

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GARKI ABUJA**

**CLERK: CHARITY ONUZULIKE**  
**COURT NO. 10**

**SUIT NO: FCT/HC/CV/2395/23**  
**DATE: 17/2/2023**

**BETWEEN:**

**OML 18 ENERGY RESOURCES LIMITED..... CLAIMANT/APPLICANT**

**AND**

- |   |   |                                    |
|---|---|------------------------------------|
| <ol style="list-style-type: none"><li><b>1. EROTON EXPLORATION &amp; PRODUCTION CO. LTD</b></li><li><b>2. NIGERIAN NATIONAL PETROLEUM COMPANY LIMITED</b></li></ol> | } | <b>DEFENDANTS/<br/>RESPONDENTS</b> |
|---|---|------------------------------------|

**RULING**  
**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

This ruling concerns an application vide Motion Exparte number M/5020/2023 moved on 17<sup>th</sup> February, 2023. Mr. A. U. Mustapha, Senior Advocate of Nigeria of Counsel to the Claimant/Applicant moved the application summarily in Court.

The application under reference is premised on sections 36 of the 1999 Constitution (as amended), paragraphs 2 of the Recitals to the FCT High Court (Civil Procedure) Rules, 2018, Order 7 Rule 11, Order 8 Rule 1, Order 8 Rule 2; Order 42 Rule 8, Order 43, Rule 3 and Order 52, Rule 13 of the said Rules of this Court as well as the inherent jurisdiction of the Court.

The Motion *Ex-parte* is dated 17<sup>th</sup> February, 2023 and filed the same day. The prayers as contained in the face of the Motion are as follows:

- 1. AN ORDER OF INTERIM INJUNCTION** restraining the 1<sup>st</sup> Defendant whether by itself, its officers, staff, employees, shareholders, servants, assigns, privies, representatives, subsidiaries, agents howsoever called or described from

initiating, continuing, or taking any step(s), or any other/further step(s) towards interfering with, obstructing or taking over the management and/or operation(s) of **Oil Mining Lease (OML) No. 18** from the Claimant pending the hearing and determination of the Claimant/Applicant's Motion on Notice filed in this case

2. **AN ORDER GRANTING A DEPARTURE FROM THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 AND DIRECTING** that notwithstanding the provision of **Order 43 Rule 3(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018**, the interim order granted in respect of relief 1 in this application shall not abate and shall continue to subsist until the hearing and determination of the Claimant/Applicant's Motion on Notice for Interlocutory Injunction filed on 17<sup>th</sup> February, 2023.
3. **AN ORDER** of this Honourable Court directing all security agencies including but not limited to the Inspector General of Police, Chief of Army Staff, Chief of Defence Staff, Chief of Naval Staff, Commander of Civil Defense to provide protection to the Claimant by way of preservation of all the assets of the 1<sup>st</sup> Defendant; maintenance of peace, prevention of crime, preservation of law and order, safety and security of the life and property in relation to all the assets of the 1<sup>st</sup> Defendants to enable the Claimant perform its duties as Operator of OML 18.
4. **AND FOR SUCH OTHER OR FURTHER ORDERS** this Honourable Court may deem fit to make in the circumstances of this case.

There are 16 grounds upon which the above four (4) prayers are anchored; to wit:

1. The Claimant is a limited liability company registered with the Corporate Affairs Commission.

2. The 1<sup>st</sup> Defendant is an indigenous companies engaged in the oil and gas business in Nigeria
3. The 2<sup>nd</sup> Defendant is a regulator and the successor company of the **Nigerian National Petroleum Corporation**. The 2<sup>nd</sup> Defendant was established pursuant to **Section 53 of the Petroleum Industry Act, 2021**.
4. By **Section 55 of the Petroleum Industry Act, 2021**, the 2<sup>nd</sup> Defendant is the agent of the Nigerian National Petroleum Corporation.
5. The contractual relationship between the Claimant and the Defendants is governed by the Joint Operating Agreement (JOA) dated 1<sup>st</sup> March 2015 and the Novation Agreement signed by the parties on 21<sup>st</sup> June, 2019.
6. By virtue of **Article 2.4.1 (iii) of the JOA**, the 1<sup>st</sup> Defendant shall cease to be the Operator of OML No. 18 if it becomes insolvent or ceases or threatens to cease to carry on its business or a major part thereof.
7. The 1<sup>st</sup> Defendant has ceased to carry on its business of operating OML No. 18 as required by the JOA since June 2022.
8. The Claimant has exercised its right under **Article 2.4.3(b) (i) and 2.6.2 of the JOA** and removed the 1<sup>st</sup> Defendant as the Operator of OML No. 18. The Claimant has taken over the operation and management and administration of the said OML No. 18 and all its assets.
9. If this application is not granted, there is an imminent danger that the 1<sup>st</sup> Defendant will take steps towards initiating , continuing, or taking any step(s), or any other/further steps(s) towards interfering with, obstructing, or disrupting the management and/or operations(s) of **Oil Mining Lease (OML) No. 18** during the pendency of the Claimant's Motion on Notice.

10. It is, therefore, necessary that this Honourable Court grants this application to restrain the 1<sup>st</sup> Defendant from taking any step or a further step to interfere with, obstruct or take over the operation(s) of Oil Mining Lease (OML) No. 18 including structures, equipment, installations, investments or any of their properties or assets howsoever described covered by or connected to the JOA pending the hearing and determination of the Motion on Notice.
11. The Claimant has a legal right to protect in this application as well as the substantive suit.
12. The substantive suit has presented serious issues of law and facts for the determination of this Honourable Court.
13. The balance of convenience is in favour of the Claimant.
14. The Claimant undertakes to indemnify the Defendants as to damages should this application be found to be frivolous.
15. There is a reasonable cause of action against the 1<sup>st</sup> Defendant
16. It is in the best interest of justice to grant this Application.

In support of the application are two (2) affidavits:

- (1) The affidavit in support which is of 59 – paragraphs and dated 17/2/23.
- (2) An affidavit of urgency which is of 5 – paragraphs and dated 17/2/23.

Attached to the Motion *Ex-parte* is a written address of the learned silk and it is also dated 17/2/23.

Mr. A. U. Mustapha SAN, relied on all the processes aforementioned while moving the application and urged the Court to grant the application. By way of a few words of adumbration, the learned SAN emphasis the issue of urgency as can be evidenced by the fact of ceasing of operation of OML 18

by the 1<sup>st</sup> Defendant. He also submitted that there is a legal right in favour of the applicant because the applicant is a party to the agreement in Exhibit SAHARA 2 – 5.

On the issue of balance of convenience, the learned counsel to the applicant argued that it is in favour of the applicant as he runs the risk of losing his rights if this application is not granted.

Learned SAN, also referred to paragraph 56 of the supporting affidavit wherein they have deposed to an undertaking to pay damages if the application turns out to be frivolous. And that he further argued that based on the facts in the affidavits there are viable issues in this case.

Lastly, Mr. A. U. Mustapha SAN prayed the Court to invoke the provision of the paragraph 2 of the Recital to the Rules of Court and Order 52 Rule 13 and not Order 43 Rule 3(2) in giving a return date of one month in order to allow service outside jurisdiction on the 1<sup>st</sup> Respondent in Lagos.

Finally, the learned Silk adopted his written address as his full arguments and urged me to grant the application.

I have considered this application. The learned SAN, of Counsel for the applicant has submitted one issue for determination; to wit:

***“Whether or not the Claimant/Applicant has made out for a grant of this application having regard to the facts and evidence placed before your Lordship”***

I instantly agree that this is the sole issue for determination.

