

Jurisprudence of Injunctions: Persons Against Whom Injunctions may Issue and the Propriety of Injunctions against Unknown Persons *

Abstract

Injunction is the strong arm of equity which acts to compel a person to refrain from a particular act. In acting *in personam* injunctions impose a direct responsibility upon a person, and for that reason bind him personally. This makes the inquiry of persons properly subject to injunctive orders, of great importance, especially, in the light of the recent injunctive orders by Nigerian courts against unknown persons. The paper found as a foundational issue that typically, an injunction is requested by a plaintiff and is invariably granted against a defendant, but under special circumstances, an injunction may be granted, on the application of a defendant, against a co-defendant; in any event, injunctive relief that directly affects the rights of persons who are not parties to a suit and are not represented are not granted. To deduce persons who constitute parties for the purpose of granting injunctions, the paper found that persons are classified as *proper*, *desirable*, or *necessary* parties. If the grant of a relief will affect the interest of persons not parties to a suit, those persons are necessary parties and must be heard or given opportunity to be heard, and if they are not before the court, the court cannot grant the claim. In this regard, the paper found that depending on the circumstances, injunctions may be granted against servants and agents; non-parties to an action; absent parties to an action; the State and government departments; public officers; corporate and unincorporated bodies; foreign sovereigns, governments and their agents; and aliens. The paper also found that if the necessity for injunctive relief is made out, but the identity of the defendant(s) is not clearly ascertained, an injunction against unknown person(s) may, subject to certain safeguards and conditions be granted. The paper then concluded.

Keywords

Anti-protest Injunctions; Injunctions; Joinder of Parties; Lis Pendens; Quia Timet Injunction; Unknown persons

1. Introduction

Late in July, 2024, a High Court of the Federal Capital Territory restricted intending participants in the planned August 1, 2024 protest in the nation's capital to the National Stadium. The Judge issued the order while delivering a ruling in an *ex-parte* application brought before him by the Minister of the Federal Capital Territory. Defendants in the suit comprised certain named defendants and, unknown persons. The legality of granting an anti-protest injunction against unknown persons under our laws, opens for interrogation, a broader questions of the persons against who an injunction may properly be granted. This paper seeks to answer that question and clearly identify and explain the persons who, under the current state of our laws, may be properly enjoined by an injunctive order of a court. Next after this, the paper deals with the concept of parties to an action as it relates to injunctive reliefs. In the section thereafter following, the paper deals with the persons who may apply for injunctive relief. In section 4, the paper deals with the general class of persons who may be enjoined by an injunctive order. Thereafter, in the sections following, particularly in sections 5 to 13, the paper deals with servants and agents, non-parties to an action, absent parties to an action, state and government departments, public officers, corporate and incorporate bodies, foreign

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sovereigns and their agents and aliens as proper subjects of injunctive relief. In section 14, the paper deals with the vexed question injunctions against unknown persons. Thereafter, the paper concludes.

2. Concept of Parties to an action for the Purpose of Grant of Injunctions

A party to an action is a person whose name is designated on record as plaintiff or defendant. The term *party* refers to a person or persons by or against whom a legal suit is brought, whether a natural or legal person. All other persons who may be affected by the suit indirectly or consequently are persons interested and not parties¹. The term *parties* includes not only those named on the record of proceedings but also those represented and who had an opportunity to attend and protect their interest in the proceedings. When, therefore, an action is instituted in a representative capacity and/or against persons in a representative capacity, that action is not only by or against the named parties, they are also by or against those the named parties represent who in the suit, are not stated *economine*². Generally, all persons who are materially interested in the outcome of a suit for an injunction or in the subject matter thereof, or who will be affected by the decree, should be made parties, either as plaintiffs or defendant³. Accordingly, injunctive relief that directly affects the rights of persons who are not parties to the suit and are not represented will not be granted⁴, and a property interest belonging to a person who is not a party will not be adjudicated in such suit⁵. The fundamental rule as to parties in injunction suits is that all persons interested in the controversy which is the subject of the suit should be made parties and such persons are manifestly proper parties⁶, and in order for a litigant to have standing as a complainant to seek injunctive relief, he must have a personal interest in the outcome of the dispute⁷. Parties not originally connected with suits for injunctive relief may be added so that their rights in the subject matter may be determined and enforced⁸. However, whether a new party should be added may depend on the sufficiency of the interest of such party in the issues before the court⁹. A person whose rights or interest will be materially affected by the decree in an injunction suit to which he is not a party has a right to intervene¹⁰. On the other hand, if one is not a necessary or a proper party and a complete determination of the controversy can be had without his being joined as such, or where he has no interest in the subject matter or outcome of the suit, he will not be permitted to intervene¹¹. Where during the course of litigation some of the parties dispose of their interest in the subject matter of the suit, the court will permit the bill to be dismissed as to them and the new owners substituted in their place¹². In any event, an injunction is binding only upon the parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the judgment or order by personal service or otherwise¹³.

¹*Bello v. INEC*, [2010] 8 NWLR Part 1196, 342

²*Ekennia v. Nkpakara*, [1997] 5 NWLR Part 504, 152

³*McCuler v. Super Maid CookWare Corp.*, 43A CJS 362

⁴*City News Centre Inc. v. Carson*, 43A CJS 362

⁵*Baron v. Pressed Metals of America Inc.*, 43A CJS 362

⁶*McMurray v. Van Gilder*, 43A CJS 364

⁷*Roberts Realty of Bahamas Ltd. v. Miller & Solomon (Bahamas) Ltd.*, 43A CJS 364

⁸*Porter v. Warner Holding Co.*, 66 S Ct 1086, 328 US 395, 90 L Ed 1332

⁹*Commonwealth of Puerto Rico v. Price Commission*, 43A CJS 376

¹⁰*Van Riper v. Jenkins*, 163 ALR 1343

¹¹*Troutman v. Shriver*, 43A CJS 378

¹²*Arrowhead Mutual Service Co. v. Faust*, 43A CJS 376

¹³ 43A CJS §251

3. Persons that may Ordinarily Apply for Grant of Injunctions

Ordinarily, grant of an injunction in a typical case is made on the application of the plaintiff and it is invariably granted against the defendant. However, under special circumstances, an injunction may be granted, on the application of a defendant, against a co-defendant¹⁴. The two matters in which the court is concerned in granting an injunction of this kind are, first, maintenance of a position that will most easily enable justice to be done when its final order is made, and second, interim regulation of the acts of the parties, that is, in other respects most convenient and reasonable in all the circumstances. It is generally, though by no means always found that an interlocutory injunction is directed to the defendant rather than to the plaintiff¹⁵. The issue as to whether or not a defendant can obtain an interim injunction will depend on whether the plaintiff's action has implied the existence of the defendant's rights the violation of which the defendant seeks to protect by an interim injunction¹⁶. A defendant may apply for an injunction before judgment if the application is connected with the purpose of the plaintiff's action or if the relief he seeks arises out of the relief sought by the plaintiff. Ordinarily, pleadings are not a prerequisite for an application for interim or interlocutory injunction to be brought or granted. In the same manner, a counterclaim is not required as a condition precedent for a defendant to claim a temporary injunctive relief. It is only when the injunctive relief sought by the defendant is unconnected with the plaintiff's case that the defendant is required to file or give notice of his counter-claim. The rationale underlying this position is that the defendant is not compelled to remain quiescent and acquiesce in a plaintiff to trespassing, disturbing, ruining or destroying the subject-matter of the action simply because he has no counterclaim before the court. A misconception about the right of a defendant to apply for an order of injunction and the conditions that must be satisfied by the applicant stems from a failure to bring into proper relationship, the subject of an action and the parties who are asserting a claim to the subject matter, and a lack of understanding of the fact that until the court to which a dispute is submitted determines the dispute, the defendant from whose control or possession the subject matter is to be wrested has, for the time being, an equal right to preserve the subject-matter of the litigation as much as the plaintiff. This misapprehension of the strength and entitlements of the positions of the respective parties arises from an error of seeing the defendant as an underdog by the fact that he is the person against whom allegations are made and who by the fact of the plaintiff's complaint is divested of every right or control in the subject-matter of the action¹⁷. However, if an application for an

