THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS CAUSE No. 91 of 2021

(ARISING FROM ARBITRATION PROCEEDINGS COMMENCED UNDER THE RULES OF THE INTERNATIONAL CHAMBER OF COMMERCE)

1. **VANTAGE MEZZANINE FUND II PARTNERSHIP**
2. **VANTAGE MEZZANINE FUND II PROPRIETARY LIMITED ..... APPLICANTS**

VERSUS

1. **SIMBA PROPERTIES INVESTMENT CO. LTD**
2. **SIMBA TELECOM LIMITED**
3. **LINDA PROPERTIES LIMITED**
4. **ELGON PROPERTIES LIMITED**
5. **COMMISSIONER LAND REGISTRATION**
6. **UGANDA REGISTRATION SERVICES BUREAU ..... RESPONDENTS**

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

This application was brought by Chamber Summons under the provisions of section 6(1) of the Arbitration and Conciliation Act, Cap 4, Section 33 of the Judicature Act, Cap 13, section 98 of the Civil Procedure Act, Cap 71, Rule 13 of the Arbitration Rules, and Order 52 Rules 1 and 2 of the Civil Procedure Rules SI-1, where the Applicants seek for orders that:

1. An interim measure of protection doth issue against the Respondents restraining them from:

a) completing an impending transaction among the 1st to 4th Respondents and KCB Bank Uganda Limited and KCB Bank Kenya Limited, or any other transaction that would:

i) Impair or otherwise prejudice the Applicants' credit and security interests vide a Mezzanine Term Facility Agreement executed on 11th December 2014 and or

ii) Utilize or recognize the unlawful alterations in the powers of the Boards of Directors of the 1st to 4th Respondents which alterations were procured through unlawful alterations made to the 1st to 4th Respondents Articles of Association.

b) pursuing any transactions or other actions-

i) which involve concluding any agreements with any bank or agreeing to any material amendments to any existing agreement with a bank; or

ii) relating to the 1st to 4th Respondents' borrowing powers on sums in excess of USD 50,000 (or its equivalent in UGX, being the limits prescribed in the 1st to 4th Respondents' Articles of Association prior to the lawful alterations), without the Applicants' consent pending the outcome of the Arbitration process between the parties , and any other actions intended to circumvent or lift the controls stipulated in the Articles of Association of the 1st to 4th Respondent companies (prior to the unlawful alterations), which granted the Applicants (and their nominated directors) the right to participate in and vote in connection with such decisions.

2. IN THE ALTERNATIVE AND WITHOUT PREJUDICE, a mandatory injunction is issued restraining the Respondents from recognizing, effecting, implementing, registering or otherwise dealing with any documents whose effect would be to impair the Applicants' security rights and interests in the 1st to 4th Respondents as at the time of the issuance of a choice of place of arbitration; including:

a) Any decisions of the Board of Directors relating to the exercise of borrowing powers relating to any transaction in excess of USD 50,000 (or its equivalent in UGX, being the limits prescribed in the 1st to 4th Respondents' Articles of Association (prior to the unlawful alterations) that may have been taken without the involvement of the Applicants' representatives;

b) Any decisions relating to or attempting to remove or otherwise bypass the Applicants' rights to participate in any decisions relating to the 1st to 4th Respondents' borrowing of any sum in excess of USD 50,000(or its equivalent in UGX).

c) Any decision made which purports to conclude or attempts to conclude or implement any agreements with any bank or any material amendments to any existing agreements with a bank.

3. The costs of this application be provided for.

Facts

This application is supported by an affidavit of Diana Kasabiiti an Advocate and Partner working with Messrs. Kirunda & Wasige Advocates, the firm duly instructed to represent the Applicants, deponed in paragraphs 1-29, and summarized as follows: -

That the Applicants and the 1st to 4th Respondents are parties to a Mezzanine Term Facility Agreement dated 11th December, 2014 pursuant to which the parties executed various security documents in favor of the Applicants.

That the 1st to 4th Respondents also put in place, as they were required to do in the terms of the Mezzanine Term Facility Agreement (as amended), various protections in their Articles of Association that were intended to protect and preserve the Applicants' credit and security interests. That such protections included appointing two Directors nominated by the Applicants to the Boards of Directors of the 1st to 4th Respondents, representing the Applicants, and the appointed Directors like all Directors are entitled to participate in all Board meetings and receive all information relating to the wellbeing and affairs of the 1st to the 4th Respondent companies.

