IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION-3 HELD IN ACCRA ON THURSDAY THE 7TH DAY OF MAY, 2026 BEFORE HER LADYSHIP JUSTICE DORIS AWUAH DABANKA-BEKOE (MRS.)

SUIT NO: GJ-CM/ACC/0309/2025

ADAMUS RESOURCES PTY LIMITED .. PLAINTIFF/APPLICANT
21A BRISTOL AVENUE,
BICTON, WA 6157
WESTERN AUSTRALIA
AUSTRALIA

VRS

1. **ADAMUS RESOURCES LIMITED .. DEFENDANTS/RESPONDENTS**
   NO. 22 NORTEI ABABIO STREET
   AIRPORT RESIDENTIAL AREA
   ACCRA

2. **ANGELA LIST**
   No. 14 ATO AHWOI STREET
   WEST LEGON - ACCRA

3. **NGUVU MINING LTD**
   H/NO.35, NORTEI ABABIO STREET
   NEAR ADAMUS GA-118-5392
   AIRPORT RESIDENTIAL AREA, ACCRA

CERTIFIED TRUE COPY
.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

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RULING ON MOTION ON NOTICE FOR AN ORDER OF INTERLOCUTORY INJUNCTION PURSUANT TO ORDER 25 RULE 1 OF THE HIGH COURT (CIVIL PROCEDURE) RULES, C. I. 47 (2004)

This ruling is in respect of a motion on notice filed on 8th April, 2025 by counsel for and on behalf of the Applicant herein praying for an order of Interlocutory Injunction restraining the Respondents herein whether by themselves, any person claiming through them, their assigns workmen, servants privies or any person howsoever described from transferring the shares held in the 1st Defendant Company or in any way administering the affairs of the 1st Defendant company to the exclusion of the Applicant until the final determination of the suit.

In an affidavit in support to the above motion the Applicant deposed to 25 paragraphs as follows;

I, Kwabena Frimpong Mensah, of No. 65 Josiah Tongogara Street, North Labone Estate, Accra, do make oath and say as follows:

1. That I am the deponent herein.

2. That I am the Attorney of the Applicant by virtue of a Power of Attorney attached to this application as **Exhibit A.**

3. That I have the authority of the Applicant to depose to this affidavit, the facts of which are within my personal knowledge and honest belief.

4. That on the 25th of February 2025, the Applicant issued a Writ of Summons and Statement of Claim for the following reliefs:

    i. A declaration that the Share Purchase Agreement dated November 7, 2022, is void
    ii. A declaration that the transfer of the Plaintiff's 90% shares in the 1st Defendant Company to the 3rd Defendant is invalid.
    iii. A declaration that the Plaintiff is the 90% shareholder of the 1st Defendant company.

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iv. An order of perpetual injunction to restrain the 2nd and 3rd Defendants from transferring the shares of the Plaintiff in the 1st Defendant company.
v. Damages for fraud
vi. Cost Inclusive of legal fees.

5. That the Applicant is the holder of 90% of the issued shares of the 1st Defendant company with the Government of Ghana holding the remaining 10% shares. Attached as **Exhibit C is a copy of form 3 filed at the Registrar of Companies.**

6. That at all times material the directors of the 1st Respondent company, which operates as a mining company in Nzema in the Western Region of Ghana as Nzema Gold Mine, were Mr. Paul List and the 2nd Respondent as evidenced in Exhibit C

10. That that in November 2022, the 2nd Respondent wrote to the Ministry of Lands and Natural Resources notifying the Ministry of change of control in the 1st Respondent company from the Applicant to the 3rd Respondent. Attached as **Exhibit D is a copy of the letter written by the 2nd Respondent.**

11. That that, the 2nd Respondent notified the Ministry of Lands and Natural Resources in Exbibit D of the change of control in the 1st Respondent company pursuant to a share purchase agreement dated 7th November 2022 and signed between the Applicant as seller, the 3rd Respondent as purchaser and the 1st Respondent as a company.

12. That by the letter written by the 2nd Respondent to the Ministry of Lands and Natural Resources in Exhibit D, the 2nd Respondent notified the Ministry that the Applicant company agreed to transfer all its shares representing 90% of the issued shares of the 1st Respondent company and the controlling interest of the Applicant to the 3rd Respondent.

