

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CV/1495/2024

DATE: : FRIDAY 14TH FEBRUARY, 2025

BETWEEN:

ESCO ENERGY VISION NIGERIA LTD.



**CLAIMANT/
RESPONDENT**

AND

MPS TECHNOLOGIES LIMITED



**DEFENDANT/
APPLICANT**

RULING

This Ruling is at the instance of the Claimant/Applicant who approached this court vide Motion on Notice dated 4th March, 2024 and filed on the 6th March, 2024, praying the court for the following reliefs:

1. An Order directing the Defendant/Respondent, whether by itself, its agents, assigns, servants or privies, or anyone acting through it howsoever having custody of the Applicant's power services generating equipment to deliver immediate possession of same to the Applicant, pending the hearing and determination of the substantive suit and/or as may be directed by the Court.
2. An Order of Interlocutory Injunction restraining the Defendant/Respondent herein, whether by itself, agents, assigns, servants or privies anyone acting through it howsoever designated, from disturbing, tampering or dealing with the Applicant's power services generating equipment pending the hearing and determination of the substantive suit and/or as may be directed by the Court.

3. And for such further order or other Orders as this Honourable Court may deem fit to make in the circumstances of the case.

The grounds upon which this application is brought are as follows:

1. Under the Master Service Agreement dated 25th March, 2021 (the "Agreement") executed by the Applicant and the Defendant/Respondent (the "Defendant"). The Applicant caused certain power-generating equipment to be installed in the Defendant's sites in furtherance of the Applicant's obligation to supply power services to the Defendant under the Agreement.
2. By virtue of ownership and the terms of the Agreement, the Applicant remains the beneficial owner of all the installed equipment.
3. Following the breach of contract occasioned by the Defendant, the Applicant is entitled to take possession of and/or be given unhindered access to the equipment, but the Defendant has denied the Applicant access to the equipment.

4. The Applicant suffers a real risk of severe, irreparable, irredeemable and irreversible damage on account of the possible damage, destruction, and/or loss of the equipment and this can only be prevented by a grant of the interlocutory reliefs sought under this application.
5. The interest of justice will be best served by this Honourable Court granting the Applicant's present application.

The application is supported by a 19 paragraph affidavit deposed to by Charles Udeme Martins, the Commercial Controller of the Claimant/Applicant in this suit. It is the deposition of the Claimant/Applicant, that by a Master Service Agreement executed by the Applicant and the Defendant on 25th March, 2021, the Defendant engaged the services of the Applicant for the supply of reliable 48Volt DC ESCO Services to Power Telecommunication equipment and to maintain power supply to the Defendant's Six Hundred and Ninety Six (696) Sites and any additional/new site handed over to the Defendant and/or built by the Defendant within the Federal Republic of Nigeria ("ESCO Services" or "Services").

That following the parties' agreement, the Applicant caused certain power services generating equipment to be installed in the

Defendant's sites in furtherance of the Applicant's obligation to supply the ESCO Services to the Defendant, in line with the Agreement.

That Applicant's power services generating equipment are sensitive, expensive, and hard to come by, hence there is the need to always keep the equipment safe and under adequate protection.

Furthermore, under the Agreement, the following obligations fall on the Defendant:

- a. Parties thereto agreed under Clause 7 of the Agreement that the Applicant's consideration for the ESCO Services to be rendered will be as provided in Annexure E to the Agreement as agreed by the parties that the Applicant would be entitled to Monthly Fees from the Cut-Over Date of each site for the full term of the Agreement. Copies of the Agreement and Annexure E to the Agreement are hereby attached as Exhibits "EVN I" and "II".
- b. Also, as a condition precedent for the commencement of the ESCO Services by the Claimant is that the Defendant is required and obligated to make monetary investments of approximately **US\$32,000,000.00 (Thirty Two Million**

United States Dollars) for the enhancement of the power systems.

- c. The Defendant was also required (per clause 7.4) of the Agreement to within thirty (30) days of parties executing the Agreement, pay to the Claimant a one-time payment of an equivalent of three (3) monthly fees for the first fifty (50) sites to be handed over to the Claimant (the "One Time Payment")

Claimant avers that it caused several expensive and sophisticated power services generating equipment to be installed in the Defendant's sites in furtherance of the Agreement. The Claimant, through its installed equipment, supplied the ESCO Services to the Defendant's sites in accordance with the Agreement, up till February 2024. However, the Defendant, in sheer disregard of the Agreement and its obligations therein, has failed, refused, and/or neglected to pay the amounts due to the Claimant thereby incurring huge financial liability which has affected the Applicant's operations negatively.