For all the SAN’s argument. See the address dated 17/2/23 particularly pages 3, 4, 5, 6 - 11. And in support of his arguments both oral and written, the learned SAN relied, *inter alia* on the following cases:

**(a) ORIZU VS. OFOMATA (2007) 13 NWLR (PT. 1052) 487.**

**(b) PHARMA-DEKO PLC VS. F.D.C. LTD (2015) 10 NWLR (PT 1467) 225**

- (c) **S.P.D.C.N LTD VS. C.I.N.R LTD (2016) 9 NWLR (PT. 1517) 300**
- (d) **KOTOYE VS. CBN (1989) 1 NWLR (PT. 98) 419**
- (e) **ODUTOLA VS. LAWAL (2003) 1 NWLR (PT. 749) 633**
- (f) **AKAPO VS. HAKEEM – HABEEB (1992) 6 NWLR (PT. 247) 266**
- (g) **NANGIBO VS OKAFOR (2003) LPELR-1938 SC PP26-28**
- (h) **UNCIZ (NIG) LTD VS. C.B.C.L LTD (2003) 6 NWLR (PT. 816) 430**
  
- (i) **ADELEYE & ORS. VS. THE EXECUTIVE GOVERNOR OF OGUN STATE (2012) LPELR 9584 (CA)**
  
- (j) **MOMAH VS. VAB PETROLEUM INC. (2000) 4 NWLR (PT. 654) 534**
  
- (k) **KASUMU VS. SHITTA-BEY (2007) ALL FWLR (PT. 356) 741**
  
- (l) **AKINPELU VS. ADEGBORE (2008) 10 NWLR (PT. 1096) 531**
  
- (m) **OWNERS OF THE MV “ARABELLA VS. N.A.I.C. (2008) ALL FWLR (PT. 443) 1208**

In this *ex-parte* application, I have taken the liberty to divide the three (3) prayers sought broadly into three (3):

- (a) Interim Injunction: Prayers 1
- (b) An Order directing all the security agencies to provide protection for the Claimant.
- (c) An Order that Order 43 Rule 3(2) of the Rules of this Court shall not operate. Meaning that the interim injunction Order granted shall not abate until the hearing and determination of the Motion on Notice in the interest of Justice.

## **A: INTERIM INJUNCTION: Prayers 1**

I have considered the facts and argument of Senior Counsel on the above relief – Interim Injunction. It is trite that interim Order of Injunction is made pending the determination of all applications before the Court. By their nature, they are usually made *ex-parte* i.e. without notice to the other side. It is to keep matters in status quo to a named date, usually not more than a few days or until the Respondent can be put on notice. The rationale is to cure the delay or serious mischief that would be caused if the other side were to be put on notice. Such Interim Injunctions are for cases of real urgency. See **NJOKANMA VS. UYANA (2006) 13 NWLR (PT. 997) 433; LAFFER NIG. LTD VS. NAL MERCHANT BANK PLC (2002) 1 NWLR (PT 748) 333.**

Interim Order of Injunction is normally made by Courts in cases of utmost urgency aimed at preserving the *res* or maintaining the *status quo* of the parties. It is also not meant to last forever or *ad-indefinitum*. It is an equitable remedy meant to operate for a short period of time. And above all, it can be granted where there is a real impossibility of bringing an application for injunction on notice and serving the same on the other party. Consequently, an applicant for an *ex-parte* injunction must file two motions namely; the one seeking the *ex-parte* order and the other on notice applying for interlocutory injunction which must be served subsequently on the Respondent.

Also, the applicant must not be guilty of delay and lastly it must not be granted unless the applicant gives a satisfactory undertaking as to damages. See the cases of **NJOKANMA VS. UYANNA (Supra); OLOWU VS BUILDING STOCK LTD (2004) 4 NWLR (PT 864) 445; KOTOYE VS. C.B.N (Supra).**

From the above, it is clear to me that I must be satisfied as to existence of the following parameter;

- (1) Real urgency
- (2) No delay
- (3) Two motions i.e one *ex-parte* and the other on notice
- (4) There must be undertaking to pay damages.