13. That by Resolution dated 7th November 2022 and purportedly signed by officers of the 1st Respondent company, the Secretary of the 1st Respondent Company was authorised to cancel the shares certificate issued to the Applicant company upon receipt of the Minister for Lands and Natural Resources' No Objection to the change of control. Attached as **Exhibit E is a copy of the Resolution dated 7th November 2022.**

14. That on 23rd December 2022, the Minister of Lands and Natural Resources granted approval for the 3rd Respondent to take over the control of the 1st Respondent company in accordance with Section 52 of the Minerals and Mining Act 2006, (Act 703), and

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thereby granted No Objection to the change of control in the 1st Respondent compan Attached as **Exhibit F is a copy of the letter from the Minister of Lands an Natural Resources dated 23rd December 2022.**

15. That on 27th December 2022, the 2nd Respondent signed a Special Resolution Form at the Office of the Registrar of Companies and changed the shareholding structure of the 1st Respondent company from the Applicant company to the 3rd Respondent company as the 90% shareholder and Government of Ghana as the 10% shareholder. Attached as **Exhibit G is a copy of the Special Resolution Form.**

16. That the 2nd Respondent represented to the Office of the Registrar of Companies tha the changes in the shareholding structure of the 1st Respondent company was due to a Deed of Transfer between the Applicant company and the 3rd Respondent dated 7th November 2022.

17. That the 2nd Respondent wrote letters and caused changes in the shareholding structure of the 1st Respondent company at the Office of the Registrar of Companies at the blind side of the Applicant when in fact the Applicant had neither signed a Share Transfer Agreement or participated in any meeting at which it was agreed that the Applicant will transfer its 90% shares in the 1st Respondent company.

18. That the Applicant has lost its shares and control in the 1st Respondent company as a result of the fraudulent representations made by the 2nd Respondent and 3rd Respondent.

19. That the 2nd and 3rd Respondents intends to transfer the Applicant's 90% shares in the 1st Respondent company to other third parties, if not restrained.

20. That pursuant to the fraudulent change in the shareholding structure of the 1st Respondent company, the 2nd and 3rd Respondents have assumed control of the affairs of the 1st Respondent company and are dissipating the assets of the 1st Respondent company to the detriment of the Applicant.

21. That if the Respondents are not restrained and the status quo maintained, the 3rd Respondent whose name is currently registered at the Office of the Registrar of Companies as holding 90% shares of the 1st Respondent will be at liberty to transfer and/or deal with the shares, creating Third Party rights on the shares.

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22. That the Respondents would suffer no hardship if restrained from dealing with the shares of the company since the 1st Defendant is a going concern and will continue to be so even when the parties are restrained.

23. That this Honourable Court, differently constituted, in a separate matter granted an injunction and set up an Interim Management Committee to administer the affairs of 1st Respondent. Attached as **Exhibit H is a copy of the Ruling of the Court setting up the Interim Management Committee.**

24. That on the other hand, should the Respondents not be restrained, the Applicant would suffer undue hardship as it would have no say in the affairs of the 1st Respondent.

25. That in the circumstances the Applicant prays for the grant of interlocutory injunction to restrain the Respondents from dealing with the shares of the 1st Respondent company until final determination of the matter.

WHEREFORE I depose to this instant affidavit in good faith.

In an affidavit in opposition the Respondents deposed to 32 paragraphs as follows;
I, Jonathan Adongo of No. 22 Nortei Ababio Street, Airport Residential Area, Accra, do make oath and say as follows:

1. That I am the deponent hereto, and the Administration Manager of the 1st defendant/respondent company herein.

2. That I have the consent and authority of the Defendants/Respondents to depose to this affidavit in opposition, in respect of matters that have come to my knowledge, information and belief.

3. That the defendants have been served with an application for interlocutory injunction seeking certain reliefs, and are vehemently opposed to same as incompetent and unmeritorious.

4. That the purported power of attorney granted to the deponent of the affidavit is invalid and incompetent to authorise the institution of the instant action, or the making of the instant application.

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5. That the purported donor of the power of attorney, Alan Morrison, styling himself as the sole director and secretary of the company, a proprietary company registered in Australia, has no capacity to authorise the institution of the instant suit.

6. That the constitution of plaintiff company mandates a minimum of three (3) directors to take valid and binding decisions affecting the company. The absence of a resolution by the board of the plaintiff duly constituted in accordance with the constitution of Plaintiff company, renders the instant action invalid, and ought to be dismissed in limine. Attached herewith and marked as **Exhibit "JA1"** is a copy of the constitution of plaintiff company.

7. That the instant action amounts to the Plaintiff company suing its ultimate beneficial owner, 2nd Defendant herein, in respect of a transfer of Plaintiff's shares by its legal owner and beneficial owner to the same Plaintiff's ultimate beneficial owner.