That the Defendant has also remained in possession of the Applicant's expensive, delicate, and sophisticated power-generating equipment despite its continuous fundamental breach

of the Agreement. That he is aware that the underlying Agreement, per Clauses 7.11 and 2.4, gives the Applicant the right and authority to remove its installed equipment following the breach of contract by then Defendant as in this present circumstance.

That if the Defendant is allowed to continue being in possession of the equipment, it would adversely impact the Applicant's business operations, as well expose the said equipment to dissipation/damages at the hands of the Defendant.

That following the breach of contract occasioned by the Defendant through its continuous default in payment of the fees, the Applicant engaged the services of Messrs. Bloomfield LP ("BLP") to urgently approach this Honourable Court for interlocutory orders, pending the hearing and determination of the substantive suit.

That the Applicant, having exhausted the avenues for non-litigious recovery of its fees, and in light of the real risk of damage, dissipation and/or destruction of its installed equipment, the Applicant's Counsel has brought this Motion before this Honourable Court for the sole purpose of invoking the protective

powers of this Honourable Court over the said pieces of equipment.

That Applicant has suffered immense financial and operational losses/costs on account of the Defendant's failure to pay the Applicant for the services rendered, and except by the immediate intervention of this Honourable Court, the Applicant will suffer irreparable damage and/or loss if the pieces of equipment are allowed to remain in the Defendant's possession.

That if this application is not granted, the Defendant will continue to unlawfully detain, and/or interfere with the equipment in the most unconscionable manner, thus inflicting irreparable, irredeemable and irreversible damage on the Applicant and its business.

That further to the above, the Applicant has furnished an undertaking to pay damages to the Defendant if this Honourable Court grants the interlocutory injunctive reliefs but subsequently finds that same ought not to have been granted. A copy of the Applicant's undertaking dated 4th March, 2024, is hereby attached as Exhibit "EVN III".

That in the interest of justice that the reliefs sought in this application be granted.

In line with law and procedure, Claimant/Applicant filed their written address, wherein sole issue was formulated for determination to-wit;

Whether the Honourable Court ought to grant the reliefs sought in the Application in the circumstance.

Learned counsel submits that this Honourable Court is well cloaked with the power to protect the judicial process of adjudication by a grant of preservative reliefs such as those sought under the Application.

Learned counsel contends that the Applicant concedes that orders of interlocutory injunction are not granted as a matter of course. The power of the Court to grant the reliefs sought in this Application is discretionary and such discretion must be exercised judicially and judiciously. He cited ***AYORINDE VS. A.G. OYO STATE (1996) 3 NWLR (Pt. 434) 20.*** Thus, a court is expected to grant an order of injunction based upon sound principles of the law and not based on the whims and caprices of a Judge. The case of ***BUSARI VS. EDO STATE CIVIL SERVICE COMMISSION (1999) 4 NWLR (Pt. 599) 365 at 370*** was cited.

It is further the submission of the learned counsel that an application for interlocutory injunction is also necessary to restrain party/parties from taking special steps and to maintain the status quo until after the determination of the case. The case of ***ANTHONY VS. SURVEYOR - GENERAL, OGUN STATE (2007) ALL FWLR (Pt. 354) 375 at 390 Paragraphs E-F*** was cited.

Learned counsel submits that an order of injunction being discretionary relief, the court must exercise its power to grant an order of injunction in a judicious and judicial manner based on sufficient materials which precedents have laid down. He cited ***KOTOYE VS. C.B.N. (1989) 1 NWLR (Pt. 98) 419;***

OBEYA MEMORIAL SPECIALIST HOSPITAL VS A.G. FEDERATION (1987) 3 NWLR (Pt. 60) 325.

Learned counsel submits that the conditions must exist conjunctively before an order of injunction can be granted

Legal Right or Interest to be protected

Learned counsel argues that it can no longer be disputed that in an application for the grant of an order of injunction, the party seeking said relief must demonstrate the existence of a legal right

that is under threat and is deserving of protection. He cited ***A.I.C LIMITED VS. N.N.P.C (2005) 11 NWLR (Pt. 937) 563.*** The fundamental basis of an application for injunction is the ability to show that / there is a right or interest being sought to be protected from imminent danger of irreversible destruction. The case of ***SEVEN UP BOTTLING CO LTD VS. ABIOLA & SONS LTD. (2001) 13 NWLR (Pt. 730) 493 was cited.***

Moreso, learned counsel submits that part of the res of this suit would be rendered nugatory if the Defendant is not stopped by this Court from keeping or holding onto the said pieces of equipment.