That such protections further included amending the Articles of Association of each of the 1st to 4th Respondent companies to include provisions stipulating that, among other things, the Board meetings of the companies are not quorate without at least one Director representing the Applicants being present, neither are any decisions and resolutions therefrom valid without the positive vote of at least one of the Applicants' representative directors.

That accordingly, the 1st to 4th Respondents appointed two representatives from the Applicants to their Boards of Directors, altered their Articles of Association and committed among other things , that none of the 1st to 4th Respondents would convene Board meetings , make decisions or permit their Board of Directors to exercise borrowing powers on in excess of US Dollars 50,000 without participation and positive vote from at least one of the Applicants' representatives on the Boards of Directors.

That the parties further agreed that in addition to the above protections afforded to the Applicants, the 1st to 4th Respondents would undertake in favor of the 1st Applicant , in clause 20.12 of the Mezzanine Term Facility agreement, to procure that no charges are made to any of their respective constitutional documents (which include their Articles of Association) without the prior written consent of the 1st Applicant"(the Non Amendment Undertaking); and may not without the prior written consent of the 1st Applicant in terms of clause 20.38 of the Mezzanine Term Facility Agreement," conclude any agreement with a bank or agree to any material amendments to any existing agreement with a bank(the No Bank Transaction Undertaking).

That the 1st to 4th Respondents are in default of their loan obligations, as they have never repaid any amount of money on either the principal or interest obligations arising from the Facility Agreement, despite the same being long overdue as the due date for payment of the full principal and accrued interest was in December, 2019. That in furtherance of this default, the 1st to 4th Respondents have taken measures intended to circumvent or otherwise defeat the Applicants' credit and security interests.

That as part of the measures intended to defeat the Applicants' interest, the 1st to 4th Respondents unlawfully and in contravention of their contractual obligations, purported to amend their Articles of Association, which is in breach of the Non – Amendment undertaking to remove the protections referred to above, in order to unlawfully approve of and pursue a refinancing transaction with KCB Bank Uganda Limited and KCB Bank Kenya Limited (the KCB Transaction).

That the KCB Transaction is a refinancing transaction with KCB Bank Uganda Limited and KCB Bank Kenya Limited, to which the 1st to 4th Respondents intend to increase their borrowings from those Banks to USD 44,628,000.

That pursuant to the agreements between the parties, the intended transaction should not be pursued without the participation and positive vote of at least one of the Applicant's representatives on the Boards of Directors of the 1st to 4th Respondent companies, and prior written consent of the 1st Applicant. That the 1st to 4th Respondents actions are only attempts to avoid the settlement of their liabilities to the Applicants.

That the Applicants' representatives on the Board of Directors of the 1st to 4th Respondents sought further information before attending any such meeting on what was being proposed in regard to the KCB Transaction so as to make an informed and responsible decision in connection with the proposal however, the 1st to 4th Respondents have insisted on unlawfully proceeding with the KCB Transaction and have unlawfully passed resolutions purporting to amend their Articles of Association in order to defeat the Applicant's protections, credit and security interests.

That the Applicants have commenced arbitration proceedings to, among other things, challenge and reverse the impugned amendments to the Articles of Association in terms of which the lender protections were unlawfully removed.

That it is urgent that the intended transaction and consequences of the impugned amendments to the Articles of Association being pursued by the 1st to the 4th Respondents are injuncted in order that the credit and security rights of the Applicants are not impaired or otherwise prejudiced pending the outcome of the arbitration instituted to reverse the said unlawful changes made to the 1st to 4th Respondents' Articles of Association. That this is because the transaction, as a bank transaction, has not received the Applicants' consent, without which it is expressly prohibited.

That in addition to the above relief against the 1st to 4th Respondents, it is important that the 5th and 6th Respondents be restrained from recognizing or registering any document purporting to give effect to any transaction that is sought to be restrained or which may have the purpose of impairing or otherwise prejudicing the Applicants' credit and security rights.

That it is in the interest of justice that this application is allowed.

