, interference with contract, etc.

4.1 Injunction against the Tort of Passing Off

Passing off is a situation where a producer of goods tries to pass off his goods which in most cases are substandard, for the goods of another producer of similar goods often of higher quality. This tort is very important in the life of a society especially as it protects the individual in whatever (lawful) economic activity one is engaged in. It protects business names, names of products, trademarks among others. Anybody who attempts to cause confusion by illegal activities bordering on imitation, deceit, fraud in economic activities may be liable for the tort of passing off. The case of *Niger Chemist v. Nigeria Chemist*[31] illustrates how the proprietor of Nigeria Chemist established after Niger Chemist tried to pass off his pharmaceutical products for those of Niger Chemist. In this case, a prohibitory injunction was granted restraining the defendants from trading under a name as similar to that of the plaintiffs as to likely mislead the public into thinking that there was some connection between the two firms.

[29]*Ibid p.16.*
[30]*Ibid p.18.*
[31](1961) I All NLR 171; See also *Hendricks v. Montague (1881) 50 LJ Ch 456.*

Also in *Ayinule v. Abimbola*[32] The plaintiff on behalf of Jones Commercial Service sought an injunction to restrain the defendant from trading as Jones Commercial Service on the grounds that the defendant's action clearly threatened legal injury to the plaintiff's business interest, in that the use of the name complained of tended to suggest that the defendant was a partner in the firm of the plaintiff or was otherwise closely associated with it.

A necessary question to raise here is whether as there is the tort of passing off goods, there could be the tort of passing off services for which an order of injunction can lie? Services always require personal involvement of the service provider and so a service provider can hardly pass off himself for another service provider. For instance, one lawyer or doctor can hardly pass off himself for another lawyer or doctor. But if it is possible for alawyer to pass off his chambers for that of a more prominent lawyer, for example, injunction would lie against this tort as against the other.

4.2 Injunction against the Tort of Nuisance

The tort of nuisance perhaps more than any other tort is about the most suitable tort for the grant of the remedy of injunction. More than any other tort, nuisance can hardly be paid for with money through the award of the common law remedy of damages. For this reason almost in all cases of nuisance where injunction was sought, it was granted. In *Moore v. Nnado*[33] the remedy of injunction was sought against noise and environmental pollution. In that case the plaintiff sued the defendant alleging, among others, that the defendant caused him nuisance through excessive noise in his adjoining palm wine bar by playing his stereogram unreasonably loud until every late in the night. The plaintiff averred that as a result of the noise, he has been compelled to seal up his windows with sheets of plywood and to spend most of his time in the backyard of his house. The court held that the defendant's misfeasance was actionable and granted the injunction sought. Similarly, in *M.K.O. Abiola v. F.O. Ijeoma*[34], the plaintiff claimed damages and injunction against the defendant on the grounds that the defendant whose residential house was near that of the plaintiff was operating a poultry farm which breeds noise and odour unacceptable to the plaintiff. The plaintiff was able to prove that not only does noise from the clucking of the chickens and the odour of their droppings disturb his rest and peace, but that rats generated by the said poultry migrate from the defendant's poultry into the plaintiff's residence. On these facts the court held that in any organized society annoyance in the form of unacceptable noise levels from the activities of neighbours must continue to enjoy the court's intervention. Consequently the court granted the injunction sought by the plaintiff.

[32] (1957) LLR 41.
[33] (1967) F.N.C.L.R. 156.
[34](1970) I All N.L.R 265.

Decisions against the nuisance of noise pollution such as the above are desirable in a society such as ours which is noise-prone. The courts have however pointed out that the law cannot take into account every unwanted noise by holding that noise is only actionable when it steps out of its background and becomes a nuisance[35]. This in some cases does not depend on how loud in terms of decibels, sones and phones the noise is as a continuous low pitched 'quiet' buzz may be as annoying as the occasional loud bang. The courts are particularly concerned with the nature, quality and duration of noise and the time of the day of its occurrence; night time noise being more likely to be actionable. However, whenever noise is made carelessly, negligently or selfishly to the harm or reasonable annoyance of neighbours, or even strangers, it becomes an actionable nuisance, a pollution which society should not permit.