8. That the commencement of the suit without the authorisation of the board of Plaintiff duly constituted in accordance with the Plaintiff's constitution and without the authorisation of plaintiff's sole shareholder, Nguvu Holdings Limited, (a company owned by Notre Dame Investments Limited, which itself is entirely owned by the 2nd Defendant herein), is mischievous, contrary to law and should not be permitted by this Honourable Court.

9. That being a single director who is not a shareholder of the Plaintiff, the said Alan Morrison, has no capacity under the Corporations Act of Australia to authorise the institution of the instant action. Attached herewith and marked as **Exhibit "JA2"** are relevant parts of the Corporations Act of Australia.

10. That the first relief sought on the motion paper is incompetent as the transfer of shares to the 3rd defendant was, to the Plaintiff's knowledge, effected almost three years ago.

11. The Defendants state further that the effect of the share transfer was to correct a mere administrative error of a fact which had existed since the year 2012, after the Plaintiff had been replaced by Endeavour Gold Corporation as owner and controller of the 1st defendant company.

12. That the second relief is untenable as neither the Plaintiff company nor the said Alan Morrison purportedly acting on behalf of the Plaintiff, is a director or shareholder of the 1st defendant company.

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13. That the third relief constitutes another strenuous effort by the Plaintiff to achieve the formation of another Interim Management Committee for the 1st Defendant, which led to confusion and virtual freeze on the operations of the 1st Defendant company, an order which lapsed following this court's ruling on 12th December, 2024. The relief is legally untenable and ought not be granted by this Honourable Court. Attached herewith and marked as **Exhibit "JA3"** is a copy of the ruling.

14. That in any event, the Plaintiff has absolutely no cause of action whatsoever against the Defendants herein and the instant case is completely frivolous and vexatious for which an injunction should not be granted by this Honourable Court.

15. That Plaintiff company is, in point of fact, wholly owned by Nguvu Holding Limited, a company owned in its entirety by Notre Dame Investments Limited, which is also owned entirely by the 2nd defendant herein. Attached herewith and marked as **Exhibits "JA4", "JA5"** and **"JA6"** are copies of the current profile of ownership of the Plaintiff company as well as documents of incorporation of Nguvu Holdings Limited (formerly BCM Investments Limited) and Notre Dame Investments Limited.

16. That all (100%) of the issued shares of Plaintiff were acquired by Nguvu Holdings Limited (formerly known as BCM Investments Limited) from Endeavour Gold Corporation by dint of a share purchase agreement dated 8th August, 2017. Attached herewith and marked as **Exhibit "JA7"** is a copy of the share purchase agreement.

17. That BCM Investments Limited, lawfully changed its name to Nguvu Holdings Limited as evidenced by a certificate issued on 7th May, 2021. Attached herewith and marked as **Exhibit "JA8"** is a copy of the said certificate.

18. That the interest of the Plaintiff in the 1st defendant company was validly transferred by the sole shareholder of plaintiff (Nguvu Holding Limited) with the consent and authorisation of the ultimate beneficial owner of Plaintiff (the 2nd Defendant herein) to the 3rd Defendant company. The said Moses Bosompem who executed the transfer form on behalf of the Plaintiff was a duly appointed director of the Plaintiff. Attached herewith and marked as **Exhibit "JA9"** is a copy of the resolution by which Moses Bosompem was appointed director of the Plaintiff company.

19. That the said Moses Bosompem acted in an administrative capacity to correct an administrative error in respect of the controller of the 1st Defendant in the records of the Registrar of Companies in Ghana.

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20. That the 3rd Defendant is thus the duly registered majority shareholder of the 1st defendant herein. Attached herewith and marked as **Exhibits "JA10"** and **"JA11"** are copies of the deed of transfer and documents duly filed at the Office of the Registrar of Companies.

21. That being a mining company, the Minister for Lands and Natural Resources, upon conducting necessary due diligence and being satisfied with documents evidencing a change of ownership and control of the 1st Defendant duly filed with the relevant statutory bodies in Ghana, including, the Minerals Commission, duly exercised his powers to issue a **"no objection"** to the change of control of the 1st Defendant company. Attached herewith and marked as **Exhibit "JA12"** is a copy of a letter written by the Minister for Lands and Natural resources to the said Paul List explaining the situation.

22. That the said Paul List is neither a director nor shareholder of the 1st Defendant company.

23. That being the sole shareholder of the plaintiff company, it is utterly indecipherable and defies logic for the Plaintiff to assert that Nguvu Holding Limited did not have the power to authorise a transfer of the shares of plaintiff in the 1st Defendant company to another entity owned by the same beneficial owner.