The 1st to 4th Respondent's opposed this application in an affidavit in reply deponed in paragraphs 1-6, by Patrick Bitature a Chairman and Director to the 1st to 4th Respondent Companies, and summarized as below;

That according to the information received from the Respondents' lawyers, which information he verily believes to be true, the Applicant's application is incompetent and bad in law for the following reasons;

i) That this application seeks the interpretation and enforcement of clause 20.12 and 20.38 of the Mezzanine Term Facility Agreement (MTFA), which is part of the arbitral dispute which was referred to Arbitration for

determination by the High Court in HCMA No. 201 of 2020 Vantage Mezzanine Fund II Partnership Vs Simba Properties Investment Co. Ltd. That this application is therefore barred by res judicata and estoppel.

ii) That the affidavit sworn by Diana Kasabiiti in support of this application delves into contentious matters of fact, is hearsay and as such is incurably defective.

iii) That this application cannot be maintained as it purports to seek an interim arbitral remedy against KCB Bank Uganda Ltd and KCB Bank Kenya Ltd, who are Senior lenders to the Respondent companies but are not party to any arbitration agreement under the MTFA.

iv) That the 2nd Applicant as the advisor to the 1st Applicant has no cause of action against the Respondent companies, is improperly joined as a party to this application and ought to be struck out.

The Respondents in the alternative but without prejudice to the foregoing states that;

The Mezzanine Term Facility Agreement (MTFA) between the 1st Applicant and the Respondent companies fell into dispute, and the dispute is under reference to arbitration to determine the respective parties' rights thereunder; that the first Applicant cannot therefore claim any willful default on payments or impropriety on the part of the Respondent companies under the MTFA, as to do would amount to a pre determination of the outcome of the arbitration.

That by virtue of the Delegation of Authority Matrix, which was issued under the MTFA in 2017, the 1st Applicant assumed positions on the Board of the Respondent companies, where it was represented by Warren Vande Merwe and Makgombe Magoba.

That when MTFA fell into dispute, the 1st Applicant's nominees to the Board and CEO position abandoned office and has remained absent from the Respondent companies since December, 2018.

That despite the said abandonment, the Respondent companies invited the 1st Applicant to several Board meetings to discuss, and agree on the KCB refinancing as a sign of comradeship and good faith but that the 1st Applicant's representatives refused to attend.

That as a result of the first Applicant's unreasonable conduct, the Articles of Association of the 4th Respondent were lawfully amended to enable its shareholders sit and approve the KCB Financing.

That it is not therefore true as alleged by the 1st Applicant that the Respondent companies acted illegally in obtaining the KCB refinancing or without the involvement of the 1st Applicant, who chose to act against its own interests and those of the Respondent companies.

That the KCB refinancing transaction with the Respondent companies was consummated by the parties thereto, and that there is nothing to injunct by way of prohibitory or mandatory order or otherwise under this application.

The 6th Respondent opposed this application in an affidavit in reply deponed in paragraphs 1-19, by Patricia Opoka Akello an Advocate of the High Court of Uganda, and the Manager Document Registration and Licensing at Uganda Registration Services Bureau but briefly that;

The 6th Respondent is an agency of the Government of Uganda, responsible for among others, the registration and regulation of companies under the Companies Act, 2012, the Companies (General) Regulations, 2016 and the Companies (Power of Registrar) Regulations , 2016, from which it executes its duties to register continuous filings of companies, including resolutions, amendment of articles and relevant forms for as long as the same are effected in accordance to the Companies Act and Regulations made thereunder.

That the 6th Respondent shall raise a point of law to the effect that this application does not disclose a cause of action against it and further that the 1st Applicant is a nonexistent legal entity, incapable of instituting these proceedings.

That the mandatory injunction sought is seeking to reverse the decisions of the 6th Respondent on registrations already effected, the grant of which will curtail its statutory duty to regulate the 1st to 4th Respondents.

That the 6th Respondent is not a party to the MFTA between the Applicants and the 1st to 4th Respondents and that as such it is prepared to abide by the decision and Orders of the Court as this Court shall think just.

The Applicants filed an affidavit in rejoinder deponed in paragraphs 1-9, by Diana Kasabiiti that the application does not seek interpretation and enforcement of clause 20.12 and 20.38 of the Mezzanine Term Facility Agreement (MTFA) between the parties. That this application seeks interim measures of relief pending determination of arbitration proceedings, and is grounded on the right legal provisions.