Real Urgency

Learned counsel submits that it is trite law that for an applicant to be entitled to the grant of an application for injunction, it must be shown that there is real urgency which requires prompt intervention of the court. In such instances, the Court cannot afford to wait until the res is destroyed or the legal right of a party has been irredeemably infringed upon, the viable option is to grant an order pending the time the court would determine the substantive suit.

The Applicant is not guilty of delay and urgency is not self induced

Learned counsel further argues that the Applicant is not guilty of delay as the Applicant has shown that having commenced an action for breach of contract and the recovery of its outstanding fees from the Defendant, the Applicant immediately approached this Honourable Court, and did not tarry needlessly to protect its assets which are currently in the Defendant's possession. Learned counsel further argues that Applicant has not slept on its rights but has been proactive about enforcing same and mitigating costs and losses which may accrue on the basis of the Defendants breach of said rights.

Serious Issues to Be Tried and real possibility of Success

It is the submission of the learned counsel that the Applicant has established that its rights are under threat, and that same deserves to be protected by the grant of an Order of Interlocutory Injunction. He cited ***OBEYA MEMORIAL HOSPITAL VS. A-G FEDERATION (Supra)***.

Learned counsel further submits that the Defendant's decision to detain the Applicant's equipment amounts to unlawful

interference with property, conversion, detention of chattel, as well as detinue by the Defendant.

Learned counsel made reference to Clause 2.4 of their Agreement.

Learned counsel submits that the Applicant is the bona fide owner of the pieces of equipment and same has not been purchased by the Defendant or any other party, and would undoubtedly succeed in the substantive application.

Balance of Convenience

Learned counsel submits that the Court is expected to grant an order of injunction once the Applicant is able to establish that it would suffer more inconvenience if the order of injunction were not granted. The case of ***ODUNTAN VS. GENERAL OIL LIMITED (1995) 4 NWLR (Pt. 387) 1 at 13 Paragraphs D-F was cited.***

Learned counsel argues that in the case at hand, the Applicant has established its ownership over the said equipment and has shown the huge losses that it stands to (continue to) suffer should this Application not be granted. Conversely, the Applicant

has shown that the Defendant has no right in relation to the equipment at all.

The court is urged to hold that the Defendant do not stand to lose anything once the suit is determined, and that no amount of damages will be sufficient to compensate the Applicant should the equipment be damaged and/or rendered useless. This Application ought to be granted by this Honourable Court pending its determination of the merits of the Motion on Notice and of the substantial Suit.

Undertaking as to Damages

It is the submission of the learned counsel that the general principle of law is that, except in recognized cases, in an application for an injunction, a beneficiary of such an order must provide an undertaking as to damages. Similarly, it was further held that a party seeking an injunction must provide a satisfactory undertaking as to damages in favour of the party/parties against whom the said injunction is sought, if the action proves vexatious, and accordingly fails. He cited ***NCC VS. NRC (1992) 1 NWLR (Pt. 220) 747.***

The Applicant has made an undertaking to pay damages where it turns out that the order of injunction ought not to have been

made, the court is urged to hold that the Applicant is entitled to the grant of the orders of injunction pending the hearing and determination of the substantive suit.

In conclusion, learned counsel submits that the Applicant has demonstrated by cogent affidavit evidence that there exist strong grounds for this Honourable Court to exercise its discretion in granting this application and the court is urged to so hold.

Based on the foregoing, counsel respectfully urges this Honourable Court to grant the Application of the Applicant.

Upon service, Defendant/Respondent filed 5 paragraphs counter-affidavit in opposition to the Applicant's Motion on Notice, duly deposed to by one Rosecarmel Odeh, counsel in the law firm of counsel representing the Defendant/Respondent in this case.

It is the deposition of the Respondent that the facts stated therein are misleading and calculated at prejudicing the Defendant/Respondent rights under the Master Service Agreement.

That Contrary to Paragraphs 6-15 of the Applicant's affidavit, the said equipment has been secured and well-protected under the custody of the Defendant/Respondent and there has been no

reason to question the safety of this equipment while in the Defendant/Respondent's care. The equipment is used in aiding the provision of communication services all over the country and there is no reason why the equipment will suffer any danger or destruction.

Contrary to the Claimant/Applicant's assertions, the Defendant/Respondent relies on the proper functioning of this equipment to maintain its operations and would not reasonably allow it to come to any harm.

Contrary to Paragraph 9 of the Applicant's affidavit, the Respondent did not willfully disregard the Agreement and its obligations therein, neither did the Defendant/Respondent fail, refuse, and/or neglected to pay the amounts due to the Claimant/Applicant. At the substantive suit, the Defendant will establish facts to discountenance the Applicant's assertions.