The issues of legal right, triable issues and balance of convenience shall also be brought into focus see the case of **GLOBE FISHING INDUSTRY LTD VS. COKER (1990) 7 NWLR (PT. 162) 265.**

**Real Urgency:**

I agree with the learned SAN that there is a real and not self induced urgency in this matter. The applicant have shown by affidavit evidence. See paragraphs 23 – 44 of the supporting affidavit.

I adverted to paragraphs 4 (f – i) of the applicants affidavits of urgency which show that 1<sup>st</sup> Defendant has ceased operation of OML No. 18 as required by the JOA since June 2022.

I therefore, find real urgency in this application.

**Legal Right:**

It is in evidence vide the affidavits and exhibits filed that the applicant is a party to the contract and agreement between it and the Defendants/Respondents. See Exhibits SAHARA 2 – 5. It is well settled that a party to an agreement can sue and be sue on it. Such a right is legal and cannot be taken away from him.

I therefore find legal right in favour of the applicant. See paragraphs 26-42 of the affidavit in support.

**Balance of Convenience:**

Certainly this application to my mind will do no harm to the Respondent. On the contrary, if the application is refused, it means the Respondents can and could proceed to interfere with, obstructing or taking over the management and/or operations of Oil Mining Lease OML 18 from the applicant. This risk and attendant damages that may ensued would be unbearable to the applicant.

I therefore find balance of convenience in favour of the applicant.

**Undertaking as to Damages:**

I adverted to paragraph 56 of the supporting affidavits. This condition is amply satisfied.



**Two Motions in Existence:**

Filed along with the Motion *Ex-parte* – **M/5020/2023** is another Motion on Notice – **M/5021/2023** praying *inter alia* for an Order of Interlocutory Injunction. This satisfies one of the criteria laid down in decided authorities e.g. **NJOKANWA (Supra) and OLOWU (Supra)**.

**No Delay:**

It should be stressed at this juncture that following a dispute that arose between the parties in their agreement, I find this application is promptly brought before this Court.

Now, in the case of **ODUSOLA VS LAWAL (2003) NWLR (PT. 749) 633**, it was held:

“.....  
.....  
***The main attribute of an ex-parte injunction is that it is to be granted in circumstances of real urgency.***”

In **AKAPO VS. HAKEEM-HABEEB (Supra)** it was held:

***“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.....”***

Having find, therefore, existence of legal right, undertaking as to damages, real urgency, no delay in bringing this application and balance of convenience all in favour of the applicant, the coast is clear for me to grant the prayers for interim injunction orders. Prayers 1 is therefore granted as prayed.

**B: PRAYER FOR INVOCATION OF ORDER 52 RULE 13 OF THE RULES OF THIS COURT – Prayer 2**

This is the relief sought that has given me some anxious moments Order 43 Rule 3(2) says an Order of Injunction made *Ex-parte* shall abate after 7 days.

The decided authorities say *Ex-parte* interim of Injunction can be made to keep the matters in *status quo* to a named date usually not more than a few days OR until the Respondent can be put on Notice. See **NJOKANMA VS. UYANA (Supra)**.

The big question is can the Motion on Notice filed along with this motion *Ex-parte* be served on the Respondents within 7 days? I dare say in this age of e-mail or courier service is possible but not probable. Assuming they were even served within 7 days, can they react to file process in objection to the Motion on Notice within 7 days? This again is not probable and certainly not in sight. These are the circumstances or background to the present order of interim injunction I have granted a short while ago of circumstances such as foregone that Order 43 Rule 3(3) of the same Rules of Court provides that the tenure of the interim order may be extended for an effective period of 7 days.

The leeway to extend the tenure of the Order is conditional upon the service of the Motion on Notice on the Defendants/Respondents.

