



IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT COURT 9, GARKI, ABUJA
BEFORE HON. JUSTICE S. B BELGORE
ON 18TH DAY OF FEBRUARY, 2025.

SUIT NO: FCT/HC/CV/4640/2024

MOTION NO: M/16759/2024

BETWEEN:

OML 18 ENERGY RESOURCE LIMITED } CLAIMANT/APPLICANT

AND

1. NIGERIAN NATIONAL PETROLEUM } DEFENDANT/RESPONDENT
COMPANY LIMITED

2. MINISTER OF PETROLEUM } DEFENDANT/RESPONDENT
RESOURCES

RULING

By a Motion on Notice brought pursuant to section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria, (As Amended) And Order 42 Rule 4 (1)& 8, 43 rule 1 of The Federal Capital Territory High Court Civil Procedure Rules And under The inherent jurisdiction of this Honourable Court the applicant prays for the following reliefs:

- 1. AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the 2nd Defendant/Respondent whether acting by himself, his officers, staff, employees, servants, assigns, privies, representatives, agents howsoever called or described from granting consent to the 1st Defendant/ Respondent to sell, trade, allocate, transfer or dispose of its interests in the Oil Mining Lease OML No. 18 pursuant to the Joint Operating Agreement (JOA) entered into by the Claimant and the 1st Defendant / Respondent dated 11th July, 1991 pending the hearing and determination of the substantive suit or arbitral proceedings.

- 2. AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the 1st Defendant/Respondent whether acting by itself, its officers, staff, employees, shareholders, servants, assigns, privies, representatives, subsidiaries, agents howsoever called or described from continuing, proceeding with, taking any step(s) or other/further step towards selling, trading, allocating, transferring or disposing of its interests in the Oil Mining Lease (OML) No. 18 pursuant to the Joint Operating Agreement (JOA) entered into by the Claimant and the 1st Defendant/Respondent dated 11th July, 1991 pending the hearing and determination of the substantive suit or arbitral proceedings.

- 3. AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the 1st and 2nd Defendants/Respondents from taking any step(s) or action(s) which may negatively impact the Claimant/ Applicants rights and interests under Article 19 of the JOA pending the hearing and determination of the substantive suit or arbitral proceedings.

4. AND FOR SUCH OTHER OR FURTHER ORDERS this Honourable Court may deem fit to make in the circumstances of this case.

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

- 1. The Claimant/Applicant is a private company duly registered under the laws of the Federal Republic of Nigeria having its registered address at 7A, Oluwa Road, Ikoyi, Lagos.**
- 2. The 1st Defendant/Respondent is a Company duly registered under the laws of the Federal Republic of Nigeria and the successor company of the Nigerian National Petroleum Corporation having its head office at NNPC Towers, Herbert Macaulay Way, Central Business District, Abuja. The 1st Defendant/Respondent was established pursuant to Section 53 of the Petroleum Industry Act, 2021.**
- 3. That the 1st Defendant/ Respondent is a joint venture partner in the Joint Operating Agreement (JOA) regarding the OML 18, together with Shell Petroleum Development Company of Nigeria Limited, Nigeria Agip Oil Company Limited, and Total E & P Nigeria Limited but Shell Petroleum Development Company of Nigeria Limited, Nigeria Agip Oil Company Limited, and Total E & P Nigeria Limited later divested their interests in the said JOA and transferred same to a company known as Eroton Exploration and Production Company Limited by virtue of a Deed of Assignment dated 20th day of October, 2014.**
- 4. That following the divestment, by a Deed of Assignment dated 20th March, 2015 and a Farm out Agreement dated 20th March, 2015, the Eroton Exploration and Production Company Limited**

transferred 36% of its 45% participating interest in ML 18 to Sahara Field Production Limited which later changed its name to OML 18 ENERGY the OURCE LTD, the Claimant in this suit, constituting a 16.2% interest in the OML. Copies of the Deed of Assignment and Farm out Agreement are hereby attached and marked as "Exhibits Sahara 3 and Sahara 4" respectively.