Contrary to the Applicant's assertion in Paragraphs 6, 12 and 16 of the Applicant's affidavit, the Respondent has neither taken nor is likely to take any action that could cause irreparable damage or harm to the said equipment.

That the Defendant in the course of its business operations, often deal with power service generating equipment and are familiar

with its sensitivity and are thus, well equipped in ensuring no dissipation/damage is done to the equipment.

That the Defendant/Applicant is not likely to cause any harm to the equipment or inflict irreparable, irredeemable and irreversible damage to the equipment as the Defendant/Respondent relies on the equipment's good working condition to facilitate its own business operations.

That on the contrary, the Claimant/Applicant, attempted to forcefully disconnect the said equipment from the Defendant/Respondent's custody, putting the said equipment at harm's way and resulting in significant losses not only to the Defendant/Respondent but also to Customers who rely on the Defendant/Respondent's services. (Attached to this mail are email correspondences from the Respondent's customers making complaints about the damage caused by the Applicant Exhibit "1").

That based on the Applicant's unlawful actions and recourse to self-help, vide a letter dated 19th March 2024, the Respondent wrote to the Applicant informing the Applicant of the effect of its illegal actions in breach of the NCC Guidelines. In response, the Respondent vide a letter dated confirmed its act of self help and

relied on a purported contractual right it had in the MSA. (Attached and Marked as Exhibit "2" & "3" are letters dated 18th and 19th March 2024 from the Applicant and Respondent respectively).

That Contrary to Paragraph 7 of the Applicant's Affidavit, the amount claimed to be due to the Claimant/Applicant, remains in dispute between the parties for various reasons, including but not limited to: The lack of consideration of the diesel price in the Claimant's/Applicant account, the omission of cost for the repair and reinstallation of the said equipment by the Defendant/Respondent, necessitated by the Applicant's attempt to forcefully disconnect the equipment. It also fails to acknowledge the Defendant/Respondent's right to offset the cost of damages incurred due to the Applicant's actions.

That the said equipment would be properly maintained and protected by the Defendant/Respondent during the pendency of this suit.

That the Applicant's application is without merit, lacking any substantive basis, and therefore should be promptly dismissed.

Written Address was filed, wherein sole issue was formulated for determination to wit;

Considering the fact that this application prejudices the Writ of Summons; and the failure of the Applicant to fulfill the conditions for the grant of interlocutory injunction, should this Honourable Court dismiss the application for injunction?

Arguing on the above, the law is settled that a court should refrain from making a finding in an interlocutory application that may prejudice the pending substantive case. The case of ***UNITED SPINNERS LTD. VS. CB LTD. (2001) 14 NWLR (Pt. 732) Page 195 at 220*** was cited.

Learned counsel argues that an interlocutory injunction such as the extant application is therefore, not to be used as a means to obtain the reliefs as sought in the statement of claim without going through trial. He cited the case of, ***ABOSELDEHYDE LABORATORIES PLC VS. UNION MERCHANT BANK LTD. & ANOR (2013) LPELR-20180 (SC)***.

In the instant case, counsel argues that the Respondent has demonstrated that the reliefs sought in the Motion on Notice are similar to the Claimant/Applicant's main claim in the substantive action. The Applicant's request is nothing but a surreptitious and unhelpful attempt to prematurely receive an Order being sought

in the substantive action. By implication, the grant of the relief will signify the determination of one of the principal reliefs in the substantive action. The Defendant/Respondent urges this Honourable Court to discountenance and dismiss the Applicant's Motion on Notice.

Consequently, the Court identified the following requirements which an Applicant must conjunctively established for the exercise of the court's discretion in its favour.

- a. That the Applicant(s) must have the locus standi to institute the action in which the injunction relief is sought
- b. The Applicant(s) must show an existence of a legal right which needs to be protected in the interim.
- c. The Applicant must show that the balance of convenience tilts towards his application.
- d. The Applicant must also show that his damages cannot be assuaged in monetary terms.
- e. The Applicant must enter into an undertaking to pay damages in the event that the court finds that it ought not to have granted the injunction in the first place.

- f. The Applicant must show real urgency.
- g. The Applicant must show a behaviour of compliance with the legal circumstances for granting an injunction.

Learned counsel refer the court to the case of ***KOTOYE VS. C.B.N. (1989) 1 NWLR (Pt. 98) 419.***

It is further the argument of the learned counsel that as a requirement of the law, the Applicant must adduce sufficiently, precise and factual affidavit evidence to satisfy this Court that its claim for injunction is not frivolous. By the record of this Court, the Applicant has not demonstrated by its affidavit the requirement of law for the grant of the injunction.