¹⁴*Edgecumbe v. Carpenter*, (1839) 8 L J Ch 17, 48 E R 904

¹⁵*Adeyemi v. Oladapo*, [2003] FWLR Part 155, 775

¹⁶*Praying Band of the Sacred Society of Cherubim and Seraphim Church v. Udokwu*, [1991] 3 NWLR Part 182, 716

¹⁷*Mortune v. Balonwu*, [2000] 5 NWLR Part 655, 87, per Olagunju, JCA at 125B-F *On one side of the divide is Okechukwu v. Okechukwu*, [1989] 3 NWLR Part 108, 234, 243 where it was held that a defendant who has neither counterclaimed nor given a notice of counterclaim is not entitled to apply for an interlocutory injunction. This was followed by the decision in *Ifekwu v. Mgbako* [1990] 3 NWLR Part 140, 588, an appeal against conviction of the offence of contempt of court in which there was an incidental reference to the fact that the contempt arose from the disobedience by the appellants who were the plaintiffs at the trial court of an order of injunction made at the instance of the respondents who were the defendant in the proceedings in which they did not counterclaim against the plaintiffs, an act considered by the learned Justice as indicative of 'an unfortunate use made of interim injunction'. On the other side of the divide are, firstly, *Praying Band of the Sacred Society of Cherubim and Seraphim Church v. Udokwu*, [1991] 3 NWLR Part 182, 716, 736 which makes an exception to *Okechukwu v. Okechukwu*, (supra) that the principle in that decision does not apply to cases 'where the very nature of the plaintiff's suit conveys that there are rights either derived from the common-law, statute or contract vested in the defendant which said rights deserve protection before the plaintiff's action is determined.' Secondly, *Perepimode v. Miekoro* [1992] 2 NWLR Part 224, 483, 490, in which various types of injunction are

injunction is made by a defendant, it must be made after appearance and on notice to the plaintiff. The defendant may before judgment apply for an injunction, and he may do so even if the plaintiff has already served him with notice of application for like purpose¹⁸.

4. Persons that Constitute Parties for the Purpose of Granting Injunction

An injunction issues against persons, and does not issue to suppress business as such¹⁹. Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence, the proceedings cannot fairly be dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff²⁰. Where the grant of a relief will affect the interest of other persons not parties to a suit, those persons are necessary parties and they must be heard or given the opportunity to be heard, and if they are not before the court, the court cannot grant the claim²¹. Thus, an injunction will not be issued restraining a defendant from taking certain action unless he is himself the person attempting to take such action or is the person in control thereof²². It is not necessary that all parties to a complaint seeking an injunction have an interest in all matters in controversy, but it is sufficient if each defendant has an interest in some matters involved, and they are connected with the others²³. Conversely, it is not necessary to join as defendants persons whose presence is not essential to a complete settlement or determination of the questions involved in the action and whose rights will not be affected by the decree²⁴. Even persons who are interested in the controversy but whose rights are separable from those of the parties before the court, and who will not be directly and necessarily affected by the decree, are not indispensable parties, and the court may proceed to a decree without them, but they are proper parties and may be joined so that a complete decree may be rendered²⁵. However, where there is a joint cause of action against two or more persons, a discharge as against one of them, operates as a discharge against all. Thus, where the claims of the plaintiff are against all defendants jointly and severally, it entails that the cause of action against them is the same and the same evidence would support the action against each. Consequently, the court would either grant an injunction against all of the defendants or refuse to grant it against them. There would be no halfway house, so the defendants would either stand together or fall together²⁶.

The purpose of the rules of court guiding joinder of parties is to allow a plaintiff to proceed in the same action against all defendants against whom he alleges to be entitled to any relief whether his claim is brought against the defendants jointly, severally or in the

enumerated and the purpose of granting them are explained this court affirmed an interlocutory injunction granted by the trial court to the defendants who had not filed statement of defence and consequently a counterclaim at the time of the application; it was granted for the purpose of checking the plaintiffs from building houses on the land which in possession of the defendants. Thirdly, Igbini v. Yusuf [1993] 2 NWLR Part 274, 206, in which this court held, at page 218, that 'the existence of a counterclaim by the defendant is not a sine qua non for the granting of an interlocutory injunction in favour of a defendant against a plaintiff as long as he shows that he has a real right to protect.'

¹⁸*Nigerian Cement Company Ltd v. Nigerian Railway Corporation*, [1992] 1 NWLR Part 220, 747

¹⁹*Vermillion v. Carman*, 43 CJS 851

²⁰*Olagunju v. Yahaya*, [1998] 3 NWLR Part 542, 501

²¹*Ezionwu v. Egbo*, [2006] All FWLR Part 316, 314

²²*Securities and Exchange Commission v. North American Research & Development Corp.*, 43 CJS 851

²³*Sylvester v. Strickland*, 43A CJS 367

²⁴*Work v. State of Louisiana*, 46 S Ct 92, 269 US 250, 70 L Ed 259

²⁵*Liberty Annex Corporation v. City of Dallas*, 43A CJS 369

²⁶*Thunde v. Samson Roger Nigeria Ltd.* [2000] FWLR Part 16, 2782

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alternative²⁷. For the purpose of an application for joinder, persons who apply for joinder are classified as *proper parties*, *desirable parties*, or *necessary parties*. Whatever class of a party the court holds the applicant to be, he could be joined under the general principle once it is shown that he has interest in the subject matter of the suit and he is likely to be affected by the result of the action²⁸. *Proper parties* are those, who though, not interested in the plaintiff's claim, are made parties for some good reasons, e.g., where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. *Desirable parties* are those who have an interest or who may be affected by the result. *Necessary parties* are those who are not only interested in the result, but also, who in their absence, the proceedings could not be fairly dealt with. In other words, the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff. While the non-joinder of a person who ought to be joined would not render the proceedings a nullity on grounds of jurisdiction or competence of the court, where a person is a necessary party in the sense that he is likely to be affected by the result of the suit, his joinder becomes a *sine qua non* to the competence of the suit being taken²⁹. Indispensable parties who are not plaintiffs must be made defendants. There is no fixed rule for determining whether a person is an indispensable party, but it is a general rule that an indispensable party is one who not only has an interest in a controversy, but also an interest of such a nature that a final decree cannot be rendered as between other claimants of interest who are parties, without affecting that interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience³⁰. However, at times, the court may proceed even though necessary parties are not joined as defendants. For example, a person who possesses valuable property rights which require protection pending trial does not need to join all necessary parties before he can obtain temporary orders protecting his rights. Furthermore, even though certain persons may be deemed necessary parties as defendants in that the action should be brought against them in order that the court may completely adjudicate a controversy and put an end to litigation, the plaintiff need not join them where they are non-residents who are outside the jurisdiction, and where the plaintiff may obtain a substantial measure of protection by an injunction against those who can be served with process³¹. An injunction to restrain the breach of a contract ordinarily will not be issued against a person who is not a party to the contract³². However, it is not indispensable to the issuance of an injunction against a breach of contract that the party against whom the injunction is sought should himself have been party to the contract, hence, third persons may be enjoined from assisting a party to a contract to commit a breach thereof.³³ As a consequence, an injunction may be issued against one who stands in the place of a party to the contract for a breach thereof, if the conditions necessary to the allowance of an injunction against the original party to the contract are present³⁴. In a case in which fraud is the gravamen of complainant's right to relief, all persons who are charged with having participated in the alleged fraud are properly joined as defendants; and those who will be the

²⁷*Ajayi v. Jolayemi*, [2001] 10 NWLR Part 722, 516

²⁸*Ebongo v. Uwemedimo*, [1995] 8 NWLR Part 411, 22

²⁹*Ogbonda v. Nkanginieme*, [2010] All FWLR Part 502, 1034

³⁰*Reid v. Reid*, 42 Am Jur 2d 1049

³¹*Thomas v. Allis*, 42 Am Jur 2d 1052

³²*James L. Kerman Co. v. Wilson Amusement Co.*, 43A CJS 99

³³*Vander May v. SchooneJongen*, 43A CJS 99

³⁴*Kinsman v. Parkhurst*, 15 L Ed 385

beneficiaries of the fraud are also proper parties³⁵. It is unnecessary to join as defendant persons who are fully and legally represented by another when the act to be enjoined affects the representative in his capacity as such³⁶. Thus, an action for injunction should be brought against the person doing or causing the wrong to be done and not against his agents, servants, or employees, the latter persons not being necessary parties³⁷.