In other jurisdictions with more developed law on noise pollution such as the UK, local authorities are empowered by statute to serve noise abatement notices on persons constituting themselves into sources of noise pollution[36] . Failure to comply with an abatement notice without reasonable excuse is a crime punishable with a fine[37]. Raves, defined under the Criminal Justice Act 1994, 'as a gathering of 100 or more people on land in the open air playing amplified music', is also actionable statutorily in the U.K.[38] Where the music by reason of its loudness and duration and the time which it is played, is such that it is likely to cause serious distress to the inhabitants of the locality, the police may take steps to ensure that it ceases.[39] Moreover a constable who has reasonable grounds for believing that a person is on his way to a rave may stop him and prevent him from going[40]. Loudspeakers cannot be used in the street between the hours of 9 pm and 8am for any purpose, or at any time to advertise entertainments, trade or business[41]. If a person wishes to use loudspeakers in the street at night, he must apply to the local authority for consent.[42]

Intruder alarms which are set off accidentally and sound for a considerable time have become disturbance in many neighbourhoods. Accordingly, the Noise and Statutory Nuisance Act 1993[43] allows local authorities if they choose, to insist on the regime that anybody installing an alarm must ensure that it complies with prescribed requirements and the police must hold the names and addresses of certain key alarm users. Furthermore, the local authority must be notified within 48 hours that an audible alarm

[35] *R v. Fenny Stratford Justice* (1976) 2 All E.R.888.
[36] S. 233 English Local Government Act 1972.
[37] *Ibid* S. 80 (5).
[38] S 62 Criminal Justice Act 1994.
[39] *Ibid* S. 63.
[40] *Ibid* S. 65.
[41] S. 62 (1) Control of Pollution Act 1974.
[42] S. 51 Noise and Statutory Nuisance Act 1993.
[43] *Ibid* S. 46(3).

has been installed. Failure to comply with these requirements without reasonable excuse will constitute a criminal offence. The regime also provides that where an alarm has been sounding for an hour after it was activated and the audible operation of the alarm is giving people living or working in the vicinity reasonable cause for annoyance, the local authority may enter the premises to turn it off.

A legal regime such as the above is one highly recommended for Nigeria where raves in the form of religious jamborees, the use of loudspeakers to hawk religion and traditional medicines and the use of car intruder alarms are rife. It is such a legal system if vigorously enforced that will begin to invest our cities with the quiet needed for recreational living. Such statutory enactments in addition to be Common law of nuisance are needed because they address noise pollution with specificity and usually have a broader space of application than common law rules.

4.3 Injunction against the Tort of Libel

Like other torts, libel attracts the remedy of injunction. Thus in the case of *Coker v. Daily Times of Nig Ltd*[44] injunction was granted to restrain the tort of libel. In this case, Sowemimo J. after finding for the plaintiff said:

> …in spite of fact that the matter before the court was based on a claim that certain publications were defamatory, the defendants continued reporting the defamatory matter complained of …… and one of their witnesses has vowed to continue with the publication after the completion of this case. This is a good reason for the injunction which is hereby granted against the defendants.

Also in *Awolowo v. West African Pilot; and Egbuna v. Amalgamated Press Ltd*[45]. The Court in both instances granted perpetual injunctions as a final relief after the plaintiffs had established libel and also proved reasonable apprehension of the repetition of the same or similar defamatory statement by the defendants.

In this present era of fake news and massive online publications through social networks, the common law remedy of damages is utterly incapable of meeting the justice of cases where libel is alleged and proved. Injunction is the most just remedy that would arrest the libel and ensure that it is not repeated again.

4.4 Injunction against the Tort of Trespass

Trespass to land in law constitutes the slightest disturbance of the possession of land by a person who cannot show a better right to possessions[46]. Injunction is also available against the tort of trespass to property. Thus a plaintiff who is in lawful and effective possession can therefore avail himself of the remedy. In*Orku Sowa v. Amachree*[47] an injunction was granted to restrain the defendants from intervening with the plaintiffs'

[44] (Unreported)Suit No. L.P.89/69.
[45](1961) All NLR 866, and (1967) I All NLR 25.
[46] David Bean, Q.C; Injunctions (8th Ed), Sweet & Maxwell, London, 2004.
[47] (1993) 1 NLR 82; See also *Eze v. Obiefuna* (1995)6 NWLR (pt. 404)639.

rights in certain lands and with their rights of fishing in certain waters. Also in *Anibire v. Womiloju*[48], it was held that where a party alleges trespass to land, the remedy of injunction is a ready tool to prevent further trespass, and a claim for injunction.