Learned counsel submits that an interlocutory injunction is meant to protect the res, subject matter of the claim from destruction or irreversible damage while the matter is being determined by the court. He cited ***SEVEN UP BOTTLING CO. LTD. VS. ABIOLA & SONS LTD. (2001) 13 NWLR (Pt. 730) 493.***

Learned counsel further added that the Applicant has failed to establish any credible risk of imminent danger in its application. The Applicant has merely underscored the sensitivity, cost, and rarity of the power generating equipment, asserting without

substantial evidence that if the Defendant/Respondent retains possession, it would adversely affect the Applicant's business operations and expose the equipment to hypothetical damage. The argument hinges on speculative damage, which is insufficient, especially given the Respondent's proven track record of meticulously handling such equipment and their clear capability to continue doing so. Thus, the assertions that the res is in imminent danger of being destroyed are merely speculative, imaginary, and misleading.

The court is therefore urge to dismiss this application. The Plaintiff/Applicant has not substantiated any real or immediate threat to its rights, rendering the request for injunctive relief unwarranted and unjustified.

Learned counsel submits that an Applicant who has applied for an injunctive relief must behave in a manner that is suggestive of clean hands because injunction being an equitable remedy is only granted to those who have come with clean hands. From the Applicant's Affidavit and the Statement of Claim in support of the suit, it has been demonstrated that this application is a self-styled relief, and equity will not help the reckless but the prudent.

He cited ***ADEJUMO VS. AYANTEGBE (1989) 3 NWLR (Pt. 110) 417.***

Learned counsel argues that the Applicant has created this situation by failing to comply with the Nigerian Communication Commission Guidelines on Procedure for Granting Approval to Disconnect Telecommunication Operators, 2022. These guidelines, issued by the Nigerian Communication Commission- the apex regulatory body for telecommunications in Nigeria- establish the proper procedure for disconnection, instead of following the due process, the Applicant unilaterally disconnected the Respondent and now seeks this Honourable Court's order to recover the equipment. This disregard for established procedures further underscores the Applicant's lack of urgency and bad faith in seeking injunctive relief.

The court is urge to dismiss this application. The Applicant's conduct, characterized by non-compliance with regulatory procedures and the creation of a self-styled emergency, does not merit the equitable remedy of an injunction.

Learned counsel contends that the competing rights of the parties to justice must be evaluated. The Applicant has not presented any fact which shows that it will suffer more injury if the

injunction is not granted. The case of ***BUHARI&ORS VS. OBASANJO & ORS. (2001) 11 NWLR (PT. 724) 369*** was cited.

The court is urged to discountenance the Applicant's submission that the balance of convenience tilts in its favour.

Learned counsel argues that it is well-established law that for an applicant to be granted an interlocutory injunction, they must demonstrate real urgency necessitating prompt court intervention. He cited ***KOTOYE VS. CBN (1989) NWLR (Pt. 98) 419;***

ITAMA&ORS VS. OSARO - LAI &ORS (2000) LPELR-6903 (CA).

Learned counsel further argues that, in the instant case, the Applicant has failed to establish that the equipment is at risk of being destroyed or that the Applicant's rights would be irredeemably infringed upon if this application is not granted. There is no evidence of an urgent threat or any attempt by the Defendant/Respondent to remove, destroy, or tamper with the res, i.e., the equipment.

Learned counsel therefore submits that the granting of an interlocutory injunction is not a matter of course or routine, slavishly following an application. The Court must take into consideration the above principles in their relevance to the facts of the case. Hence, the court is urge to dismiss the application for injunction as the same is manifestly imaginary and unmeritorious.

In conclusion, learned counsel submits that the determination of the Motion on Notice will prejudice the substantive Suit and that the Applicant has failed to meet and establish the requirements for the court to invoke its discretionary powers in granting an application for Interlocutory Injunction.

Consequently, the court is urge to dismiss the Claimant/Applicant's Motion for Interlocutory Injunction as it lacks merit and is devoid of any legal basis.

In turn, Applicant filed 13 paragraph affidavit deposed to by Charles Udeme Martins, commercial controller of the Claimant/Applicant in this suit.

That the depositions made in paragraph 3 of the Counter Affidavit are erroneous and flawed with fabrications that the Respondent has been using/relying on to detain and utilize the Applicant's Equipment without consideration illegally.

That contrary to the Respondent's position, the continuous breach and failure of the Respondent to fulfill its financial obligations to the Applicant under the Agreement forced the Applicant to exercise its legal and contractual right (as provided under Clause 7.11 of the Agreement) by disconnecting the Equipment which it had installed in the Respondent's sites and consequently ceasing the supply of energy services to the Defendant on 2nd March, 2024.