5. Injunctions against Servants and Agents

Power to restrain persons not parties to suit is limited to defendant's agents and associates³⁸. There is no agency as between wrong doers; each of them is personally liable³⁹. Nonetheless, where the defendant is a lawfully constituted agent of persons alleged to have violated the law, and the acts performed by the defendant pursuant to the agency do not import any assertion of a personal claim over the infringing act, his principals would be the proper persons to be held liable for the breach⁴⁰. In any event, in absence of showing of right to injunction relief against the principal, there is no right to such relief against an agent⁴¹. Even where the acts of the agent are such as to make it possible for personal liability to be extended to him, necessity requires that his principals should be made party to the action for purposes of obtaining an injunction over them all⁴². In general, although an injunction will not be allowed, nor a decree rendered against an agent, where the principal is not made a party to the suit, but, where the principal is not subject to jurisdiction of the court, as in the case of a sovereign state, the rule may be dispensed with⁴³.

6. Injunctions against Persons not Party to an Action

Although no cause or matter shall be defeated by reason of misjoinder or non-joinder of any party, yet in the absence of a proper party before the court, it will be idle for the court to make an order of injunction against strangers to a contract or a party to it who is not before the court⁴⁴. As a general rule, an injunction will only be granted *in personam*, and will not be granted against any person not a party to the action⁴⁵, so that injunctions are binding only on

³⁵ *Pepple v. Rogers*, 43A CJS 370

³⁶ *Carpenter v. Knollwood Cemetery*, 43A CJS 379

³⁷ *Elliot v. Cline*, 43A CJS 370

³⁸ *Chase National Bank v. City of Norwalk, Ohio*, 54 S Ct 475, 291 US 431

³⁹ In *Heugh v. Abergavenny & Delves*, 28(2) E & E D 1038, there was a dispute between plaintiff and one of defendants about a weir situate on plaintiff's land. The other defendant was charged with intending to enter forcibly on the land and destroy the weir. It was held that the last mentioned defendant could not sustain a demurrer to a bill for injunction on ground he had no interest in subject-matter of the dispute, and was a mere agent acting on the orders of the principal defendant.

⁴⁰ In *Nobel's Explosive Co. Ltd. v. Jones, Scott & Co.*, (1882) 52 L J Ch. 339, 48 L T 490, a patent was granted in England for an invention rendering nitro-glycerine less dangerous. Foreigners imported into England article compounded of nitro-glycerine and other substances made abroad according to the patent process. Respondents, as Custom House agents for importers, passed the article, through the Custom House, and obtained permission, for landing and storing them in importers' magazines. It was held that respondents being only Customs House agents for importers, and not themselves the importers, and having neither possession of nor control over the goods, their acts did not amount to an exercise or user of the patent, and no action could be maintained against them for infringement of the patent.

⁴¹ *Wilgus v. Peterson*, 46 FPD 2d 654

⁴² In *Matthew v. Guardian Assurance Co.*, (1918) 45 DLR 32, it was held that application for injunction should not be entertained against agent of insurance company to restrain him from applying for issuance of a licence to the company, without the latter being made a party to the proceedings.

⁴³ *Osborn v. Bank of the US*, 6 L Ed 204

⁴⁴ *Union Beverages Ltd v. Pepsicola International Ltd.*, [1994] 3 NWLR Part 330, 1; *Yusuff v. IITA*, [2009] 5 NWLR Part 1133, 18

⁴⁵ *Moore v. A-G.*, 28(2) E & E D 1040; *Ladoke v. Olabayo*, [1992] 8 NWLR Part 261, 605

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parties and their privies and, to the extent they purport to bind others, are void⁴⁶. Furthermore, equity does not enjoin unnamed individuals since equity acts in *personam*⁴⁷. However, a court with jurisdiction of a *res* may restrain the entire world from interference therewith⁴⁸, and an injunction served upon a sheriff is effectual, though he is not named or described therein, except as *all other persons*⁴⁹. Where before an action is brought for an injunction, a party has transferred and parted with his interest in the undertaking which is alleged to be in violation of the rights of plaintiff, he would not be a proper party to the action, and an order of injunction may not be appropriately made against him⁵⁰. As a corollary to this rule, the underlessee of a person who has covenanted not to carry on a particular trade on the demised property will be restrained from carrying it on, though such covenant was not contained in the original lease, but only in an assignment thereof, and although the underlessee had no actual notice of it when he took his underlease, and, even though he had no constructive notice; as also as to an assignee of underlessee⁵¹. Where however, the party has not completed the transference of his interest to the third party, or is holding and sharing the interest concurrently with the third party, he would be a proper party to the proceeding and the order of injunction may be obtained against him and the third party simultaneously⁵².

Lis pendens is a Latin expression which, when translated into English, simply means, *a pending law suit*⁵³. The full maxim which is expressed as *lis pendente lite nihil innovetur* means that nothing should change during the pendency of an action, is aimed at preserving the subject matter of litigation, and applies to both tangible and intangible res⁵⁴. *Lis pendens* refers to and denotes the jurisdiction, power or control which courts acquire over property in litigation pending action and final judgment. It is a common-law doctrine that binds the purchaser or encumbrancer of property to the results of any pending lawsuit which may affect the title to, any lien on, or possession of the property⁵⁵. The doctrine of *lis pendens* rests upon the foundation that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendent lite* were permitted to prevail. The sense in the doctrine is that no decree of the court will bind the person who came into a disputed property *bona fide* before the suit and is neither made a party by law or order of court; but where he comes in *pendent lite* and while the suit is in full prosecution, and this includes while the suit is under appeal, and without the allowance of privity by the court, the decree will bind him⁵⁶. The doctrine of *lis pendens* affects a purchaser who buys a property, the subject matter of litigation during the pendency of such litigation, so as to prejudice the adverse or opposite party⁵⁷. Purchasers *pendent lite* are not necessary parties to a bill in

⁴⁶*Wilgus v. Peterson*, (n 41); in *Uzundu v. Uzundu*, [1997] 9 NWLR Part 521, 466, it was held wrong for a court to make an order of interlocutory injunction against persons who are not parties to the action in which it was made and who were not given a hearing.

⁴⁷*Smith v. Board of Commissioners of District of Columbia*, 46 FPD 2d 654

⁴⁸*Cherry v. Insull Utility Investments*, 34 FD 594

⁴⁹*In re Lady Bryan Mining Co.*, 34 FD 599

⁵⁰*Scarisbrick v. Tunbridge*, (1854) 3 Eq. Rep. 240

⁵¹*Clements v. Welles*, (1865) LR 1 Eq. 200, 35 L J Ch. 265, 13 LT 548, here, it was further held that to a suit to enforce such a covenant, the original covenantor is not a proper party, if he has parted with all his interest in the property and is not any way in fault.

⁵²*Evans v. Davis*, (1878), 10 Ch. D 747, 48 L J Ch. 223, 39 LT 391

⁵³*Ezomo v. New Nigerian Bank Plc.*, [2006] 14 NWLR Part 1000, 624

⁵⁴*Umoh v. Tita*, [1999] 12 NWLR Part 631, 427

⁵⁵ Black's Law Dictionary, 6th edition, page 932, West Publishing.