24. That, further, with the 2nd Defendant also being the managing director and shareholder representative of Nguvu Holdings Limited, and the ultimate beneficial owner of Notre Dame Investments Limited, which is the sole owner of Nguvu Holdings Limited, it is illogical and contrary to good reasoning for Plaintiff to contend that the 2nd Defendant did not have authority to cause a transfer of the Plaintiff's shares in –the 1st Defendant, to a company also beneficially owned by the same 2nd Defendant, i.e. 3rd defendant herein.

25. That Defendants undertook the transaction in November, 2022 in order to achieve an efficient re-organisation of businesses whose ultimate beneficial ownership rests in the 2nd Defendant. Effectively, Plaintiff company, whose shareholder is Nguvu Holding Limited (which is beneficially owned by the 2nd Defendant through Notre Dame Investments Limited), transferred its shares in 1st Defendant company to the 3rd Defendant (owned by the 2nd Defendant).

26. That Allan Morisson is very much aware that this decision to carry out the reorganization was taken as far back as 2018.

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27. That the motive of the instant application is to frustrate the 1st Defendant company and ground its operations to a halt, an objective the court must never use its equitable processes to facilitate.

28. The Plaintiff's quest to derail the operations of the 1st Defendant is evidenced by the letter written by the Plaintiff to the 1st Defendant's bankers requesting them to halt the grant of a loan facility applied for by the 1st defendant. Attached herewith and marked as **"Exhibit JA13"** is the letter.

29. That Alan Morrison is neither a director nor a shareholder of the 1st Defendant and therefore a grant of this application will work gross injustice to the 1st Defendant.

30. That greater inconvenience and hardship will be caused the Defendants by a grant of the instant application than by its refusal.

31. That Applicants have failed to make a proper case for the exercise of this Court's equitable jurisdiction to grant an injunction.

WHEREFORE I humbly swear to this affidavit in

In a supplementary affidavit in support to the above motion the Applicants deposed to 11 paragraphs as follows;

I, Kwabena Frimpong Mensah, of No. 65 Josiah Tongogara Street, North Labone Estate, Accra, do make oath and say as follows:

1That I am the deponent herein.

2That I attorneyhave the authority of the Applicant to depose to this affidavit, the facts of which are within my personal knowledge and honest belief.

3That on the 8th of April 2025 the Applicant filed and served a motion for injunction seeking:

i. To restrain the Respondents herein whether by themselves, any person claiming through them, their assigns workmen, servants' privies or any person howsoever described from transferring the shares held in the 1st Defendant Company

ii. To restrain the Respondents and directors appointed by them without recourse to the Plaintiff from in any way administering the affairs of the 1st Defendant company to the exclusion of the Applicant until the final determination of the suit

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iii. In furtherance to (ii) above the appointment of an Interim Management committee to administer the affairs of the 1st Respondent until the final determination of the suit

4. That on the 16th of May 2025 the Respondent filed an affidavit in opposition to the application for injunction, and raised an objection to the capacity of the Applicant to commence and maintain the action through the sole director of the Applicant company.

5. That I repeat the immediately preceding paragraph and say that Allan Morrison was and has always been the sole director of the applicant within the period relevant to this instant suit.

6. That I repeat the immediately preceding paragraph and say further that, as sole director of the company since 29th December 2017, Mr Allan Morrison as fiduciary, had a duty to authorize the institution of proceedings to protect company property from being dissipated as in this case.

7. That the Applicant's Board was duly reconstituted on the 21st of November 2025 and the Applicant by a resolution, ratified the institution of this action in accordance with Australian Law. Attached as **Exhibit J** is a copy of the said resolution.

8. That in response to paragraphs 24 and 25 of the affidavit in opposition I say that by virtue of the fundamental rule of Company Law that a company is distinct from its shareholders, any transfers of assets of the company (in this case shares held by the company in another company) should be done by legally appointed directors of the board of directors, but not the shareholders.

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9. That the control of BCM Investments Limited (now Nguvu Holdings Limited which is a different entity from Nguvu Mining Limited) is the subject of litigation in St Christopher & Nevis.

10. That again the respondent in paragraph 19 and 20 of the affidavit in opposition claims Mr. Moses Bosompem who executed the transfer form on behalf of the company was acting as a duly appointed director and in so doing acted in an "administrative capacity" to correct an "administrative error".