- 5. The contractual relationship between the Claimant /Applicant and the 1st Defendant/Respondent is governed by the Joint Operating Agreement (JOA) dated 11th July, 1991.**
- 6. Contrary to the provisions of Article 19.4 of the JOA, the 1* Defendant/Respondent has concluded and finalized its plans to sell/transfer its interests to a third party without giving same Claimant/Applicant the prior right of first refusal to acquire the same and without the Claimant's consent.**
- 7. By virtue of Article 19.4 of the JOA, the 1st Defendant/Respondent ought to seek the Claimant's written consent and approval and give the Claimant/Applicant a prior right of first refusal before taking any step towards selling, transferring, or disposing of, divesting of its interests in OML 18 and under the JOA to a 3rd party.**
- 8. In furtherance of its plan to sell/transfer its interest under the JOA and OML 18 in breach of Article 19.4 of the JOA, the 1st Defendant/Respondent by letter dated 30th July, 2024 gave notice to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) of its intention to assign 30% (thirty per cent) of its 55% (fifty-five per cent) interest in OML 18 to INDORAMA (i.e. IR Energy Limited).**

- 9. In response to the 1st Defendant/Respondent's letter of 30th July, 2024 the NUPRC, in furtherance of its statutory powers, by letter dated 2nd August, 2024 informed the 1st Defendant/Respondent that the NUPRC has no objection to the process of the proposed assignment of 30% (thirty per cent) of its 55% (fifty-five per cent) interest in OML 18 to INDORAMA.**
- 10. The 1st Defendant/Respondent has now approached the 2nd Defendant/Respondent to obtain requisite consent to assign 30% (thirty per cent) of its 55% (fifty-five per cent) interest in OML 18 in flagrant disregard of the Claimant/Applicant's pre-emptive right as conferred under Article 19.4 of the JOA.**
- 11. In addition the unsuspecting members of the public are already being misinformed and misled vide a renowned oil and gas publication i.e African Oil + Gas report that Indorama has taken 30% (thirty per cent) operatorship in OML 18.**
- 12. The 1st defendant/ respondent has no intention to honour its obligation under article 19 of the JOA by first offering its interest to the Claimant/Applicant for it to exercise its prior right of first refusal to purchase the same.**
- 13. The Claimant/Applicant has approached this Honourable Court in resolving this dispute against the 1st Defendant/Respondent to enforce its right of first refusal to purchase the 1st Defendant/Respondent's interests in line with Article 19.4 of the JOA.**

- 14.If this application is not granted, there is a high possibility that the 1st Defendant/Respondent will finalize and conclude its plans to sell and transfer its interests in OML 18 and under the JOA to a 3ra party before the hearing and determination of this suit or when the Arbitral Tribunal is duly constituted and can make interim preservative orders.**
- 15.Pursuant to Article 14 of the JOA, the Claimant/ Applicant has served on the Defendants/ Respondents, a Notice of Arbitration on the 3rd of December 2024.**
- 16. It is, therefore, necessary that this Honourable Court grants this application to restrain the Defendants/ Respondents from taking any step towards the transfer of the res pending the hearing and determination of this suit or when the Arbitral Tribunal is duly constituted and can make interim preservative orders.**
- 17.The Claimant/Applicant has a legal right to protect in this application as well as the substantive suit and the prospective Arbitration.**
- 18.The substantive suit has presented serious issues of law and facts for the determination of this Honourable Court.**
- 19.The balance of convenience is in favour of the Claimant/Applicant.**
- 20.The Claimant / Applicant undertakes to indemnify the Defendants / Respondent as to damages should this application be found to be frivolous.**

21. It is in the best interest of justice to grant this Application

In support of the application is a 53 paragraph affidavit deposed to by Abubakar Sadiq Abubakar with 9 annexures marked exhibit sahara 1-9 Also attached is another affidavit of 4 paragraphs with annexures marked exhibit Sahara 10-13.