⁵⁶*Umoh v. Tita*, (n 54)

⁵⁷*Abia v. Cross River Property and Investment Ltd.*, [2006] All FWLR Part 339, 955

chancery and need not be brought in, since the judgment binds them, though they are not brought before the court⁵⁸.

Injunctive relief which attempts to affect rights of individuals who were not parties to action for injunction are overbroad in scope and subject to limitation so as to affect only rights of parties before court⁵⁹. The jurisdiction to grant an injunction is limited to parties to the action so that in a suit for an injunction to prevent a violation of an agreement, only the persons alleged to have made the agreement must parties⁶⁰. Thus, the court has no jurisdiction to grant an injunction against third parties as if they were defendants⁶¹, so that where the lessor does not add the sub-lessee as a party to his action for an injunction against his lessee for breach of the covenants contained in the lease, although he may be entitled to an injunction against such lessee, the scope of the injunction must be confined to the lessee, his servants and agents, and must not extend to the sub-lessee⁶². In a suit against a city alone, injunction attempting to restrain all persons to whom notice thereof should come, as well as the city, from doing certain things was held error as to persons not agents of, or associated with city, because power to restrain persons not parties to suit is limited to defendant's agents and associates⁶³. In suit against officers of labour unions, personal relief by injunction against persons who, pending the suit, succeeded original parties as officers is erroneous; the suit not being a representative one⁶⁴. However, where evidence showed that certain defendants who though not parties to a contract had knowingly been complicit with party in violation of the contract, injunction against such parties was proper⁶⁵, and the court has jurisdiction to grant an injunction to restrain persons who are not parties to an action in committing a breach of an injunction which has been obtained from the court against such defendant by the plaintiff⁶⁶. In this regard, an order was made in a summary way, to restrain a person, not a party to the suit, to whom the receiver had let a farm, part of the estates in the cause, from removing hay, straw, etc., therefrom⁶⁷; and an injunction may be obtained upon motion, to restrain a purchaser under a decree, not a party to the cause who has not paid his purchase-money, from committing waste on the property purchased⁶⁸.

⁵⁸*Pullan v. Cincinnati & C. Air-Line R. Co.*, 34 FD 480

⁵⁹*Bethel v. Peace*, 46 FPD 2d 652

⁶⁰*Landed Estates Co. Ltd. v. Weeding*, (1869) 21 L T 384

⁶¹ In *Edison & Swan United Electric Light Co. v. Holland*, (1889) 6 RPC 243, defendants in a patent action claimed indemnity against third parties, and obtained an order that the third parties should be at liberty to appear at trial, and be bound by decision of court upon any question as to the indemnity, but not otherwise. At trial, the court decided in favour of plaintiffs on one patent, and against them on another, and directed set-off of costs, but made no order against third parties. Plaintiffs appealed, and served notice of appeal on defendants and third parties. Third parties appeared on the appeal with defendants. Appeal was allowed. After judgment plaintiffs applied for injunction against third parties, and for leave to amend by making them defendants, and for costs against them. It was held that court had no jurisdiction to grant an injunction against the third parties as if they were defendants.

⁶²*Metropolitan District Railway Co Ltd. v. Earl's Court Ltd.*, (1911) 55 Sol. Jo. 807

⁶³*Chase National Bank v. City of Norwalk, Ohio*, (n 38)

⁶⁴*Hitchman Coal & Coke Co. v. Mitchell*, 38 S Ct 65, 245 US 229, 62 L Ed 260

⁶⁵*Day Companies v. Patat*, 92 S Ct 71, 404 US 830, 30 L Ed 2d 59

⁶⁶*Hubbard v. Woodfield*, (1913) 57 Sol. Jo. 729, defendant was under order of the court not to sell certain grass. He nevertheless instructed some auctioneers to sell it. Defendant could not readily be found, so plaintiff obtained an *ex parte* injunction against the auctioneers. It was held that there was jurisdiction to continue that injunction without adding the auctioneers as parties to the action. See also *Electronic Applications (Commercial) Ltd v. Toubkin*, [1962] RPC 225

⁶⁷*Walton v. Johnson*, (1848), 60 E R 654

⁶⁸*Casmajor v. Strobe*, (1823), 57 E R 152

7. Injunctions against Absent Parties to Action

For the purpose of being bound by the judgment of a court, *party* means not only a person named as such but includes one who, cognisant of the proceedings and of the fact that a party thereto is professing to act in his own interest, allows his battle to be fought by that party, intending to take the benefit of the contest in the event of success. Parties also include privies. Thus, all members of a family are bound by a decision of a court in an action instituted for and on behalf of the family⁶⁹. The courts are familiar with situations where injunctive orders can be made to operate against a large number of persons than the defendants on the record if the circumstances justify it. Thus where upon the facts of the case, the court is satisfied that the named defendants are fronts for larger and sometimes indeterminate persons, the court would unhesitatingly pronounce its judgment not only against the named defendants, but extend it to embrace all the invisible members shielded by the named defendants⁷⁰. Traditionally in equity, where there is right to issue general injunction, court has inherent power to impose, upon any persons who have contributively played a part in doing or committing enjoined action involved and have been made party to the suit, such reasonable and relevant individual restraint as may be necessary to enable decree to accomplish its preventive purpose⁷¹. On motion for injunction where an objection was taken, that certain necessary parties were not before the court; but counsel appearing for the absent parties, and consenting to their being made parties, to be bound by the proceedings, and treated as if actually defendants on record, it was held that this cured the defect⁷². Furthermore, that some defendants had not been served will not prevent issuance of injunction against those served⁷³.

8. Injunctions against the State and Government Departments

The judicial powers vested on the courts created or authorised by the Constitution extend, notwithstanding anything to the contrary, to all inherent powers and sanctions of a court of law; and extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person⁷⁴. By the provision of section 251(1) of the 1999 Constitution, exclusive jurisdiction is vested in the Federal High Court in civil causes and matters arising from the administration, management and control of the Federal Government, the operation and interpretation of the Constitution as it affects the Federal Government as well as any action or proceedings for a declaration or *injunction* affecting the validity of any executive or administrative action or decision by the Federal Government. The proviso to the subsection states that a person has the right to seek redress against the Federal Government or any of its agencies in an action for damages, *injunction* or specific performance, where the action is based on any enactment, law or equity. The proviso cannot be invoked where no relevant enactment, law or equity authorises an action for damages, *injunction* or specific performance. The jurisdiction does not include any cause of simple contract or damages for negligence⁷⁵. There is no blanket provision in section 251(l) & (r) of the 1999 Constitution which confers exclusive jurisdiction on the Federal High Court in suits against the Federal Government or any of its agencies regardless of the subject matter.

⁶⁹ *Balogun v. Adejobi*, [1995] 2 NWLR Part 376, 131

⁷⁰ *Onyekwulunne v. Ndulue*, [1997] 7 NWLR Part 512, 250

⁷¹ *Securities and Exchange Commission v. Barraco*, 46 FPD 2d 653

⁷² *A.-G. v. Grey County*, 28(2) E & E D 1040

⁷³ *Brown v. Pacific Mail S.S. Co.*, 34 FD 600

⁷⁴ s. 6(6) of 1999 Constitution

⁷⁵ *Maduafokwa v. Abia State Government*, [2010] All FWLR Part 516, 563

Only a few selected cases are made the exclusive preserve of the Federal High Court⁷⁶. If, a court other than the Federal High Court is properly seised of jurisdiction in a matter where the Federal Government or any of its agencies or departments is a party, the court is competent, subject to the satisfaction of any statutory prerequisites, to issue an injunction against the Federal Government or any of its agencies.

