THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION-3 HELD IN ACCRA ON FRIDAY THE 25TH DAY OF JUNE 2021 BEFORE HER LADYSHIP JUSTICE MARIAMA SAMMO

SUIT NO.CM/BDC/0924/2020

SPRINGFIELD EXPLORATION AND PRODUCTION LTD. ... PLAINTIFF/APPLICANT

VS.

1. ENI GHANA EXPLORATION AND PRODUCTION LTD.
2. VITOL UPSTREAM GHANA LTD. ... DEFENDANTS/RESPONDENTS

PARTIES: NANA OSEI KOFI ADDAE REPRESENTS PLAINTIFF
ABENA OWUSU REPRESENTS 1ST DEFENDANT
ADAM KAYE REPRESENTS 2ND DEFENDANT

RULING

In this application, the Plaintiff/Applicant has invoked the jurisdiction of the Court for an order for the preservation of funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field. The legal basis of the application is indicated on the face of the motion paper as Order 25 rule 2 of the rules of the Court (C.I. 47). Having stated the rule pursuant to which the jurisdiction of the Court is invoked for the reliefs sought, it is imperative for the Court to briefly examine the rule and determine the scope of its powers there under.

In the case of **Shardey Vs. Martey [1972]2 GLR 350**, the Court of Appeal held that when an application is made and the relevant rule is cited, it enables the court to ascertain whether the application is properly before it and determine the powers it has under the rule. In the instant application, the specific provision of Order 25 rule 2 relevant for the determination of the application are subrules (1), (3) and (4). It is provided in subrule (2) (1) as follows:-

"Detention, Preservation of Property

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter or in respect of which any question may arise in the action, or may order the inspection of any such property in the possession of a party."

In terms of the rule, an Applicant for the preservation of any property must demonstrate one of two things. The property sought to be preserved must, either be;

i. the subject-matter of the cause or matter; or

ii. one in respect of which any question may arise in the action.

The fact that either of the two preconditions stated in the rule is sufficient to ground the application is not in doubt by the use of the word ***"or"*** in the rule because it carries with it a disjunctive connotation. See **Republic vs. Yebbi and Avalifo [2000] SCGLR 149.**

For purposes of an application for preservation therefore, it is sufficient if the application establishes either that the property sought to be preserved is;

i. the subject-matter of the cause or matter; or

ii. one in respect of which any question may arise in the action.

It is also important to point out that so far as the second part of the disjunctive requirement is concerned, it is not necessary to prove that the property sought to be preserved is property in respect of which a question will definitely arise in the action. The second part of the requirement which may be alternatively canvassed to justify the application is permissive. The effect of the rule is that, it is sufficient if the Applicant introduces or it is reasonable to expect that a question is likely to arise in respect of the property which forms the subject matter of the application.

In an earlier ruling of this Court in **Suit No.CM/BFS/1149/2019**, **Beige Bank Ghana Limited (in receivership) Vs. Michael Nyinaku & 12 Others,** dated 21st April 2021, this

Court pointed out that for purposes of an application for preservation, it may appear sufficient if the application establishes either that the property sought to be preserved is;

i. *the subject-matter of the cause or matter; or*

ii. *is one in respect of which any question may arise in the action.*

The Court however noted that in appropriate circumstances the Court may accept the argument that the rule is very liberal with the effect that, it may be sufficient if the Applicant can introduce and with reasonable expectation that a question is likely to arise in respect of the property which forms the subject matter of the application. Such an argument must however be examined with circumspection.

The current rules of this court on the subject of preservation are in *pari materia* with the English Rules of the Supreme Court, 1965. It is observed that the Plaintiff refers to it in its submissions. The English Rules just referred to provides for orders of preservation in Order 29 rule 2. It is stated there in similar terms as provided in Order 25 rule 2. The English rules on this matter is explained by the learned editors of the Supreme Court Practice, 1995 edition at page 532, paragraph 29/2–3/2 thus; *"Property" - The property must be bona fide the subject-matter of the action".*

The learned editors however say that the powers of the court set out in the rules do not constitute an exhaustive list of the powers available to the Court. This appears confirmed by sub rules 2, 3 and 4, especially sub rule 4 which says that an *"order under [the] rule may be made on such terms as the Court considers just."* The learned editors of the Supreme Court Practice 1995 state at page 535 paragraph 29/2-3/1 as follows:-

> *"...Court has an inherent jurisdiction to make interlocutory orders for the purposes of promoting a fair trial; it is a jurisdiction which confers power, in the exercise of a judicial discretion, to prepare the way by suitable orders or directions for a just and proper trial of the issues joined between the parties".*

This Court accordingly takes the view that while the Court may make appropriate orders in circumstances as it deems just, in considering the application for an order of preservation of the rules as a whole, in terms of their structure and purpose, the court must ensure it remains within the confines of the rules of the Court invoked and not stray into what it perceives as just when the rules clearly indicate the manner in which such application shall be determined.