That contrary to the fabricated lies stated in paragraph 3 (i) of the Counter Affidavit, the Applicant disconnected the Equipment through its authorized personnel, who visited the sites. The Applicant never forcefully disconnected its Equipment as claimed by the Respondent.

Following the disconnection and cessation of services, the Applicant instituted this action against the Respondent for the recovery of its outstanding fees as well as for the recovery of the installed Equipment.

That the Respondent's Counter Affidavit is rather filled with false and untrue statements which show the Respondent's dishonest and unethical nature.

That the Respondent acknowledges the Applicant's ownership over the said Equipment but has illegally taken control of the Equipment (contrary to the Agreement) to the detriment of the Applicant. Due to the unlawful detention of property, the Applicant is currently being exposed to the sum of **N946,179,470.05 (Nine Hundred and Forty - Six Million One Hundred and Seventy-Nine Thousand, Four Hundred and Seventy Naira, Five Kobo)** being the total average cost for the 67 Sites which the Applicant currently has its Equipment installed, and which are in the Respondent's custody.

Contrary to paragraph 3 (k) of the Counter Affidavit, the Respondent had severally and unequivocally admitted being indebted to the Applicant, and sufficient evidence in support of this position forms part of the record before this Court.

That the disconnection that was carried out by the Applicant on 2nd March, 2024, was done by authorized personnel under the Applicant's authority without any damage or negative result occasioned to the Equipment.

That the Respondent, from 3rd March, 2024, without regard to the underlying Agreement, and the concurrence of the Applicant, invited some external persons (including former staff of the

Applicant), to interfere, tamper, reconfigure, bypass, and consequently reconnect the Equipment which the Applicant had disconnected. Attached as Exhibit "EVN 1" is a copy of the schedule showing the list of sites that were illegally bypassed by the Respondent as of 13th March, 2024.

That due to the disregard and effrontery of the Respondent, the Applicant issued a letter to the Respondent, dated 18th March, 2024, demanding the immediate return of the Equipment to the status they were before being tampered with by the Respondent. That the Applicant's Equipment are now on the verge of total breakdown (as cunningly indicated by the Respondent) the Respondent shall be further indebted to the Applicant in the sum of **N14,122,081.64 (Fourteen Million, One Hundred and Twenty-Two Thousand, Eighty-One Naira, and Sixty-Four Kobo)** being the present market value of each piece of equipment and the average cost per site.

That from the above, it is evident that there is every indication from the Respondent's Counter Affidavit that irreparable damages has or will be done to the Applicant's Equipment if nothing is done to remove same from the Respondent's custody without delay.

That Defendant has frustrated all efforts made by the Applicant to recover its money and its Equipment.

That contrary to the Respondent's claim in paragraph 3 (j) of the Counter Affidavit, the Applicant did not commit any breach of any Act or Guidelines in force. The Applicant carried out the disconnection of its Equipment by virtue of its legal and contractual rights under the Agreement.

That the Act and the Guidelines which were mischievously cited by the Respondent have no bearing, relation, application, or relevance to the Applicant or the subject matter of this suit. The Act and Guidelines only apply to operators in the telecommunications sector, and the Applicant herein is neither a telecommunication company nor is it providing telecommunication services to the Respondent.

That on account of his professional calling, that the Applicant has no obligation to give any notice to any regulatory body before enforcing its legal and contractual rights as provided for, and as mutually agreed to, by parties, under the Agreement.

That the Respondent has not shown or demonstrated any legal justification for detaining the Applicant's Equipment.

That contrary to paragraphs 3 (1) and (m) of the Counter Affidavit, the Applicant's priority is to take possession of its Equipment, and not to debate whether the Respondent can protect the equipment or not. Thus, the Respondent's deposition regarding its capacity to maintain property which does not belong to it is unfounded and without legal justification.

That per Clauses 7.11 and 2.4 of the Agreement, the Applicant has the right and authority to remove the Equipment.

That the Applicant has suffered losses/costs on account of the Respondent's failure to pay the Applicant for the services rendered, and the Defendant's unethical and unconscionable actions continue to expose the Applicant to more losses and except by the immediate intervention of this Honourable Court, the Applicant will continue to suffer irreparable damage and/or loss if the Equipment continue to remain in the Defendant's possession.

That it is in the interest of justice for this Honourable Court to grant the reliefs contained in the Applicant's Motion on Notice dated 4th March, 2024, for the protection and delivery of the Equipment to the Applicant.