A governmental subdivision must be made a party defendant where it is the only, or one of the only parties against which an injunctive order could conceivably grant effective relief to plaintiff⁷⁷. However, such an entity is not an indispensable party where there is no attempt to divest it of a right or to impose an obligation on it⁷⁸, or where it has no substantial interest in the subject matter of the litigation, or where a practical and effective decree may be rendered without making it a party⁷⁹. A court should act with utmost caution when it is asked to exercise its extraordinary power to issue an injunction against a coordinate branch of government, especially when the court is asked to give temporary or preliminary relief without benefit of a full hearing and opportunity to be fully advised on all issues⁸⁰. Injunctive and declaratory remedies are discretionary and courts are reluctant to apply them to administrative determinations unless these arise in context of a controversy ripe for judicial resolution. In this regard, the basic rationale of *ripeness doctrine* arising out of courts' reluctance to apply declaratory judgment and injunctive remedies unless administrative determinations arise in context of a controversy ripe for judicial resolution is to prevent courts through avoidance of premature adjudication from entangling themselves in abstract disagreements over administrative policies and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties: in this regard, the court is required to evaluate both fitness of issues for judicial decision and hardship to parties of withholding court consideration⁸¹. When a plaintiff seeks to enjoin or prohibit the activity of a government agency, his case must contend with the well-established rule that the government is granted the widest latitude in the dispatch of its own internal affairs⁸², and the rule that the court will not substitute its judgment or discretion for that of the executive applies whether mandamus is sought or whether mandatory injunction is sought⁸³. Based upon this consideration, an injunction will not be granted to interfere with the exercise of disciplinary powers in a service such as the fire brigade⁸⁴. If the acts of a public body are in question, the public interest is an important factor and qualifies the ordinary financial considerations. In this regard, a public authority should not be restrained by interlocutory injunction from exercising its statutory powers unless the plaintiff shows that there is a real prospect that he will succeed in his claim for a permanent injunction at the trial⁸⁵. Ordinarily, a party required to undergo an administrative proceeding does not, by that fact alone, suffer sufficient injury to trigger equitable intervention by way of injunction; however, it does not follow that the harm stemming from pending administrative proceedings can never be so great as to be irreparable. Thus, if an administrative body threatens invasion of important substantive rights, an equity

⁷⁶*Aso Motel Kaduna Ltd. v. Deyemo*, [2007] All FWLR Part 390, 1444

⁷⁷*Commissioners Court of Harris County v. Moore*, 43A CJS 373

⁷⁸*Mission Independent School District v. Diserens*, 161 ALR 877

⁷⁹*Ham v. Kings Daughters Circle No. 4 of Greenville*, 43A CJS 373

⁸⁰*American Book Co. v. Blount*, 46 FPD 2d 312

⁸¹*Abbott Laboratories v. Gardner*, 87 S Ct 1507, 387 US 136, 18 L Ed 2d 681

⁸²*Marchesani v. McCune*, 97 S Ct 127, 46 FPD 2d 91

⁸³*Hunt v. Government of Virgin Island*, 46 FPD 2d 91

⁸⁴*Buckoke v. Greater London Council*, [1970] 2 All ER 193

⁸⁵*Smith v. Inner London Education Authority*, [1978] 1 All ER 411

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court need not stand helplessly by until the damage has been done⁸⁶. Loss of government employment can amount to irreparable harm, and injunctive relief may be a proper remedy pending final administrative determination of validity of discharge. In some, but not all, cases of government employee discharge, back pay and reinstatement may not be enough to prevent irreparable injury so that the employee may be entitled to interim injunctive relief against discharge pending appeal from discharge before the Civil Service Commission - if any⁸⁷.

9. Injunctions against Public Officers

The doctrine that courts may not interfere with exercise of judgment and discretion which law reposes in an officer as part of his official function is as applicable to injunction as to mandamus⁸⁸, and where an official attempts to exercise the jurisdiction conferred upon him, though his errors may be subject to subsequent correction, they cannot be enjoined as an arbitrary exercise of his authority⁸⁹. Thus, the judicial power will not be interposed by mandamus or injunction to limit or direct the action of public executive officers in respect to pending matters within their jurisdiction and control⁹⁰, and injunction will not issue to restrain official conduct without a clear showing of an abuse of legal duty or wrongful usurpation of power⁹¹. Government Commissions of Inquiry are lawful, and the courts have no power to restrain persons acting under the authority of such commissions provided that they do not invade private rights, or interfere with the course of justice⁹². But then, if a statute vests no discretion in an executive officer but to act under a given set of circumstances, or forbids his acting except upon certain named conditions, a court will compel him to act or refrain from acting if he attempts wholly to disregard the statutory mandate, but if a discretion is vested in him, and he is to act in the light of facts he ascertains, and the judgment he forms, a court cannot restrain him from acting on the ground that he has exceeded his jurisdiction by reason of an error either of fact or law which induced his conclusion⁹³. In this regard, an injunction will issue to prevent a public officer from unlawfully assuming powers over property in such a manner as to infringe upon or violate the rights of a citizen⁹⁴, and in appropriate

⁸⁶*Bannercraft Clothing Co. Inc. v. Renegotiation Board*, 46 FPD 2d 129; in *Fitzgerald v. Hampton*, S Ct 549, 409 US 1055, 34 L Ed 2d 509, it was held that exhaustion of administrative remedies doctrine did not preclude court from enjoining Civil Service Commission, before the administrative process had been completed, from holding closed hearing in case in which former government employee claimed to have been illegally fired in retaliation for testimony he gave before Senate-House Joint Economic Committee.

⁸⁷*Murray v. Kunzig*, 93 S Ct 1494, 410 US 981, 36 L Ed 2d 176, district court had jurisdiction to grant interim injunctive relief to prevent discharge of a probationary employee whose appeal challenging the discharge was pending before the Civil Service Commission, where employee had urged that if relief was denied she might suffer irreparable harm since because of an absence of present wages she might be unable to meet her financial commitments, and employee claimed that her termination was based at least in part on events which took place prior to her employment, and, if correct in this regard, she would prevail in her appeal to the Commission because admittedly the agency did not accord her hearing and other procedural due process called for by its own regulations. In *Zirin v. McGinned*, 81 S Ct 286, 364 US 921, 5 L Ed 2d 260, Director of Internal Revenue advised employee of Department that her employment was terminated because of unsatisfactory quality of her work and employee sought relief on ground that Director's act was *ultra vires* and she had never been legally separated, it was held that Court had jurisdiction to restrain Director from continuing to act in pursuance of an illegal separation if such were found to be the case.

⁸⁸*Gaines v. Thompson*, 74 US 347, 19 L Ed 62

⁸⁹*Adams v. Nagle*, 58 S Ct 687, 303 US 532, 82 L Ed 999

⁹⁰*Proctor & Gamble Co. v. Coe*, 59 S Ct 65, 305 US 604, 83 L Ed 384

⁹¹*Laughlin v. Cummings*, 34 FD 364

⁹²*Clough v. Leahy*, 28(2) E & E D 1038

⁹³*Adams v. Nagle*, (n 89)

⁹⁴*Noble v. Union River Logging R. Co.*, 13 S Ct 271, 147 US 165, 37 L Ed 123

circumstances police misconduct can be preliminarily enjoined⁹⁵; so that a court may exercise its equity powers of equivalent mandamus powers to compel boards or officers to act in a matter with respect to which they may have jurisdiction or authority, although the court will not assume to control or guide exercise of their authority⁹⁶. Furthermore, if commissioners appointed pursuant to an Act of Parliament exceed the authority given them by the Act, and thereby infringe on, or violate private rights, the court has jurisdiction to restrain them by injunction⁹⁷. Courts have no power to compel a public officer to perform the function of his office that is purely discretionary, and such rule applies whether the relief sought is described as a mandatory injunction or mandamus⁹⁸. Likewise, equity is without power, by injunction, to restrain public officers from performing acts required by law to be performed⁹⁹, and courts are reluctant to grant injunctive relief against public officers¹⁰⁰, and will not enjoin administrative officers on mere chance that they may act unlawfully¹⁰¹. In any event, an injunction does not lie against an executive officer as respect discretionary duties, but purely ministerial acts are subject to such control.¹⁰² If an officer of the government is without lawful power to do the thing complained of, he may be enjoined with the same propriety as by mandamus he can be compelled to perform a duty imposed upon him by law¹⁰³, and where the head of a department is without power at all to do an act complained of, he is as much subject to injunction as he would be to mandamus in case of his refusal to do an act which the law plainly requires him to do¹⁰⁴.