Also attached the written address of counsel which counsel duly adopted. In it counsel raised a sole issue for determination to wit:

WHETHER OR NOT THE CLAIMANT/APPLICANT HAS MADE OUT A CASE FOR THE GRANT OF THIS APPLICATION HAVING REGARD TO THE FACTS AND EVIDENCE PLACED BEFORE YOUR LORDSHIP?"

In treating the issue raised counsel submitted that the applicant has a legal right. It is settled law that the essence of the grant of an injunction is to protect the existing legal right of a person from unlawful invasion by another. See AKAPO V. HAKEEM-HABEEB (1992) 6 NWLR (PT. 247) 266 AT 289, PARAS. F-H, where Karibi-Whyte JSC enthused:

"It is well established that the essence of the grant of injunction is to protect the existing legal right of a person from unlawful invasion by another. See Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419. It is for the protection of a recognizable right. See Obeya Memorial Hospital v. A-G for Federation & Anor (1987) 3 NWLR (Pt. 60) 325. Hence an injunction can be granted though no pecuniary damage is proved. See King v. Brown. Durant & Co (1913) 2 Ch. 416. As long as the acts complained of will result in the infringing of the applicant's rights. It is a proper case for intervention by the grant of an injunction."

Counsel submitted that the Claimant/Applicant has deposed to facts at paragraphs 16 to 36 of the Affidavit in support of this application clearly

showing that it has a legal right in this case to justify the grant of this application. For the sake of clarity, the Claimant/ Applicant submits that the following facts clearly shows that he has a legal right in this case to justify the grant of this application:

The JOA entered into by the Claimant and the 1st Defendant constitutes a binding agreement between the parties. (Para. 35 of the Affidavit) the JOA was entered into by the parties voluntarily and remains binding on the parties thereto. (Para. 36 of the Affidavit). There is a valid and enforceable agreement between the Claimant and the Is Defendant. The Claimant herein wishes and insists on the enforcement of its rights in the JOA. (Para. 37 of the Affidavit).

Learned counsel submitted that grant of this application would preserve the res. He further submitted that it is trite law that the purpose of an interlocutory injunction is the preservation of the res. Please see the case of **ADELEYE & ORS V. THE EXECUTIVE GOVERNOR OF OGUN STATE (2012) LPELR-9584(CA)**, where the Court of Appeal held as follows:

"I wish to add that the purpose of an interlocutory injunction is, apart from protecting the right of the Applicant, it is also meant to preserve the res from being wasted. Both the court from which an appeal lies as well as the court to which an appeal lies have a duty to preserve the res for the purpose of ensuring that the appeal, if successful is not rendered nugatory. Please also see the case of **ORJI V. ZARIA IND. LTD. (1992) 1 NWLR (PT. 216) PG. 124 AT 134 PARAS F-G**.

It is the submission of counsel that the Claimant/Applicant herein has brought this application simply to preserve the subject matter of the substantive suit by restraining the Defendants/Respondents from concluding the sale or transfer of its interest to a 3rd party without first

affording the Claimant/Applicant the right of first refusal to purchase the said interest pending the hearing and determination of this suit. In essence, a grant is necessary to prevent the Defendants/Respondents from taking steps capable of putting the Claimant/Applicant as well as this Honourable Court in a state of helplessness before the hearing and determination of the substantive suit by this Court or before the Arbitral Tribunal is duly constituted and can make interim preservative order. Counsel further submitted that the applicant cannot be compensated in the form of damages, therefore, maintenance of the status quo is the proper remedy & the balance of convenience is in favour of the claimant/applicant.

On the other hand, where damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether should the defendant succeed at the trial he would be sufficiently compensated under an undertaking to be given by the plaintiff as to damages for the loss the defendant would have sustained by reason of the grant of the application for interlocutory injunction."

Counsel urged the court to grant the application while undertaking as to pay damages in the event that the grant of this application turns out to be frivolous.

The 1st defendant on. The other hand filed a counter affidavit of 13 paragraphs deposed to be Sulaiman K. Usman. Attached to the affidavit are 2 annexure marked NNPC1 1 and NNPC12. Counsel also filed a written address wherein he canvassed a sole issue for determination to wit:

"whether in the circumstances of this case and on the strength of the evidence adduced, the applicant is entitled to the grant of injunctive reliefs against the 1st respondent"

The applicant filed a further affidavit of 6 paragraphs in response to the 1st defendant's/respondent's counter affidavit. For convenience purposes I shall adopt the issue raised by the respondent.