Another big question is what happens if the Motion on Notice is likely not to be served or practically impossible to be served within 7 days? This provisions of the Rules provides for no such serious circumstance. However, the same Rules in Order 52 Rule 13 provides thus:

***“Where no provision is made by these rules or by any other written law, the Court shall adopt a procedure in accordance with substantial justice.”***

In my humble view, therefore, the circumstances of this case dictate that I invoke the provision of Order 52 Rule 13 to this case now. This is the only way.

Applying Order 52 Rule 13 to this case will soften as it were the harshness and difficulties that would be occasioned if Order 43 Rule 3(2) is to fully operate. This is what the interest of justice to both parties especially the Defendants/Respondents who are not in Court presently demands. I am fortified in this my instant view by the decision of the Supreme Court in

**U.T.C LTD VS. CHIEF PAMOTEI (1989) 2 NWLR (PT 103) 244** where the Court per BELGORE JSC (as he then was, later CJN) opined as follows:

*“Rules of procedure are made for the convenience and orderly hearing of cases in Court. They are made to help the cause of justice and not defeat justice. For Court to read Rules in the absolute without recourse to the justice of the case, to my mind, that will be making the Courts slavish to the Rules. This is clearly not the reasons of the Rules of Courts.”*

See also **OLUFEAGBA & OR VS. ABDULRAHEEM & ORS (2009) 19 NWLR (PT. 1173) 384.**

The applicant wants in prayer 2 an order directing the provision of Order 43 Rule 3(3) of our Rules not to operate until the hearing and final determination of the Motion on Notice – M/5021/2023.

I do not think granting this prayer as it is couched in the Motion papers is in anyway defensible. I say this because it means the order of interim injunction would operate and remain in force in perpetuity and without a named or fixed date for the hearing and determination of the Motion on Notice. This will make absolute nonsense of the prayers in the Motion on Notice and in fact on the application itself.

So in my judicial reasoning, a middle course will serve the interest of justice to all concerned in this case in effect therefore, an order invoking provisions of Order 52 Rule 13 and thereby directing that the ex-parte order of interim injunction granted shall not abate until the date for the hearing of the Motion on Notice – M/2051/2023 which is now fixed for 15/3/2023.

Finally, and for avoidance of doubt, this application vide Motion number M/5020/2023 succeeds and granted as follows:

1. **AN ORDER OF INTERIM INJUNCTION** restraining the 1<sup>st</sup> Defendant whether by itself, its officers, staff, employees, shareholders, servants, assigns, privies, representatives, subsidiaries, agents howsoever called or described from initiating, continuing, or taking any step(s), or any other/further step(s) towards interfering with, obstructing or taking over the

management and/or operation(s) of **Oil Mining Lease (OML) No. 18** from the Claimant pending the hearing and determination of the Claimant/Applicant's Motion on Notice filed in this case is hereby granted.

2. **AN ORDER GRANTING A DEPARTURE FROM THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2018 AND DIRECTING** that notwithstanding the provision of **Order 43 Rule 3(2) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018**, the interim order granted in respect of relief 1 in this application shall not abate and shall continue to subsist until the hearing and determination of the Claimant/Applicant's Motion on Notice for Interlocutory Injunction filed on 17<sup>th</sup> February, 2023 is hereby granted.
  
3. **AN ORDER** of this Honourable Court directing all security agencies including but not limited to the Inspector General of Police, Chief of Army Staff, Chief of Defence Staff, Chief of Naval Staff, Commander of Civil Defense to provide protection to the Claimant by way of preservation of all the assets of the 1<sup>st</sup> Defendant; maintenance of peace, prevention of crime, preservation of law and order, safety and security of the life and property in relation to all the assets of the 1<sup>st</sup> Defendants to enable the Claimant perform its duties as Operator of OML 18 is hereby granted.

SIGNED

**S. B. Belgore**

(Judge) 17/2/2023