A court should act with utmost caution when it is asked to exercise its extraordinary power to issue an injunction against a coordinate branch of government, especially when the court is asked to give temporary or preliminary relief without benefit of a full hearing and opportunity to be fully advised on all issues¹⁰⁵. Furthermore, courts must be especially cautious about intervening through preliminary injunction in affairs of law enforcement agencies, the activities of which necessarily require flexibility and discretion¹⁰⁶. Injunctive interference by judicial power with procedural acts of a properly constituted administrative branch of government is an extreme and extraordinary remedy which should not be exercised in absence of clear showing of impairment of constitutional or statutory rights and probability of irreparable damage¹⁰⁷. In respect of the actions of executive and

⁹⁵*Illinois Migrant Council v. Pilliod*, 46 FPD 2d 354

⁹⁶*Virginian Railway Co. v. System Federation No. 40*, 57 S Ct 592, 300 US 515

⁹⁷*Foster v. Hornsby*, 28(2) E & E D 1038

⁹⁸*Danville Tobacco Association v. Freeman*, 46 FPD 2d 94

⁹⁹*Kelley v. Kavanaugh*, 34 FD 365

¹⁰⁰*Brandenburg v. Doyle*, 34 FD 365

¹⁰¹*Stork Restaurant Corporation v. McCampbell*, 34 FD 365

¹⁰²*Western Union Telegraph Co. v. Tax Commission of Ohio*, 34 FD 365; in *Dr. Martin Luther King, Jr. Movement Inc. v. City of Chicago*, 46 FPD 2d 354, intervening taxpayers and homeowners in area in which plaintiffs sought to obtain permit to hold parade were not entitled to preliminary injunction restraining city authorities from granting permit on theory that the parade would infringe on their right to enjoy their property, inasmuch as city officials had duty to enforce law and honour plaintiffs' right to engage in peaceful expression of their views.

¹⁰³*Lane v. Darlington*, 39 S Ct 299, 249 US 331, 63 L Ed 629

¹⁰⁴*Smith v. Reynolds*, 17 S Ct 998, 166 U S 717, 41 L Ed 1186

¹⁰⁵*American Book Co. v. Blount*, (n 80) 92

¹⁰⁶*Taylor v. McGowan*, 46 FPD 2d 350; in *Smith v. Board of Commissioners of District of Columbia*, (n 47), it was held that the court would not enjoin a large number of unnamed investigators for government agency and instruct them on how to conduct their duties, under penalty of being punished for contempt of court, since the court would have no means of supervising and determining the day-to-day compliance or failure to comply with such an injunction.

¹⁰⁷*De Camp Bus Lines v. US*, 46 FPD 2d 93

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administrative departments, the court will not interfere by injunction, unless necessary to conserve personal or property rights¹⁰⁸, and injunctive relief against either state or federal governmental agencies should not be granted except upon clear showing of irreparable damage and an inadequate remedy at law, and relief should be denied in cases of doubt¹⁰⁹. To issue a temporary injunction against an order of a government agency, which has exercised its statutory discretion, is a very serious matter and is entirely different from issuance of a temporary restraining order, which is commonly issued upon proper showing in a case in which permanent rights are being granted¹¹⁰.

The remedy for review and correction of errors of public officers constituting inferior quasi-judicial tribunals on matters pertaining to their jurisdiction, is by certiorari and not by injunction¹¹¹. To permit judicial review either by injunction or by declaratory judgment of every procedural, preliminary and interlocutory order or ruling by which a person may consider himself aggrieved, would afford opportunity for constant delays in the course of administrative proceedings and would render orderly administrative procedure impossible, and result in bringing to the courts such an avalanche of trivial procedural questions as would largely monopolize their time and energies¹¹². To justify the use of the power of a court of equity, to enjoin action by an administrative board, something more must be involved than an application of statute in an unconstitutional manner against complainant, and there must be an allegation and proof of threatened injury under some of the recognized sources of equitable jurisdiction¹¹³. Nevertheless, one may enjoin government official who is acting either in excess of authority or pursuant to unconstitutional statute¹¹⁴, and a citizen who is subjected to regulation of his business or property by governmental agency which has no jurisdiction to exercise such regulation or control may, in equity, enjoin usurpation of power without proof of extent of monetary damage¹¹⁵. Injunctions will not issue against administrative officers on mere apprehension they will not do their duty or not follow the law¹¹⁶, and if an official of the government has authority to make a decision, his action in executing the decision may not be enjoined merely because it was incorrect as to law or fact¹¹⁷. In any event, it is not by office of person to whom writ is directed, but nature of thing to be done, that propriety or impropriety of issuing injunction is to be determined¹¹⁸.

There is a presumption that the State or a department thereof will not violate the Constitution or the laws, and such violation if it occurs, is by the state officer or head of department, and the state officer or head of department may be restrained by proper action instituted by a citizen¹¹⁹. Executive action may be restrained indirectly by enjoining a cabinet member from enforcing an executive order found to violate the law¹²⁰. In cases involving exercise of judgment or discretion by executive departments of government or duly appointed members of local authority, a general rule is that injunctive relief should be denied and that

¹⁰⁸*Cooley v. Bergin*, 34 FD 366

¹⁰⁹*Washington Mills Co. v. Schauffler*, 34 FD 366

¹¹⁰*Merchants Delivery Co. v. US*, 46 FPD 2d 92

¹¹¹*Angelus v. Sullivan*, 34 FD 366

¹¹²*Utah Fuel Co. v. National Bituminous Coal Commission*, 59 S Ct 253, 305 US 575, 83 L Ed 362

¹¹³*Petroleum Exploration v. Public Service Commission*, 304 US 209, 58 S Ct 834, 82 L Ed 1294

¹¹⁴*Henry v. Schlesinger*, 46 FPD 2d 93

¹¹⁵*South Carolina Power Co. v. South Carolina Public Service Authority*, 34 FD 458

¹¹⁶*Knoll Associates Inc. v. Dixon*, 46 FPD 2d 93

¹¹⁷*Arthur v. Fry*, 46 FPD 2d 93

¹¹⁸*Bush v. Orleans Parish School Board*, 81 S Ct 754, 365 US 569, 5 L Ed 2d 806

¹¹⁹*Great America Insurance Company v. Stiley*, 46 FPD 2d 103

¹²⁰*Atlee v. Nixon*, 93 S Ct 1545, 411 US 911, 36 L Ed 2d 304

court should not attempt to substitute its judgment for that of public official involved, even if the judgment appears to be unwise, short of a showing of fraud, illegality or oppression¹²¹. Courts will enforce ministerial duties required of executive officers by mandates of Parliament, and will enjoin acts, such as trespass and acts beyond statutory authority or jurisdiction of such officers, but will not interfere with matters intrusted by Parliament to discretion of heads of executive departments¹²², and even in a suit properly brought, in a case of which an equity court has jurisdiction, injunctive relief cannot be granted, where the action sought to be enjoined involves a judgment based upon an exercise of discretion by an administrative agency in a matter properly within its jurisdiction¹²³. Other than this, injunction will not lie against an executive official to restrain use of government property authorised by Parliament and within discretion of the executive¹²⁴.