11. That I repeat the above paragraph and say that by virtue of the decision of the Supreme Court of Western Australia in MORRISON v WOODTHORPE [No 3] [2022] WASC 454, the appointment of Mr Moses Bosompem and other directors by Nguvu Holdings was declared illegal and by operation of law Mr. Moses Bosompem was never a director of the applicant and it is for that reason that his name does not appear in any historical search conducted on the company at the Australian Securities and Investment Commission (ASIC) which is the equivalent of Ghana's Office of the Registrar of Companies. Attached as **Exhibit K** is a copy of the historical record of the Plaintiff.

WHEREFORE I depose to this instant affidavit in good faith.

In a supplementary affidavit in opposition the Respondents deposed to 16 paragraphs as follows;

I, Jonathan Adongo of No. 22 Nortei Ababio Street, Airport Residential Area, Accra, do make oath and say as follows:

1. That I am the deponent hereto, the Administration Manager of the 1st Defendant/Respondent company herein and I have the consent and authority of the Defendants/Respondents to depose to this supplementary affidavit in opposition, in respect of matters within my knowledge, information and belief.
2. That the Applicant has filed a supplementary affidavit in which various new, erroneous and misleading depositions have been made, which I hereby seek to respectfully correct.

3. That I am advised by Counsel and believe same to be true that these new and fresh allegations clearly are an ex post facto effort to boost the ill-motivated application for

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injunction filed by the applicant about **nine (9) months ago** and therefore ought to be frowned upon by this Honourable Court.

4. That in response to paragraphs 6 and 7 of the Plaintiff/Applicant's supplementary affidavit in opposition, I respectfully invite the Court to disregard the averments therein as well as Exhibit J attached thereto, as not only in violation of known principles of company law but also in violation of the company's Constitution particularly Articles 41 and 57.

5. That the Plaintiff/Applicant admits the Defendants/Respondents' assertion that at all material times the company had only one director, Allan Morrison. The Plaintiff has not shown any authority by which a single director of a company on his own, without recourse to the shareholder, can appoint other persons to act as director, or can exercise the powers of the company to take decisions as appointing more directors.

6. That remarkably, the document - Exhibit J - purports to be a board resolution dated **nine(9) months after** the institution of the instant action, and is neither signed nor approved by the sole shareholder of Plaintiff company but is rather purportedly executed by persons who have no capacity in the company. I respectfully say that the purported Exhibit J is not only an afterthought and a desperate attempt to clothe the Plaintiff with capacity but also void and of no legal effect.

7. That I am advised by Counsel and believe same to be true that, the attempt to constitute a board at the blind side of the shareholder/member of the company betrays the illicit intentions and mischief of the purported signatories to the said Exhibit J.

8. That the Defendants/Respondents disputes the Applicant's reliance on the case of Morrison v. Woodthorpe [NO.3][2022] WASC 454, and say that assuming without admitting that the court declared the appointment of Mr. Moses Bosompem invalid, the court did not declare the acts carried out by him as director prior to that declaration null and void.

9. That accordingly, acts done by Mr. Moses Bosompem in his capacity as a director including executing the share transfer form of Plaintiff company remain valid and binding on the company.

10. That in response to paragraphs 8 and 9 of the supplementary affidavit, I say that the distinction of the personality of a shareholder from that of the company does not mean that a transfer of the company's shares in another company, on the authorisation of the

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sole shareholder of the company, can be nullified by a sole director of the company who is not a shareholder.

11. That I am advised by counsel and verily believe same to be true that the pendency of a challenge of BCM Investments Limited in the High Court of St. Christopher & Nevis has nothing to do with the instant action. The sole question to be determined is whether the Court ought to grant an injunction against the 1st defendant, a company whose shares have been duly registered at the Office of the Registrar of Companies since 2022 on the authorization of the Ministry of Lands and Natural Resources, and which is regularly undertaking a serious business activity in Ghana (mining), solely on the application of a person based in Australia who has no capacity either in the 1st defendant company or to institute the instant action.

12. That as is evident from events since the suit was filed, the primary interest of the Plaintiff/Applicant is to use an injunction or the pendency of an application for injunction to frustrate the Defendants/Respondents' business, more particularly, the business of the 1st Defendant/Respondent.

13. That the Plaintiff/Applicant, through its lawyers, has resorted to writing to third parties especially financial institutions misrepresenting the legal effect of the pending application, in a bid to scare them from doing business with the 1st Defendant. **Attached and marked as Exhibit JA14 is a copy of the said letter.**

14. That as a result of Plaintiff's action, the bank has failed to make available to the 1st Defendant the financial facility already granted, gravely affecting the operational and commercial activities of the 1st Defendant company.