“Whether in the circumstances of this case and on the strength of the evidence adduced, the applicant is entitled to the grant of injunctive reliefs against the 1st respondent”

The parties are before the court on grounds of a breach of the joint operating agreement between the parties. I have carefully perused the affidavit in support of the application as well as the annexures thereto and contrary to the arguments of the respondents counsel in his written address there is a disclosure of a legal right. What would happen if parties do not maintain status quo pending the determination of the arbitration which is a condition precedent to approaching the courts in the event that there is any dispute between the parties. The task of this honourable court at the stage is simple and straightforward. The parties have voluntarily agreed to the terms in the Joint Operating agreement and they cannot act outside of the terms they have agreed to.

It is trite that Parties are bound by the terms of contracts freely entered and executed by them - *pacta sunt servanda*. Our Courts have, in a plethora of cases, made pronouncements on the sanctity of contracts and the need for Parties to abide fastidiously to the terms and conditions stated therein. **Relying Ifeta v. S.P.D.C (Nig.) Ltd (2006) 8 NWLR (Pt.983) 585 at 605 parasA-B**, the Supreme Court held thus:

“Parties' freedom of contract carries with it the inevitable implication of sanctity of their contract. This means that if any question should arise with respect to the contract, the terms in any document which constitutes the contract are, invariably, the guide to its interpretation; Dalek Nigeria Limited v. Oil Mineral Producing Areas Development Commission (OMPADEC) (2007)ALL FWLR (Pt.364) 204 at 236 Paras. D-F,

The provisions of Article 14 and 19 of the JOA relating to dispute resolution and right of offer are clear and unambiguous and clearly set out the procedure to be embarked upon by a party alleging the occurrence and/or the existence of a dispute arising from the implementation of the JOA. In the case of **FELAK CONCEPT LTD V. AG AKWAIBOM STATE (2019) 8NWLR (PT 1675) 433.**

It was held that where parties have agreed to resort to arbitration, an aggrieved member cannot jump over the forum for the primary adjudication of the breach by going direct to a trial court.

See also **OMALIKO V. AWACHIA 2002 12 NWLR (Pt. 780) at pg 445 para A-B.**

What is the point of going to arbitration where the res' is not protected and liable to destruction eventually?

Furthermore, I ask myself, the Respondent haven taken step in appointing an arbitrator thereby sticking to their own side of the JOA, why are they objecting to this application for an injunctive order the main purpose of which is to preserve the res? I am not unmindful of the vein reference to the alleged lack of jurisdiction of this Court because according to the respondent's Counsel the dispute relate to "mining". This obviously is challenged by the applicant's Counsel saying in the matter is chiefly matter of contract simpliciter. Whatever it is, it is premature to delve into that. What matter now is that there are dispute between the parties arising from the Operating JOA or the scope thereto. And since the same JOA provides for arbitration as a sine qua non to recourse to Courts of law, then that must be complied with. It is gratifying that the Respondent too have taken steps to appoint an arbitration. This means they are clearly aware and ready to give effect to that provision.

In conclusion, there is merit in this application, meaning that without delving into the substantive suit the court orders that the provisions stated out clearly in the Joint Operating Agreement be strictly adhered to by parties pending the final decision of the arbitration. That being the case, I am minded to grant the application as prayed as this will preserve the res and ensure parties maintain status quo.

That is the Ruling of this Court.

Signed
S. B. BELGORE
(JUDGE) 18/2/2025

Appearances of Counsel:

1. A. U. Mustapha SAN with H. E. Iyoha Izekor, Mustapha Baba Tafarki, Ramadan Yahaya and J. H. Ndiya for the Claimant/Applicant
2. Kelechi O. with Gabriel M. Ishom and O. R. Iyere for the 1st Respondent
3. 2nd Respondent not represented.