10. Injunctions against Corporate and Unincorporated Bodies

The general principles determining who are proper or necessary parties defendant in actions for injunction apply to private corporations or associations and their officers, and to stockholders¹²⁵, so that an injunction will not be allowed against a corporation or its officers who are strangers to the suit¹²⁶. Officers of a corporation are not necessary parties defendant when it is not shown that they, independent of the corporation, are doing or threatening to do the injury complained of, or where no relief is prayed for as to any of the officers that is not prayed for with respect to the corporation¹²⁷. Furthermore, a former officer of a corporation is not a necessary party where no relief is sought against him, and neither his rights nor his liabilities will be affected if defendant prevails¹²⁸. As a rule, corporate bodies, being an artificial legal entities may only act through their human agents, namely officers and servants.¹²⁹ In view of that, whenever an injunction, whatever its nature may be, is directed to a corporation, it also runs against the corporation's officers, in their corporate capacities¹³⁰. Equity courts have jurisdiction over corporations at the instance of one or more of their members to apply preventive remedies by injunction to restrain those who administer them from doing acts which would amount to a violation of charters or to prevent any misapplication of their capitals or profits, which might result in lessening the dividends of stockholders or the value of their shares, if the acts intended to be done create a breach of

¹²¹*Mims v. Yarborough*, 93 S Ct 528, 409 US 1041, 34 L Ed 2d 491

¹²²*Transcontinental & Western Air v. Farley*, 55 S Ct 119, 293 US 603, 79 L Ed 695; in *American School of Magnetic Healing v. McAnnulty*, 23 S Ct 33, 187 US 94, 47 L Ed 90, it was held that the decision of the Postmaster General that letters addressed to a certain corporation should be refused delivery is not so conclusive on the courts as to preclude them from granting injunctive relief to such corporation, where his action was not authorized by the statutes under which he assumed to act.

¹²³*Utah Fuel Co. v. National Bituminous Coal Commission*, (n 112); in *BF Cummins Co. v. Burleson*, 34 FD 381, it was held that awarding by Postmaster General, after careful investigation and report by committee of experts, of contracts to certain successful bidders for furnishing of cancelling machines, under a statute requiring the contract to be awarded 'on the basis of cheapness and efficiency,' involves ascertainment of facts and exercise of discretion, and is not a mere or plain ministerial duty, and therefore cannot be restrained by injunction. In *Farley v. Heininger*, 34 FD 381, *Heininger v. Farley*, 60 S Ct 110, 308 US 587, 84 L Ed, it was held that primary duty of determining whether mails are being used to defraud is committed to Postmaster General and only when there is no evidence reasonably to support the conclusion found that court may enjoin enforcement of a fraud order.

¹²⁴*Ferris v. Wilbur*, 34 FD 370

¹²⁵ 43A CJS §371

¹²⁶*White v. Wood*, 43A CJS 371

¹²⁷*Reitzer v. Medina Valley*, 43A CJS 371

¹²⁸*Clarke v. Marks*, 43A CJS 371

¹²⁹*Carlen v. University of Jos*, [1994] 1 NWLR Part 323, 631,

¹³⁰*Securities and Exchange Commission v. Coffey*, 95 S Ct 829, 420 US 908, 42 L Ed 2d 837

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trust¹³¹. An injunction to restrain action by a voluntary association need not be directed against such association by name, an injunction against members as individuals being effective to restrain illegal action by them in their associated capacity, which effects all the practical relief possible by injunction in such cases¹³².

11. Injunctions against Foreign Sovereigns, Governments and their Agents

The jurisdiction of every court is limited by the principle of sovereign immunity, and every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its territory. Redress of grievances by reason of such acts must be obtained through the means open to sovereign powers as between themselves¹³³. Under the doctrine of sovereign immunity, the protection avails not only the State, but also the Head of the State, personally, while in office, and to the government of the State, and its component parts or any of their departments¹³⁴. A sovereign prince is exempted from the jurisdiction of the tribunals of a state in which he happens to be, absolutely as far as his person is concerned, and, with respect to his property, at least as far as that is connected with the dignity of his position, and the exercise of his public functions. No proceeding *in rem* can be instituted against the property of a sovereign prince if the *res* can in any fair sense be said to be connected with the *jus coronae* of the sovereign, but other property of the sovereign may be proceeded against *in rem*¹³⁵. A department of a foreign state under the supervision of a Ministry of the foreign state is entitled to immunity from suit even though it is invested with corporate powers for the purpose of enabling them to carry out their statutory functions¹³⁶. The court has no

¹³¹*Dodge v. Woolsey*, 59 US 331, 15 L Ed 401

¹³²*American Steel & Wire Co. v. Wire Drawers' & Die Makers' Union*, 34 FD 594

¹³³*Oetjen v. Central Leather Co.*, 246 US 297, 38 S Ct 309

¹³⁴*Oluwalogbon v. The Government of United Kingdom*, [2005] 14 NWLR Part 946, 760; in *Gladstone v. Ottoman Bank* (1863), 32 L J Ch. 228, 8 LT 162, 71 ER 221, a bill filed against the Ottoman Bank, its directors, and the Sultan, alleged that the Sultan's Government had granted to plaintiffs the exclusive right of issuing bank notes in Turkey, and subsequently, in derogation of that grant, made a similar concession to defendants, the Ottoman Bank, and prayed a declaration of plaintiffs' exclusive right, and an injunction against the Ottoman Bank and its directors. It was held on the demurrer of the bank and directors, inasmuch as the court had no jurisdiction on the contract as against the Sultan, it had none against the bank and its directors, and the demurrer was allowed accordingly. See also, Chike B. Okosa, 'The Limits of Sovereignty and Diplomatic Immunity,' (2004) 4(1) *The Constitution* [88-93]; Chike B. Okosa, 'The Nigeria/P&ID Arbitration: The Limits of Sovereign Immunity and Nigeria's Sovereign Prerogative to Resist Enforcement of the Award,' (2019) 17 *Abia State University Law Journal*, [66-78]

¹³⁵*The Charkieh*, 28 LT 513

¹³⁶*Baccus SRL v. Servicio Nacional Del Trigo* [1956] 3 All ER 715, plaintiffs, an Italian company, issued a writ against defendants, a body which had corporate status by Spanish law, claiming damages for breach of contract. The Spanish Ambassador, a former Minister of Agriculture, deposed that defendants were a department of the Spanish Ministry of Agriculture, notwithstanding their separate juristic personality, and that C, the head of department was a Spanish civil servant subordinate to the Minister of Agriculture. Defendant's solicitors, acting on instructions obtained from C in Spain entered an unconditional appearance to the writ and obtained a consent order for security for costs against plaintiffs. In authorising these steps in the action, C acted without knowledge that any right to sovereign immunity would thereby be prejudiced and without knowledge of the Minister or any representative of Spain able to waive the sovereign immunity from suit. On appeal against an order, made in the proceedings on the ground that defendants were entitled to sovereign immunity from suit as a department of State of Spain, it was held that the defendants were entitled to sovereign immunity because they were, on the evidence, a department of State of Spain, and were nonetheless so because they were invested with corporate powers for purpose of enabling them carry out their statutory functions under supervision of Spanish Minister for Agriculture, and; defendants' immunity had not been waived since steps taken by defendants in the action were taken on authority of C who acted in ignorance of any right to immunity being thereby prejudiced and without

jurisdiction to prevent a foreign sovereign from removing his property in this country, thus, a foreign sovereign who, for the purpose of obtaining his property, submits to be made a defendant in an action, does not thereby lose his rights¹³⁷. However, even where there is no submission to the jurisdiction of the local court, the court will nonetheless be competent to grant an interim injunction to restrain a stakeholder from paying over a fund *in medio* to the principal possessing the legal interest in it, although that principal is absent, and not amenable to its jurisdiction¹³⁸. Furthermore, traditionally, *ultra vires* act of agent of sovereign are not those of sovereign, and equitable relief may be granted against the agent individually¹³⁹. Accordingly, subject to the certain exceptions stated above, the court is deprived of jurisdiction of granting relief against a Foreign State by way of injunction, unless that State has given its written consent to such relief being given against it. In this regard, it should be noted that a general submission to jurisdiction is not to be regarded as consent for the purpose of an injunction being granted against the foreign sovereign.