However, where possession is not strong enough to enable the plaintiff maintain an action for trespass, injunction would not be granted. Indeed in the case of *Eyibagbe v. Eyibagbe*[49], it was decided that where in an action for trespass and injunction, the main claim of trespass is dismissed; the court should also dismiss the claim for injunction because an order for injunction is only ancillary to prevent further trespass.

4.5 Injunction against Breach of Confidential Information

A prohibitory order of injunction is available to restrain a a breach of confidentiality. A person who has by reason of his employment become acquainted with certain confidential information will not be permitted to disclose of divulge at will those pieces of information. The applicant her needs to adduce cogent reason to show existence of a fiduciary relationship.

In present times where information is critical to the success of any business concern, breach of confidential information between employer and employee or by a person in a position of utmost good faith is viewed with disfavour by the court and the remedy of injunction will lie against the breach of confidential information in proper cases. Thus in Robs v. Green[50]the defendant during the period of his employment with the plaintiff copied from his employer's book a list of customers with their addresses . After the termination of the employment with the plaintiff, he set up a business similar to that of the plaintiff and used the list to solicit orders for his own business. The court held that in equity, the plaintiff was entitled to an injunction against the defendant in respect of the breach of faith which the defendant had committed and which he appeared likely to continue in future.

Similarly, in the case of *AIC v Engineer Nazar Eldidi & Ors*[51] the Federal High Court on an application by Chief Afe Babalola (SAN) granted an interim order of injunction restraining the 1st to 5th defendants who were former employees of the plaintiff from using or continuing to use the plaintiff's business information, affairs, techniques, and goodwill acquired in the course of their employment with the plaintiff for the benefit of the 6th defendant with regards Akwa-Ibom Water Project.

[48] (1993)5 NWLR(pt. 296)623.
[49] (1996) 1 NWLR (pt. 425) p.408 at 419.
[50] (1895)2 QB 315
[51] Unreported. Cited in Afe Babalola, Injunctions and Enforcement of Orders, OAU Press Ltd, Ile Ife, 2002.

4.6 Injunction against Breach of Intellectual Property Rights

Intellectual Property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. Intellectual Property is protected in law by, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the Intellectual Property system aims to foster an environment in which creativity and innovation can flourish[52].

An injunction would lie to restrain breach of copyright, patent, or trademark in deserving cases. For instance, in *Plateau Publishing Company v. Adorphy& 2 Ors*[53] the plaintiff was granted a perpetual injunction among other reliefs against the defendant from further sale, use, or dealings in the plaintiff's case. The facts of the case are as follows: the plaintiff sent his article titled ,"AfterTarka What Next: Special Tribute" to the first defendant for publication but it was not published . later it was published by the first defendant under a different name of one Yima Sen (the 3rd defendant) as the author without the plaintiff's authority. The publication was in the Sunday standard of 4th May 1980and it was headed "Lessons FromTarkaism: A Tribute Feature From Yima Sen". Also in *Sunday Uzokwe v. Dansy Industries Nigeria Ltd and Anor*[54]. Where the plaintiff instituted an action claiming an injunction restraining the defendants from infringement of his registered design; the court entered judgement in his favour and injunction was granted against the defendant.

5. Conclusion

This paper has attempted to measure the relevance and potentials of injunction to effectively complement the shortcoming of the common law remedy of damages particularly in the torts of passing off, libel, breach of confidential information, nuisance, trespass, breach of intellectual property right, etc. With globalization bringing about an increase in the volume of commercial transactions and other human interactions, so also has the attendant increase in litigation. The breadth and purpose the remedy and the flexibility with which it can be applied ensure that injunctions remain a source of fascination in modern litigation. However, the increased complexity of the legal regime governing injunctions, combined with the spectacular invasion of fundamental rights, means that it can be strongly argued that each case should be considered with regards to the circumstances surrounding it and caution must always be the watchword when an injunctive order is being considered.

[52] WIPO, *What is Intellectual Property?*<*wipo.int*>accessed 20/09/2020.
[53] (1981) 4 NWLR (pt. 34) 205.
[54] (2002)FWLR (pt. 90) 1322.