The Court holds therefore that in an application for an order of preservation while a liberal view may be taken of the rule to justify the grant of an application for an order of preservation where the subject matter of the application is not directly in issue in the substantive proceedings before the Court, the property which is the subject matter of the application must not be targeted for collateral purposes rather than for purposes of determining an issue in the substantive proceedings.

The Court shall conclude its examination of the rule by referring to the previous provision of the rule in Order 50 rule 5 of the repealed LN 140A. Order 50 of LN 140A itself was headed; *Interlocutory orders as to mandamus, injunctions or interim preservation of property*. Order 50 rule 5 of LN 140A provided as follows;

"5. *It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of any such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any sample to be taken or any observation to be made or experiments to be tried, which may be necessary or expedient for the purposes of obtaining full information or evidence."*

The side note to Order 50 rule 5 reads; *"Detention, preservation or inspection of property the subject matter of action."* In the opinion of this court, this rule although not directly couched in exactly the same language as Order 25 rule 2(1) embodies the same grounds and circumstances under which the Court may make an order for preservation. This is because the rule, like the provisions of Order 25 rule 2(1) empowers the Court to make the order for preservation of any property or thing which is either;

i. "the subject of any such cause or matter; or

ii. as to which any question may arise therein.

Having observed the identical nature of the provisions of Order 25 rule 2(1) of C.I. 47 and Order 50 rule 5 of LN 140A, it is appropriate to resort to the principles laid down by the courts in decisions based on Order 50 of LN 140A to the present application as the two rules are substantially in similar terms.

In the case of **Akwaa II and Others Vs. Hagan and Others [2007-2008]1 SCGLR 200**, the Supreme Court held that:-

> *"It is a trite principle of construction of statutes that when the same or similar words which have received construction, in a superior court, have been repeated in a subsequent statute in pari materia, the presumption is that they are so used with the same meaning as in the prior statute."*

In the instant application, the Plaintiff prays the Court *"for an order for the preservation of funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field from the commencement of the suit pending its final determination."*

It is noted with all due respect to Applicant's counsel that the relief sought lacks clarity because at the time the action commenced, there was no obligation on the part of the Defendants to preserve any funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field. If the Defendants decided so to do it must have arisen out of good faith.

At the time of commencing this suit therefore, there was no guarantee that funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field had not been interfered with and for that matter shall be the subject of the orders prayed for in the application before the Court. It is however, trite knowledge that as soon as a party becomes aware that the Court's jurisdiction has been invoked for a particular relief, such a party must abstain from all or any steps that will either interfere or have the likelihood of interfering with the reason for which the court's jurisdiction is invoked.

For this reason, the prayer that the Court's order should cover funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field from the commencement of the suit is irregular. The Court's orders can only deal with matters at the time the Court's jurisdiction was invoked for the reliefs prayed for in this application.

The Court further notes that as a corporate entity the Defendants are required to comply with certain specific statutory obligations arising out of funds, revenue and monies earned, paid to and/or accruing to them from the exploration and production of petroleum by Defendants from the Sankofa Field. This is clear from a reading of the processes filed by the parties. Plaintiff is not entitled to such payments from the revenue accruing from the exploration and production activities taking place in the Sankofa field. For this reason, the blanket prayer for preservation of all funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field is also irregular.

Notwithstanding these procedural irregularities, the Court takes the view that the application is not thereby defeated. The law imposes on the court to look at the substance of every application and not the form in which it is brought in order to dispense justice to the parties.

In determining the substance of the application, it is important to appreciate the facts as deposed to in the Plaintiff's affidavit in support where the Plaintiff states that it has contractual right to the exploration and production of petroleum over an area known as the West Cape Three Points 2 Block (WCTP-2). The Plaintiff acknowledges that the Defendants also have contractual rights to the exploration and production of petroleum over an area known as the Offshore Cape Three Points Block (OCTP). The contract areas of the Plaintiff and the Defendants cover two fields in their respective contract areas. These fields are the Plaintiff's Afina Field on the one hand and the Defendant's Sankofa Field on the other hand. The two fields share a common boundary.

The Plaintiff's case is that it has gathered information from various analysis and tests conducted by the Plaintiff itself and other independent experts, and has reached the conclusion that there is evidence that the accumulation of petroleum in the Defendants' contract area of the Sankofa Field extends into the Plaintiff's contract area. The Plaintiff contends that it is a statutory requirement in section 34 of the Petroleum (Exploration and Production) Act 2016 (Act 919) that where an accumulation of petroleum extends beyond the boundaries of one contract area into another contract area, the relevant contractors must enter into an agreement to develop and produce the accumulation of petroleum as a single unit.

