

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO 18 GUDU - ABUJA
ON FRIDAY THE 13TH DAY OF DECEMBER, 2024.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO. CV/3000/2024
MOTION NO: M/9939/2024

BETWEEN

UNITED BANK FOR AFRICA PLC }.....CLAIMANT

AND

1. ONIDA AGRI & AQUACULTURE SOLUTIONS LTD } DEFENDANTS
2. KIDRON ISRAEL }

RULING

Applicant filed motion No: M/16257/2024 dated 3/12/2024 and attached is an affidavit of urgency. The affidavit of urgency stated that the defendant will suffer irreparable hardship if this motion is not heard as a matter of urgency. Defendant moved his motion on 12/12/2024 seeking to set aside the ruling of this court dated 12/7/2024 on grounds of emergence of new facts, concealment of same and misrepresentation. The claimant in his reply on points of law submitted that the court is functus officio on the matter and same cannot be revisited.

I have read both written submission and it is worthy to note that the ruling of the court dated 12/7/2024 had a conditional clause to the effect that the orders can always be varied upon proper application by the defendant. However, defendant in his affidavit and written submission had submitted that the 1st defendant is

company who currently has a contract in Taraba State awarded to it, signed with the National Agency for Science and Engineering Infrastructure. That defendants are unable to execute the contract and coming in and out of court in order to get money would be time wasting and inconvenient. The said exhibit is attached. 2nd defendant also attached his application for naturalization to be a Nigeria citizen and the acknowledgement of same by the Nigeria government. That the staff and management of the defendants have been adversely affected by the courts order and that defendant is willing to undertake that he will always roll over and keep money rolling in his account in order not to dissipate the monies in his accounts. It is of grave concern that presently all the staff working with defendant have not been paid their salaries due to the order of this court. All the points highlighted above contain emerging new facts which was not formerly brought to the attention of this court. This court was certainly not aware that the account was being used to pay staff salaries, that the defendant is not flight risk as he has applied to be a Nigeria citizen and same is being processed and acknowledged by the Nigeria government. The general rule is that where a party seeking an injunction fails to disclose some facts or there are emergence of new facts which if made available at the time would have affected the order of the court, the order has to be discharged on such grounds save and except the non-disclosure or new facts were not materially significant to affect the status of the order. The ruling sought to be set aside is an interlocutory one and not a final judgment of the court wherein all rights of parties would have been decided. Where an order was obtained by misrepresentation, the courts have the duty to set aside same. The misrepresentation comes from the

new facts that have emerged as highlighted above. In the circumstances, it would be in the interest of justice to set aside the order made on 12th July, 2024 and I hereby set same aside.

Defendant have however stated that they would readily roll over and keep rolling over money in the accounts and will not dissipate monies in the account in order not to foist a situation of fait accompli on the court. It is consequently ordered as follows:

- (1) It is hereby ordered that defendant makes an undertaking not to dissipate the money in the account by keeping the account permanently funded pending determination of this suit.
- (2) This court order dated 12th July, 2024 is hereby vacated.

Parties: Absent

Appearances: C.C. Igata appearing for the Defendant. Claimant is not represented

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
13TH DECEMBER, 2024