In line with the law and procedure, learned counsel filed Reply on point of law wherein two issues were formulated for determination to wit;

1. **Whether considering the circumstances of this case, the Applicant's interlocutory injunction ought to be granted.**
2. **Whether the Nigerian Communications Act, 2003 and its Guidelines can be said to be applicable to the Applicant or the subject matter of this suit.**

On issue one, **Whether considering the circumstances of this case, the Applicant's interlocutory injunction ought to be granted.**

It is the argument of the learned counsel that the Respondent did not state how and what the Applicant failed to establish in its Application to conclude that the Application is without merit. All the items listed in paragraph 26 of the Respondent's Written Address have been sufficiently addressed in the Applicant's Application. Among others,

Learned counsel submits that the res would be rendered nugatory if the Respondent is not stopped by this Court from detaining and

illegally using the said equipment, the court is therefore urge to discard the Respondent's argument in its totality.

Whether it is the Respondent or the Applicant who has acted in a reprehensible Manner?

Learned counsel argues that Respondent starting from January 2022 till date has been shady, deceitful, and malicious in its dealings with the Applicant. By the Respondent's own admission, it is evident that the Respondent has not only failed to pay the Applicant the money owed for over Two (2) years, but it has also taken over the property of the Applicant by converting same for its own use even after the Applicant had disconnected the Equipment.

That having established the Applicant's right and entitlement to the Equipment, learned counsel submits that the Respondent has no legal basis for holding onto, or detaining the Applicant's property, and as such should be compelled to release same to the rightful owner.

Learned counsel further submits that its actions suggest nothing other than the intent to permanently deprive the Applicant of its property by colluding with the Nigerian Police Force to deny the Applicant entry into the sites. In this regard, the Court is urge not

to allow the Defendant to circumvent the law. The case of ***HART VS. T.S.K.J. NIG. LTD. (1998) 12 NWLR (Pt. 578) 372 was cited.*** "Equity would not allow the law to be employed or used as an engine of fraud.

In light of the foregoing, the court is urge to discountenance the Defendant's Counter Affidavit filed in opposition to the Applicant's Motion on Notice. He cited ***BULET INT. LTD. VS. OLANIYI (2017) 17 NWLR (Pt. 1594) 260, per ONNOGHEN, C.J.N. at page 294.***

On issue two, ***Whether the Nigerian Communications Act, 2003 and its Guidelines can be said to be applicable to the Applicant or the subject matter of this suit.***

Arguing on the above issue, learned counsel submits that it is trite law that every statute must be construed in accordance with its intendment and tenor. Therefore, the duty of any Court when interpreting a Statute is to seek out the intention of the legislature in passing such Statute into law. He cited ***ORAKUL RESOURCES LTD. VS. N.C.C. (2022) 6 NWLR (Pt. 1827) 539.***

It is expected that where the wording of the statute is clear and unambiguous, the Court must give effect to it as pronounced. The

provision of section 2 of the Nigerian Communications Act, 2003, (the "NCC Act"), was cited.

It is the learned counsel's submission that the NCC Act will apply to entities that provide communications services and/or network-related services to consumers within Nigeria. Therefore, the NCC Act does not apply to the Applicant, nor does it apply to the Applicant's business in anyway whatsoever. Hence, the Respondent is either intentionally trying to mislead this Honourable Court or the Respondent intends to waste the time of this Honourable Court by raising a frivolous argument in response.

Part II of the NCC Act specifically provides for interconnection between operators in the telecommunications sector. Sections 96 and 100 of the NCC Act.

Learned counsel submits that the Respondent's contention in paragraph 14 of its Written Address is shallow and fundamentally wrong. The subject matter of this suit arose from the Respondent's breach of the obligation to provide the requisite consideration for the energy services provided. Therefore, this suit qualifies as an action for recovery of debt of which jurisdiction is vested in this Honourable Court.

Learned counsel further submits that the agreement between both parties was neither for a telecommunication/network interconnection (as envisaged in Section 2 and Part II of the NCC Act), nor is the Applicant a telecommunication service provider or licensee.

The court is therefore urge to discountenance the Respondent's preliminary points for being frivolous and grant the reliefs sought by the Applicant therein as prayed.

COURT:-

I have gone through the affidavit in support of the reliefs herein contained on the face of the application in view, on one hand, and the counter affidavit in opposition to the application on the other hand and the reply on point of law of the learned Counsel for the Applicant to the written address of the Respondent.

The Claimant in the said motion sought for an Order of interlocutory injunction as already captured in the preceding part of the Ruling.

I shall be brief but succinctly in addressing the issues raised in the application in the interest of justice.

In civil cases, the burden of proof is governed by the balance of probabilities, requiring parties to present evidence that is more likely true than not true. The Act outlines a procedural framework for the allocation of the burden of proof ensuring equitable distribution and thorough adjudication of the pertinent issues.