15. That I am further advised by counsel and believe same to be true that the Plaintiff's actions generally, amount to a deliberate abuse of the interlocutory processes of this Honourable Court.

16. That unless this Honourable Court intervenes, the Plaintiff will continue to weaponise the pendency of the interlocutory processes in this Honourable Court to cause irreparable harm to the Defendants.

WHEREFORE I respectfully swear to this supplementary affidavit in opposition and pray for a dismissal of the instant application.

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BACKGROUND

The Plaintiff/Applicant allegedly avers by its pleadings that it was the 90% shareholder of the1st Defendant/ company in Ghana until the 2nd Defendant fraudulently purported to transfer the shares to the 3rd Defendant/

That the 2nd Defendant/ transferred the shares of the Plaintiff/ in the 1st Defendant company to the 3rd Defendant/ on the blind side of the Plaintiff / and without complying with the provisions of the Companies Act.

That as a result of the above, the 2nd and 3rd Defendants/ are running

the affairs of the 1st Defendants/ company without recourse to the Plaintiff/ as the 90% shareholder of the 1st Defendant

That since the Plaintiff/ shares in the 1st Defendant company have not

been validly transferred, the Plaintiff still has an interest in the 1st Defendant company.

That in the circumstances, it will be unfair and unjust for the

Defendants/ to illegally and unjustifiably hold on to the shares of the

Plaintiff /Respondent in the 1st Defendants company. That on the basis of this that the Plaintiff instituted its writ of summons and statement of claim for its reliefs and then followed it with this motion.

APPLICANTS CASE

The Applicant's case is that the 2nd Respondent wrote letters and caused changes in the shareholding structure of the 1st Respondent company at the Office of the Registrar of Companies at the blind side of the Applicant when in fact the Applicant had neither signed a Share Transfer Agreement or participated in any meeting at which it was agreed that the Applicant will transfer its 90% shares in the 1st Respondent company.

It Is the Applicant case that the 2nd and 3rd Respondents intends to transfer the Applicant's 90% shares in the 1st Respondent company to other third parties, if not restrained.

As a result of the change in the shareholding structure of the 1st Respondent company, the 2nd and 3rd Respondents have assumed control of the affairs of the 1st Respondent company and are dissipating the assets of the 1st Respondent company to the detriment of the Applicant.

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Therefore, if the Respondents are not restrained and the status quo maintained, the 3rd Respondent whose name is currently registered at the Office of the Registrar of Companies as holding 90% shares of the 1st Respondent will be at liberty to transfer and/or deal with the shares, creating Third Party rights on the shares.

That the Respondents would suffer no hardship if restrained from dealing with the shares of the company since the 1st Defendant is a going concern and will continue to be so even when the parties are restrained.

On the other hand, should the Respondents not be restrained, the Applicant would suffer undue hardship as it would have no say in the affairs of the 1st Respondent.

By its supplementary affidavit in support the Applicant says that I repeat the immediately preceding paragraph and say that Allan Morrison was and has always been the sole director of the applicant within the period relevant to this instant suit.

As a sole director of the company since 29th December 2017, Mr Allan Morrison as fiduciary, had a duty to authorize the institution of proceedings to protect company property from being dissipated as in this case.

Also, the Applicant's Board was duly reconstituted on the 21st of November 2025 and the Applicant by a resolution, ratified the institution of this action in accordance with Australian Law. Attached as **Exhibit J** is a copy of the said resolution
That in the circumstances the Applicant prays for the grant of interlocutory injunction to restrain the Respondents from dealing with the shares of the 1st Respondent company until final determination of the matter.

RESPONDENTS CASE

It is the case of the Respondents that the purported donor of the power of attorney, Alan Morrison, alleged as the sole director and secretary of the company, a proprietary company registered in Australia, has no capacity to authorise the institution of the instant suit.

The constitution of plaintiff's company mandates a minimum of three (3) directors to take valid and binding decisions affecting the company. The absence of a resolution by the board of the plaintiff duly constituted in accordance with the constitution of plaintiff company, renders the instant action invalid, and ought to

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be dismissed in limine. Attached herewith and marked as **Exhibit "JA1"** is a copy of the constitution of plaintiff company.

That being a single director who is not a shareholder of the plaintiff, Alan Morrison, has no capacity under the Corporations Act of Australia to authorise the institution of the instant action. Attached herewith and marked as **Exhibit "JA2"** are relevant parts of the Corporations Act of Australia.

