

SUIT NO. FHC/B/CS/7/2016: BUA INTERNATIONAL LIMITED & ANOR v. HMMSD & 5 ORS

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Dear Sir

We represented the 4th, 5th and 6th Defendants in the above numbered Suit which was scheduled to come up today, 05 December 2017 before the Federal High Court, Benin Judicial Division (*coram* Ajoku J.) ("**the Court**") for hearing of the substantive Suit. Prior to the day's proceedings, we had filed our Amended Statement of Defence in response to the Plaintiffs' 2nd Amended Statement of Claim. We were also served with the following documents:

1. 1st, 2nd and 3rd Defendants' Amended Statement of Defence dated 28 November 2017 but filed on 05 December 2017 in response to the Plaintiffs' 2nd Amended Statement of Claim;
2. Plaintiffs' Motion on Notice dated and filed on 04 December 2017 seeking *inter alia*, the leave of the Court to amend their 2nd Amended Statement of Claim ("**Motion to amend**");
3. Plaintiffs' 3rd Amended Statement of Claim and accompanying processes dated and filed on 04 December 2017, and
4. Plaintiffs' Motion on Notice dated and filed on 04 December 2017 seeking in the main, an Order of Mandatory Injunction directing the 1st Defendant to cancel the "Stop Work Order" letter dated 17th October 2017 and also "directing the 1st to 6th Defendants from interfering with the Plaintiffs operation on its mining site covered by ML 18912 and ML 18913 and/or the disputed ML 2541" ("**Mandatory Injunction Motion**")

At the day's proceedings, Plaintiffs' lead Counsel, Mr Sylva Ogwemoh SAN informed the Court of the Plaintiffs' Motion to amend and sought to move same. The 1st, 2nd and 3rd Defendants' Counsel, Mr Folusho Akinlonu informed the Court that he was opposed to the Motion to amend relying on Order 17 Rule 1 of the Federal High Court Rules, 2009 which allows a party to amend his pleading not more than three times before the Judgment. Mr Akinlonu in alternative argued that if the Court is minded to grant same he would be asking for a cost of N300,000.00 citing the inconvenience and the cost of filing a fresh Defence Processes in response to the 3rd Amended Statement of Claim.

On our part, we informed the Court that we are not opposed to the Motion to Amend only in terms of relief 1 alone. In respect of relief 2 seeking for deeming Order, we relied on the previous rulings of the Court on the Plaintiffs' similar Applications and urged the Court to refuse relief 2 of the Motion to amend. We equally aligned ourselves with Mr Akinlonu's application for cost and drew the Court's attention to the fact that we just filed our response to the 2nd Amended Statement of Claim only to be confronted with the 3rd Amended Statement of Claim. The 7th to 15th Defendants' Counsel on his part informed the Court that he is not opposed to the Motion to amend and that he is not equally asking for cost. Though Mr Ogwemoh SAN after opposing the Applications for cost sought to join issues with us on relief 2 of the Motion to amend, the Court was minded to grant only relief 1 of the Motion to amend and refused relief 2 thereof. The Court also awarded the cost of 10,000 in favour of the 1st, 2nd and 3rd Defendants and 4th, 5th and 6th Defendants respectfully.

Thereafter, Mr Ogwemoh informed the Court of his Mandatory Injunction Motion and argued extensively how the 1st Defendant vide its Stop Work Order letter dated 17 October 2017 has disrespected the Court by invading its mining site with armed policemen in a bid to stop the Plaintiffs from mining on the disputed mining lease notwithstanding the pendency of this Suit. He equally urged the Court to use its disciplinary power to stop the 1st Defendant from interfering with the Plaintiffs' mining rights. Mr Akinlonu informed the Court that the content of the Stop Work Order letter does not align with the Plaintiffs' lead Counsel's account as the letter is merely a restatement of the 1st Defendant's earlier letter dated 21 December 2015 directing the Plaintiffs to stop illegal mining on the 5th Defendant (Dangote Industries Limited)'s Mining lease No. 2541. Mr Akinlonu further argued that the Plaintiffs are the ones in contempt for publishing all sorts of stories on newspapers despite the pendency of the Suit. On our part, we agreed with the Plaintiffs' lead Counsel on the need for parties not to interfere with the subject matter of the

pending Suit and went further to urge the Court to extend its disciplinary power to the Plaintiffs who have been mining illegally on the mining lease despite the pendency of this Suit and the sister Suit. We equally corrected the erroneous impression created by the Plaintiffs' Counsel that the 4th to the 6th Defendants are the ones instigating the 1st Defendant.

The Court expressed its dissatisfaction over the conduct of the 1st Defendant in meddling with the subject matter of the Suit and threatened to commit the 1st Defendant's official who wrote the Stop Work Order letter to prison if the 1st Defendant does not desist from further interference with the Plaintiffs' mining right. On our application that the status quo Order sought by the Plaintiffs should apply to all the parties including the Plaintiffs themselves, the Judge was of the view that we had on the last adjourned date conceded to accelerated Hearing of Suit and to allow the Plaintiffs to continue to mine and that we cannot be heard asking for status quo Order. As it relates to the mandatory injunction Motion, the Court was of the view that it should be left pending and that if by the next adjourned date the 1st Defendant did not stop interfering with the Plaintiffs' mining right, the Court would be minded to invoke its disciplinary power to stop the 1st Defendant.

In view of the adjourned dates in ***SUIT NO: FHC/B/CS/74/2016: DANGOTE INDUSTRIES & ANOR v. BUA & ANOR***, the Court consequently adjourned this Suit to 30 and 31 January, 13, 14, 27 and 28 February and the 13 and 14 March, 2018 for hearing of the substantive Suit.

Best regards

Olatunji Muritala