To arrive at justice, the Court hereby formulate a lone issue for determination to wit; **Whether given law, fact and circumstances of this case, the Applicant has proved its case to be entitled to the grant of all the reliefs sought.**

A careful reading of the case before the Court will reveal that the grouse of the Applicant is basically anchored on and derived from Exhibit "EVN1" (Master Service Agreement) between the Applicant and the Respondent.

The position of law that an Applicant for interlocutory injunction must have an established legal right, for his application to succeed, cannot be over emphasized.

Of equal importance is the fact that interlocutory injunction is usually granted to protect the Plaintiff against injury, by violation of his right for which he could not be adequately compensated in damages recoverably in the action if the uncertainty were resolved in his favour at the trial.

See ***ADAMU VS. A.G NASARAWA STATE (2007) 6 NWLR (Pt. 1031) 485 at 492 Paragraphs F-G.***

Furthermore, one determining factor for granting an Order of interlocutory injunction is to preserve the Res. It is indeed the provision of the law that the Res should not be destroyed or annihilated before the judgment of Court. See ***AKINKPELU VS. ADEGBORE & ORS (2008) 4 – 5 SC (Pt. 11) 75.***

I shall consider the evidence of the parties with the aim of ascertaining the Legal Right which the Applicant alleged to be tempered with. This is in view of the facts that where there is no legal right known to law, the Plaintiff cannot be heard to complain.

The Claimant/Applicant in his affidavit in support of Motion on Notice stated that sometime in March 25th , 2021, the Respondent engaged the services of the Applicant for the supply of reliable 48 Volt DC ESCO Services to power telecommunication equipment and to maintain power supply to the Defendant's Six Hundred and Ninety-Six (696) sites and any additional/new site handed over to the Defendant and or built by the Defendant within the Federal Republic of Nigeria and the terms were documented in the Master Service Agreement, vide Exhibit "EVN 1".

The Applicant further stated that it caused several expensive and sophisticated power service generating equipment to be installed in the Defendant's site, however, the Defendant in sheer disregard of the agreement and its obligation therein, has failed, refused and /or neglected to pay the amounts due to the Applicant thereby incurring huge financial liability which has affected the Applicant's operations negatively. The Defendant has also remained in possession of the Applicant's expensive, delicate, sophisticated power-generating equipment despite its continues fundamental breach of the Agreement. The Applicant then sought for order of interlocutory injunction as already captured in the preceding part of the ruling.

In debunking the allegation of the Applicant, the Respondent filed a counter affidavit wherein it maintained that the amount claimed to be due to the Applicant remains in dispute between the parties for various reasons, including but not limited to; the lack of consideration of diesel price in the Applicant's account, the omission of cost for the repair and reinstallation of the said equipment by the Respondent necessitated by the Applicant's attempt to forcefully disconnect the equipment.

Respondent further deposed that the said equipment has been secure and well protected under the custody of the Defendant/Respondent and there has been no reason to question the safety of this equipment while in the Defendant/Respondent care.

It is interesting to note that both the Applicant and the Respondent are on the same page with respect to the existence of Exhibit "EVN1" (Master Service Agreement Agreement) between them. However, both parties have divergent views with respect to the execution and performance of the contract/agreement.

It is very instructive to note that, at this stage, the Court is only enjoined to determine whether or not, from the documents and averments contained in the affidavit in support of this Application, the Applicant indeed has a legal right worthy of any protection by this Court.

In determining the said right of the Applicants, I am also encouraged to avoid any overlap into the main issue as not to determine the substantive issue at stage, thereby denying either of the parties the right of trial at this stage. See ***NDIC VS. S.B.N***

PLC. (2003) NWLR (Pt. 801) page 311 at 423 Paragraph H.

See also the case of ***LAWRENCE DAVID LTD. VS. ASUTON (1991) 1 ALL ER 385 at page 394 – 6.***

Whether the above Exhibits annexed by the Applicant is sufficient to grant the reliefs sought or not, it is an issue to be determined while considering the substantive case as Court is precluded to delve into main issues at the interlocutory stage.

I have read carefully the reliefs sought by the Applicant in the above Motion with the relief sought in the substantive suit. It is my considered view that the reliefs are interwoven and generally similar, therefore, granting the Application at this stage will definitely amount to delving in to the main issue and I shall refrain from doing so.

Accordingly, I shall dismiss this application in the interest of justice.

This Application is hereby dismissed.

***Justice Y. Halilu
Hon. Judge
14th February, 2025***

APPEARANCES

D.C Iroagalachi, Esq. – for the Claimant/Applicant.

John Ojelabi, Esq. with **Chinelo Obiekwe, Esq.** –
Defendant/Respondent.