The Defendants state further that the effect of the share transfer was to correct a mere administrative error of a fact which had existed since the year 2012, after the plaintiff had been replaced by Endeavour Gold Corporation as owner and controller of the 1st Defendant company.

That the third relief by the Plaintiff constitutes another strenuous effort by the plaintiff to achieve the formation of another Interim Management Committee for the 1st Defendant, which led to confusion and virtual freeze on the operations of the 1st Defendant company, an order which lapsed following this court's ruling on 12th December, 2024. The relief is legally untenable and ought not be granted by this Honourable Court. Attached herewith and marked as **Exhibit "JA3"** is a copy of the ruling.

It is the further case of the Defendant that all (100%) of the issued shares of plaintiff were acquired by Nguvu Holdings Limited (formerly known as BCM Investments Limited) from Endeavour Gold Corporation by dint of a share purchase agreement dated 8th August, 2017. Attached herewith and marked as **Exhibit "JA7"** is a copy of the share purchase agreement.

That BCM Investments Limited, lawfully changed its name to Nguvu Holdings Limited as evidenced by a certificate issued on 7th May, 2021. Attached herewith and marked as **Exhibit "JA8"** is a copy of the said certificate.
Further with the 2nd defendant also being the managing director and shareholder representative of Nguvu Holdings Limited, and the ultimate beneficial owner of Notre Dame Investments Limited, which is the sole owner of Nguvu Holdings Limited, it is contrary to good reasoning for Plaintiff to contend that the 2nd Defendant did not have authority to cause a transfer of the Plaintiff's shares in – the 1st Defendant, to a company also beneficially owned by the same 2nd Defendant, i.e. 3rd Defendant herein.

The Defendants undertook the transaction in November, 2022 in order to achieve an efficient re-organisation of businesses whose ultimate beneficial ownership

rests in the 2nd Defendant. Effectively, Plaintiff company, whose shareholder is Nguvu Holding Limited (which is beneficially owned by the 2nd Defendant through Notre Dame Investments Limited), transferred its shares in 1st Defendant company to the 3rd Defendant (owned by the 2nd Defendant).

The Defendants case is that the purpose of the instant application is to frustrate the 1st Defendant company and ground its operations to a halt,
And the Plaintiff's quest to derail the operations of the 1st Defendant is evidenced by the letter written by the Plaintiff to the 1st Defendant's bankers requesting them to halt the grant of a loan facility applied for by the 1st Defendant. Attached herewith and marked as **"Exhibit JA13"** is the letter.

Again, the Plaintiff/Applicant admits the Defendants/Respondents' assertion that at all material times the company had only one director, Allan Morrison. The Plaintiff has not shown any authority by which a single director of a company on his own, without recourse to the shareholder, can appoint other persons to act as directors, or can exercise the powers of the company to take decisions as appointing more directors.

Exhibit J - purports to be a board resolution dated **nine(9) months after** the institution of the instant action, and is neither signed nor approved by the sole shareholder of Plaintiff company but is rather purportedly executed by persons who have no capacity in the company. Exhibit J is not only an afterthought and a desperate attempt to clothe the Plaintiff with capacity but also void and of no legal effect.

That Alan Morrison is neither a director nor a shareholder of the 1st Defendant and therefore a grant of this application will work gross injustice to the 1st Defendant.

That greater inconvenience and hardship will be caused the Defendants by a grant of the instant application than by its refusal.

THE LAW AND PRINCIPLES

By Order 25 Rule 1 of C.I. 47, the Court may make an order of Interim/interlocutory injunction when it finds it just and convenient. The courts have over the years developed the jurisprudence on when it can be said to be *just and convenient* to grant applications of this nature. To succeed, the Applicant must be able to demonstrate that:

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a. He has a legal and/or an equitable interest in the subject of the dispute which warrants protection.

b. There is the need to maintain the status quo ante to avoid irreparable damage pending the determination of the matter

c. The Balance of convenience weighs in favour of the Applicant.

d. Refusal of the application will cause injury and hardship which cannot be adequately compensated in monetary damages.