That this grant of the reliefs sought in this application would not in any way amount to variation of the decision of this Court in HCMA No. 201 of 2020 Vantage Mezzanine Fund II Partnership Vs Simba Properties Investment Co. Ltd.

That as an advocate, she is aware that a party to arbitration proceedings can seek interim measures of protection before, and during arbitration proceedings, and that is the case in the instant application.

That the doctrines of res judicata and estoppel do not apply in the instant application.

That the affidavit in support of this application does not delve into contentious matters of fact, neither is it based on hearsay nor defective.

That the application is not an abuse of Court process in so far as it does not seek reliefs that have been sought before in any proceedings before the High Court.

That the application is maintainable as against the 1st to 4th Respondents in so far as they are parties to the MTFA but KCB Bank Uganda, and KCB Bank Kenya are not parties to the arbitration proceedings, and need not be joined to these proceedings.

That the 2nd Applicant is the General Partner of the 1st Applicant and as such has direct and material interest in the outcome of the arbitration proceedings. That seeking interim measures of relief does not in any way pre determine the outcome of arbitration proceedings. That this application is intended to preserve the rights of the parties, and the status quo during the said arbitration proceedings.

That the Applicants have never abandoned the office of Director of the respective Respondent companies; on the contrary, the Applicants have been denied vital information and essentially excluded from any decision making process in these companies.

Representation

The Applicants were represented by Counsel Kirunda Robert of M/S Kirunda & Wasige Advocates, while the 1st to 4th Respondents were represented by Counsel Kagoro Friday Robert of M/S Muwema & Co. Advocates, and the 6th Respondent was represented by Counsel Birungi Dennis of the Legal Department, Uganda Registration Services Bureau. Counsel for the parties filed written submissions as directed by this Court.

Issues for determination

1. Whether the Applicants have made out the grounds for the grant of reliefs sought in this application?
2. What remedies are available?

Determination of the preliminary objections

Whether the 1st Applicant has the legal capacity to institute these proceedings?

Counsel for the 6th Respondent submitted that the registration of the 1st Applicant in South Africa does not exonerate the 1st Applicant from the requirements of section 4 of the Partnership Act, which makes it mandatory to register when not using the true surnames of the partners. Counsel cited the case of *The Fort Hall Bakery Supply Co. Vs Frederick Muigai Wangoe (1959) E.A 474,* in support of his submissions.

Counsel contended that without registration as required under section 4 of the Partnership Act, the 1st Applicant is not recognised under the laws of Uganda, has no legal presence in the territorial jurisdiction of the Republic of Uganda, and therefore, no locus standi to commence this application.

In reply Counsel for the Applicants submitted that under Order 30 rule 1 and 10 of the Civil Procedure Rules, a partnership has capacity to sue and be sued in its name. That the Rules do not impose a requirement for foreign partnerships to be registered in Uganda in order to have legal capacity to sue or be sued. Counsel relied upon the case of *Krone Uganda Limited Vs Kerilee Investments Limited HCMA No. 306 of 2019,* in support of his submissions.

Counsel contended that section 4(2) of the Partnership Act, does not specifically disable an unregistered partnership from commencing proceedings or being sued, and that legal capacity is a matter of law, and the law allows partnerships to sue in their name.

Counsel argued that this fact of the Applicant's legal capacity is also established by the conduct of the parties. That the 6th Respondent has previously received and enforced orders issued against the 1st Applicant, and that the 1st-4th Respondents have previously sued the Applicant vide HCCS No. 988 of 2019, and HCMA No. 1106 of 2019, pursuant to which they obtained interim orders that were vacated by HCMA No. 201 of 2019.

Counsel further argued that the 6th Respondent enforced these orders, and are estopped from denying the 1st Applicant's existence or capacity to sue or be sued or enter into and enforce rights under the MTFA.

Resolution

Section 4 of the Partnerships Act, 2010 provides as follows:

4. Mandatory registration

(1) A firm carrying on business in Uganda under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners which are corporations without any addition other than the true first names of individual partners or initials of the first names; and the corporate names of all partners which are corporations, shall register its name under the Business Names Registration Act.

(2) Where any persons operate a business as a partnership in contravention of subsection (1), every party to the business commits an offence and is liable on conviction, to a fine not exceeding twenty currency points and to an additional fine not exceeding five currency points for each day for which the offence continues after the expiration of fourteen days.