13. Injunctions against Aliens

Foreigners resident in this country, as well as Nigerian citizens are liable to actions for the injury done for their infringing upon the rights of other persons¹⁴⁰. In pursuance of its *in personam* jurisdiction, a court of equity may properly grant an injunction against a person who is outside of the territorial jurisdiction of the court¹⁴¹. However, the court has no jurisdiction to restrain a foreigner abroad as regards transactions carried on by him in his own country¹⁴²; and the court would not grant an injunction against foreign creditors suing abroad even if the cause of action arose locally¹⁴³.

authority of a proper representative of the Sovereign State of Spain that was necessary to enable defendants to submit to the jurisdiction.

¹³⁷ In *Vavasseur v. Krupp*, [1874-80] All ER Rep. 214, a foreign sovereign bought in Germany shells made there, but said to be infringements of an English patent. They were brought to England in order to be put on board a ship of war belonging to the foreign sovereign, and the patentee obtained an injunction against the agents of the foreign sovereign and the persons in whose custody the shells were, restraining them from removing the shells. The foreign sovereign then applied to be and was made a defendant to the suit. An order was then made that notwithstanding the injunction he should be at liberty to remove the shells. See also *British Westinghouse Electric & Manufacturing Co. v. Electrical Co.*, (1911) 55 Sol. Jo. 689; *The Jupiter*, (1927) 137 LT 333; *Amon v. Raphael Tuck & Sons Ltd.*, [1956] 1 All ER 273

¹³⁸ *Gladstone v. Musurus Bey*, (1862) 32 L J Ch. 155, 7 LT 477, 71 ER 216, certain securities were deposited by plaintiffs in the Bank of England in the name of the ambassador of a foreign state, in order to secure performance of a contract between plaintiffs and the foreign government. The ambassador threatened to withdraw the deposit on ground of an alleged breach of contract by plaintiffs, which they denied. It was held that it was not competent for plaintiffs to move against the ambassador; but an interim injunction might be granted against the bank to restrain them from parting with the fund, and under this order, the bank would be protected against any proceedings by the ambassador.

¹³⁹ *Alabama Rural Fire Insurance Co. v. Naylor*, 46 FPD 2d 670

¹⁴⁰ *Caldwell v. Vanvliessen*; *Caldwell v. Verreck*; *Cladwell v. Rolfe*, (1891) 21 L J Ch. 97, here, injunction was granted against subjects of the Kingdom of Holland, to restrain them from using on board their ships within the dominion of England, without the license of plaintiffs, an invention, to the benefit of which plaintiffs were exclusively entitled under the Queen's patent

¹⁴¹ *Downes v. Jackson*, 28(2) E&ED 1038

¹⁴² In *Badische Anilin Und Soda Fabrik v. Basle Chemical Works, Bindschedler*, [1898] AC 200, it was held that a foreign manufacturer, who manufactures abroad and sends by post at their request to a firm in England, articles, which infringe an English patent, does not himself infringe the patent, and is not liable to an injunction restraining infringement in an action by the owner of the English patent.

¹⁴³ *Re Chapman*, (1872) LR 15 Eq. 75, A., a trader in London, being in difficulties, sent round a letter to his creditors, asking for indulgence; thereupon certain creditors in New York commenced action in New York courts in respect of bills accepted, made payable, and dishonoured in London to attach the debts due to A. from

14. Injunction against Persons Unknown

In instituting an action, it is required that the writ of summons must amongst other things, state the name of the defendant with legal capacity to defend the action¹⁴⁴. The rules of the High Court of the Federal Capital Territory allow that if in land matters, a claimant is unable to identify the person against whom he claims, he may describe such a person as a '*person unknown*'¹⁴⁵. The background to this provision is found in the large volume of land fraud attendant on the very active property market in the Federal Capital Territory. The provision ensures that difficulty or impossibility of locating the persons involved in the very often opaque chain of either previous or current purported owners or occupants of disputed properties does not frustrate the hearing of land matters. This provision is novel and is not replicated in the rules of most of the other courts. Normally, equity does not enjoin unnamed individuals since equity acts in *personam*,¹⁴⁶ and the jurisdiction to grant an injunction is limited to parties to the action¹⁴⁷. Consequently, injunctive relief which attempts to affect rights of individuals who were not parties to action for injunction are overbroad in scope and subject to limitation so as to affect only rights of parties before court¹⁴⁸. However, a court with jurisdiction of a *res* may restrain the entire world from interference therewith¹⁴⁹, and an injunction served upon a sheriff is effectual, though he is not named or described therein, except as *all other persons*¹⁵⁰. In *Hampshire Waste Services Ltd v Intended Trespassers*¹⁵¹, the court granted a *quia timet* injunction to restrain future trespass by protestors. The judge amended the description of the persons unknown in that case so that it referred to persons entering or remaining on the relevant land without the consent of the owner of it. There have been many cases where the courts have been asked to grant, and have granted, injunctions against persons unknown. As it happens, many of these involved injunctions against various kinds of protestors.¹⁵² Consequently, there is no conceptual or legal prohibition on suing persons unknown who are not currently in existence but will come into existence when they commit the prohibited tort. This jurisdiction is however, subject to the requirements that there must be a sufficiently real and imminent risk of a tort being committed to justify *quia timet* relief; it is impossible to name the persons who are likely to commit the tort unless restrained; it is possible to give effective notice of the injunction and for the method of such notice to be set out in the order; the terms of the injunction must correspond to the threatened tort and not be so wide that they prohibit lawful conduct; the terms of the injunction must be sufficiently clear and precise as to enable persons potentially affected to know what they must not do; and, the injunction should have clear geographical and temporal limits.¹⁵³

15. Conclusion

The primary duty of the court is to do justice to all men who are in matters before it. When the court sets out to do justice so as to cover new conditions or situations placed before it, there is

various New York firms. A. immediately filed a petition for liquidation, a receiver was appointed, and application made for an injunction to restrain the actions in the New York courts. It was held that the court would not grant an injunction against the foreign creditors suing abroad.

¹⁴⁴*Ayorinde v. Oni*, [2000] 3 NWLR Part 649, 348

¹⁴⁵o. 13 r. 9 of High Court of FCT, Abuja (Civil Procedure) Rules, 2018

¹⁴⁶*Smith v. Board of Commissioners of District of Columbia*, (n 47)

¹⁴⁷*Landed Estates Co. Ltd. v. Weeding*, (n 60)

¹⁴⁸*Bethel v. Peace*, (n 59)

¹⁴⁹*Cherry v. Insull Utility Investments*, (n 48)

¹⁵⁰*In re Lady Bryan Mining Co.*, (n 49)

¹⁵¹[2004] Env LR 196

¹⁵²*Ineos Upstream Ltd v. Persons Unknown*, [2017] EWHC 2945 (Ch)

¹⁵³*Joseph Boyd v. Ineos Upstream Ltd*, [2019] EWCA Civ 515

often a need to have recourse to equitable principles. A court, because it is authorised to administer both law and equity, must, in exercise of its equitable jurisdiction be seen as a court of conscience. Consequently, Judges who dispense justice in the courts of law and equity must always be ready to address new problems and create new solutions where the justice of the matter so requires. On the principle of *ubi jus, ibi remedium*, the court will provide a remedy irrespective of the fact that no remedy is provided either at common-law or by statute, if from the facts before the court, it is satisfied that: the defendant is under a duty to the plaintiff, there was a breach of that duty, the defendant suffered legal injury, and the injury was not remote¹⁵⁴. This principle is no more exemplified than in the reach of the equity jurisdiction of the court. Consequently, where injunctive remedy is appropriate, the courts have the jurisdiction to frame the remedy in such a manner that the necessary parties are brought under the rule of the injunction; and this is so even if those necessary parties are unknown persons.

¹⁵⁴*Amaechi v. INEC*, [2008] All FWLR Part 407, 1; in *Ewhrudje v. Warri Local Government Council*, [2005] 7 NWLR Part 924, 334, it was held that in exercise of duty of court to provide a remedy for a plaintiff even if none has been prescribed in the statute book, it must not follow that because a claim for damages fails, the claim for injunction must also fail. If a trespass is threatened, or reasonably apprehended or likely to occur, an injunction to restrain the defendants from committing a trespass may be granted, even though no trespass has been proved.