See cases such as **18th JULY VRS YEHANS INTERNATIONAL LTD [2012] 1 SCGLR 167-173; OWUSU V OWUSU ANSAH [2007-2008] SCGLR 870**

By Order 25 Rule 1(2), A party to a cause, matter may apply for the grant of an injunction before, or after the trial of the cause or matter, whether or not a claim for injunction was included in the party's writ, counterclaim or third-party notice

EVALUATION

The Court has considered, the affidavit in support for the application and oppositions for the interlocutory injunction, and the submissions by counsel for the parties. It is trite law that the granting or refusal of an injunction is at the discretion of a trial court and in the exercise of such discretion the trial judge ought to take into consideration the pleadings and the affidavit evidence before it, see **POUTNEY VRS: DOEGAH (1987 – 88) 1GLR 111 at 116.**

From the affidavit and the submissions, the Applicant alleges he has a right in the subject matter in question as Director of the Plaintiff's Company

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A fundamental principle in an application for interlocutory injunction which one has to consider is whether the applicant has a legal right at law or in equity which the court ought to protect by maintaining the status quo. The above principle was emphasized in the case of **VANDERPUYE VRS: NARTEY (1977) 1GLR 428** at 432 and added that there was the need to preserve the status quo in order to avoid irreparable damage to the Applicant, provided the claim is not frivolous and vexatious. The question for consideration in that regard resolves itself into whether on the balance greater harm would be done by refusal to grant the application than not.

The question that demands an answer is that does the Applicant has a legal or equitable rights in the Plaintiff shares in the 1st Defendant. He alleges 90% of Plaintiff's shares is being transferred by the 2nd Defendant to the 3rd Defendant which must be protected to avoid irreparable damage which damages cannot be compensated adequately. And as the Director he stands in a fiduciary relationship with the Company and thus has a legal duty to protect the interest of the Plaintiff by having access and control in the management of the assets and other properties of the Plaintiff. But when such transfer and changes in the 1st Defendant shares structure takes place, he would not have the chance to perform those responsibility in the 1st Defendant and if the 2nd and 3rd are restrained, it would not affect the 1st Defendant's operation since it is a going concern. Again the 1st Defendant's would not be dissipated. Furthermore, this action taken by him has been ratified by the other Directors.

Furthermore, the application discloses ***serious questions to be tried or the existence of a right at law or in equity to be protected*** or ***real prospect of success for the case of the Applicant*** to warrant the exercise of the court's discretion to grant this application for injunction.

Therefore, the Defendants/Respondents must be injuncted from dealing with the shares of the 1st Respondent company until final determination of the matter.

The Defendants/Respondents dispute the above assertion and state that an interlocutory injunction against the Respondents has no basis as the transaction that took place in 2022

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was to ensure an efficient re-organization of the businesses whose ultimate ownership rest in the 2nd Defendant. Plaintiff's shares or shareholder is beneficially owned by the 2nd Defendant and through Notre Dame investments transferred its shares in 1st Defendant to the 3rd Defendant owned by the 2nd Defendant.

That Alan Morrison the Applicant in this suit is not a director nor a shareholder of the 1st Defendant, therefore the grant of this application will end in injustice to the 1st Defendant.

COURT'S POSITION

The Court after analyzing the evidence has noted that, the Applicant of this application being a Director of the Plaintiff's is of the view that the assets of the company needs protection from dissipation and being a Director, he has to see to same.

The question is, as a director has, he got any legal or beneficial interest in the company. Again, can he alone as a director bring the suit against the Defendants. His answer is that, his action of instituting this suit was ratified by other directors.

The Defendants challenge this position and even to the extent that by the companies Act of Australia a sole director cannot embark on such a mission. That the so-called ratification was a nullity because the so-called directors appointed by the sole director after the institution of this suit is procedurally wrong

That the Applicant not being a legal nor beneficial owner of the Defendants company wants to frustrate the efficient running of the Defendants companies.

The Court is of the opinion that the conditions precedent for the grant of interlocutory Injunction have not be met by the Applicant.

Consequently, the Court finds the Application meritless and hereby dismisses same.

(SGD)
DORIS AWUAH DABANKA BEKOE (MRS)
JUSTICE OF THE HIGH COURT

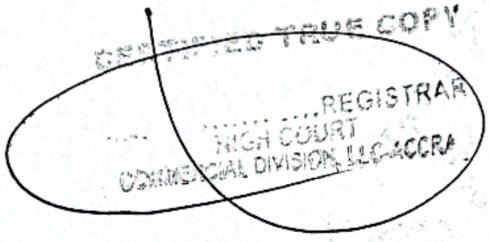
COUNSEL:

KERVIN TETTEY ASHONG HOLDING BRIEF OF OKATAKYIE

BOAKYE DANQUAH ABABIO FOR PLAINTIFF/APPLICANT – PRESENT

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YAA KOBI FRIMPOMAAH HOLDING BRIEF OF GODFRED YEBOAH DAME OF DEFENDANTS -PRESENT



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