In light of the above provision, this Court finds that the preliminary objection on the legal capacity of the 1st Applicant is a serious question of law, which requires proper consideration in a trial, and cannot be dealt with in an application of this nature. To use the words of Lord Diplock in the case of ***American Cyanamid Co. Vs Ethicon Ltd [1975] A.C 396 at pg.399***, the Court stated that:

> "One must look at the whole case to see whether there is a question to be tried …"

In the given circumstances, this objection is therefore dismissed.

Whether this Honourable Court has jurisdiction to entertain this application?

Section 6 of the Arbitration and Conciliation Act, Cap 4(as amended) provides that:

Interim measures by the court

(1) A party to an arbitration agreement may apply to the court, before or during arbitral proceedings, for an interim measure of protection, and the court may grant that measure. (Emphasis is mine)

(2) Where a party applies to the court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.

From the above provision, it is not in doubt that this Court has jurisdiction to entertain an application of this nature. This position has been decided in a plethora of cases namely; ***Pan Afric Impex(U) Ltd Vs Barclays Bank PLC & ABSA Bank Ltd, HCMA No. 0804 of 2007(Arising from HCCS No. 0839 of 2007),*** and ***Guangdong Hao He Engineering & Construction Company (U) Limited Vs Britam Insurance Co. (U) Ltd & Capital Shoppers Limited, Miscellaneous Cause No. 37 of 2020,*** relied upon by Counsel for the Applicants.

This Court finds that the objection raised by Counsel for the 1-4th Respondents is frivolous.

Whether the affidavit in support of this application contains contentious matters, and ought to be struck out?

This Court has looked at the affidavit deposed by Diana Kasabiiti, and finds that the facts are within the knowledge of the deponent; the grounds of her belief, and the source of information were disclosed; the facts therein relates to the background of the matter to be dealt with at the arbitration proceedings from which this application is premised.

In the instant case, it is not in doubt that the Applicants and the 1-4th Respondents have been referred to arbitration proceedings by this Court.

I am cognizant of the fact that in an application of this nature, there should be either an arbitration agreement entered into by the party seeking a relief of interim protection or a matter pending arbitration proceedings by the parties thereto.

The question on whether the relief sought for in this application is proper as against the 5th and 6th Respondents, who are not party to the arbitration proceedings is therefore answered in the negative.

Whether this application is an abuse of Court process?

Abuse of Court process involves the use of the process for an improper purpose or a purpose for which the process was not established. ***(See Attorney General & Uganda Land Commission Vs James Mark Kamoga & James Kamala SCCA No.8 of 2004 at pg.7)***

In the instant case, I find that the relief of interim protection sought for by the Applicants has not been instituted before, and determined by this Court.

The Respondents have failed to demonstrate how this application is an abuse of Court process.

For the foregoing reason, this objection raised by Counsel for the 1st -4th Respondents is dismissed.

I will now turn to the merits of this application as hereunder:

I have taken into consideration the evidence adduced by the parties in their respective affidavits, the submissions of Counsel for the parties herein, and the cases cited. This Court makes the following findings:

Issue No.1: Whether the Applicants have made out the grounds for the grant of reliefs sought in this application?

It's settled law that the purpose of a temporary injunction is to preserve the status quo, until the questions to be investigated in the suit are disposed of.

The grounds that the Court should consider in an application of this nature has been decided in a plethora of cases; namely that:

(i) That the Applicant must establish a prima facie case with a probability of success.
(ii) That the Applicant will suffer irreparable injury, that may not be adequately compensated for by an award of damages.
(iii) That if the Court is in doubt, then the application is decided on a balance of convenience. ***(See Robert Kavuma Vs Hotel International Ltd, SCCA No. 8 of 1990[1993] KALR 188 at pg.191; American Cyanamid Co. Vs Ethicon Ltd [1975] A.C 396 at pg.399,*** and ***E.L. T Kiyimba Kaggwa Vs Haji Abdu Nasser Katende (1985) HCB 43*****)**

Ground 1: That the Applicant must establish a prima facie case with a probability of success.

Aprima facie case is a claim that is not frivolous or vexatious, and presents serious questions to be tried. ***(See American Cyanamid's case as per Lord Diplock at pg.407)***

This Court finds that the Applicants have raised serious questions in paragraphs 1-10 of the affidavit in support of this application, to be tried in the pending arbitration proceedings namely that: whether the Applicants representatives on the Board of Directors of the 1st -4th Respondents were entitled to the requisite information, so as to participate in the decision making of the 1st – 4th Respondent companies; and whether the draft agreement in respect of the KCB transaction is lawful?

In the above circumstances, this Court finds that the submission of Counsel for the 1st -4th Respondents that the interim measure of protection sought by the Applicants is purposed to stop a refinancing transaction between the 1st -4th Respondents, and KCB Banks, yet they are not parties to the arbitration agreement is misconstrued.

I am fortified in the above view in an excerpt from ***the Law of ADR in Canada, An Interlocutory Guide (Glaholt, Duncan and Rotterdam, Markus Lexis Nexis, Canada 2011 at pg101***, cited in the decision of ***Scales and Software Limited Vs Web Commercial Systems Limited & ABSA Bank Kenya PLC, CS No. E532 of 2020 [2021] eKKLR***, relied upon by Counsel for the Applicants, where Court observed that the authors stated that:

"where third party claims are involved, Courts have ordered that litigation with regard to matters within the Arbitration Agreement and between the Principal parties be stayed pending arbitration, and with regard to third party matters not governed by the Arbitration Agreement, have ordered that a stay of proceedings for the estimated time it would take the Principal parties to complete their arbitration. Thus, while a Court has no jurisdiction to order third parties to submit to arbitration, the Court can stay third party claims pending arbitration when it appears just and equitable to do so." (Emphasis was added)

This Court shall invoke its inherent powers under section 98 of the Civil Procedure Act, Cap 71, to make orders as may be necessary for the ends of justice to the parties herein, that any claims by KCB Bank, Uganda, and KCB Bank, Kenya (Third parties), be stayed until the pending arbitration proceedings between the Applicants and the 1st -4th Respondents is concluded.

Accordingly, this ground is answered in the affirmative.

Ground 2: That the Applicant will suffer irreparable injury, that may not be adequately compensated for by an award of damages.

The proposition of the law is that irreparable damage does not mean that there must not be physical possibility of repairing injury but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages. ***(See Kiyimba's case above)***

The Applicants have adduced evidence under paragraph 26 of the affidavit in support of this application to prove that their interests and rights under the MTFA, if not protected shall cause substantial injury.

This evidence was not rebutted by the 1st -4th Respondents, who under paragraph (iv) of the affidavit in reply averred that the above refinance, restructure and consolidation was very critical for the continued survival and existence of the Respondent company businesses, and this was in turn necessary to secure any subordinate lender interests of the 1st Applicant.

For the foregoing reason, this ground therefore succeeds.

Ground 3: That if the Court is in doubt, then the application is decided on a balance of convenience.

It is settled law that the balance of convenience means an examination of which party would stand to lose if the injunction is denied. (***See Sunstone Limited Vs Nakamya Robinah & Another HCMA No. 1674 of 2017,*** and ***Rem Publishers & Anor Vs Uganda National Bureau of Standards Miscellaneous Cause No. 171 of 2019,*** which cited with approval Kiyimba's case)

In the given circumstances of this case, I find that the Applicants have adduced sufficient evidence to prove that they stand to lose more if the injunction is denied. The balance of convenience is therefore in favour of the Applicants.

Issue No. 2: What remedies are available?

This Court having found issue (1) above in the affirmative, further finds that this application has merit.

In the result, this application is allowed against the 1st and 4th Respondents, and Court makes interim orders that:

1. The 1st – 4th Respondents are restrained from completing an impending transaction among them, and KCB Bank Uganda Limited, and KCB Bank Uganda Limited.

2. The 1st – 4th Respondents are restrained from pursuing any other transaction that would impair or otherwise prejudice the Applicants' credit, and security interests in the Mezzanine Term Facility Agreement executed on 11th December, 2014.

3. The claims against the 5th and 6th Respondents are stayed for a period of (6) six months, pending the conclusion of the arbitration proceedings.

4. The pending arbitration proceedings shall be concluded in the next (6) six months from the date of this Order.

5. Costs of this application shall abide the outcome of the arbitration proceedings.

Dated, and delivered electronically this 29th day of March, 2023.

SUSAN ABINYO
JUDGE
29/03/2023