The Plaintiff further contends that in terms of the provisions of section 34 of Act 919, the Minister of Energy has directed the Plaintiff and the Defendants to enter into an unitisation agreement for purposes of developing and producing the accumulation of the petroleum straddling in both fields as a single unit. Section 34 of Act 919 provides as follow;

> *"34. Co-ordination of petroleum activities and unitization*
>
> *(1) Where an accumulation of petroleum extends beyond the boundaries of one contract area into one or more other contract areas, the Minister in consultation with the Commission may, for the purpose of ensuring optimum recovery of petroleum from the accumulation of petroleum, direct the relevant contractors, to enter into an agreement to develop and produce the accumulation of petroleum as a single unit."*

There is no need for the Court to embark on any explanation of the meaning and effect of this statutory provision as its language is quite clear. As required by the statutory provisions of Act 919 above quoted, the Minister has directed that the Plaintiff and the Defendants unitise their exploration and production activities.

The Plaintiff's concern arises from the fact that the Defendants have not complied with this directive from the Minister to unitize and develop the accumulation of petroleum which has straddled their respective contract areas as one unit. The Plaintiff's case is that whilst the Defendants have refused to comply with the Minister's directive to unitize and develop the petroleum which has straddled their respective areas, the Defendants have continued to produce petroleum which comes from their straddling contract areas with the effect that the defendants are enjoying the income, proceeds, funds, revenue or monies earned from the production of petroleum from this common pool, to the exclusion of the Plaintiff.

The Plaintiff's case is that to the extent that the petroleum accumulated in the Defendants' contract area extends into the Plaintiff's, the income, proceeds, funds, revenue or monies earned by the Defendants from exploring and producing petroleum in their contract area belong to and must be shared by, between and among the Plaintiff and the Defendants. It is for this reason that the Plaintiff has commenced proceedings in the Court to enforce its right not only to have the petroleum straddling the contract areas developed as one unit but also to ensure that its share of the income, proceeds, funds, revenue or monies earned from the production of petroleum from this common pool, is enforced by the Court.

In its Writ of Summons and also in paragraph 49 of its Statement of Claim, the Plaintiff has endorsed five reliefs against the Defendants. The reliefs as endorsed on the Writ of Summons and Statement of Claim are as follows;

i. *An order directed at Defendants to comply with the directive issued by the Minister of Energy in his letter of 9th April 2020 and enter into an agreement forthwith with Plaintiff to produce and develop the accumulation of the petroleum in the Sankofa and Afina fields as a single unit.*

ii. *An order directed at Defendants to co-operate with Plaintiff to produce and develop the accumulation of petroleum in its Sankofa and Afina fields as one unit.*

iii. *An order directed at Defendants to render accounts to the Plaintiff in respect of all monies, revenue and proceeds received or accrued by Defendants for their exploration and production activities in the Sankofa field from the year 2009, when Defendants commenced exploration of the said field till date.*

iv. *An order that any income, profits on other finds due Plaintiff from Defendant's exploration and production activities in the Sankofa fields be paid to the Plaintiff upon account having been taken.*

v. *Costs on a full indemnity basis".*

It is on the basis of these reliefs that the Plaintiff brings the instant application *"for an order for the preservation of funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field."*

Reading the reliefs endorsed on the Writ of Summons and Statement of Claim the first two reliefs appear to be geared towards achieving the same result. The first relief prays the Court for an order directed at Defendants to comply with the directive issued by the Minister of Energy in his letter of 9th April 2020 and enter into an agreement forthwith with Plaintiff to produce and develop the accumulation of the petroleum in the Sankofa and Afina fields as a single unit.

The Court observes that if the Plaintiff is successful in making out its case in this respect, then the Defendants will be directed as prayed for, to "*enter into an agreement forthwith with Plaintiff to produce and develop the accumulation of the petroleum in the Sankofa and Afina fields as a single unit.*" This will appear to achieve the same result prayed for in the second relief which prays the Court for an "*order directed at Defendants to co-operate with Plaintiff to produce and develop the accumulation of petroleum in its Sankofa*

and Afina fields as one unit." The Plaintiff's second relief will therefore appear superfluous.

An examination of the two reliefs however reveals that they ought to have been claimed as alternative reliefs. The reason is that the second relief seems to be mounted on principles of common law and equity. This is implied from the Plaintiff's pleadings which contend that to the extent that the petroleum accumulated in the Defendants', Plaintiff has an interest in the exploration and activities engaged in by the Defendants. The Plaintiff's case is therefore not grounded solely on the Minister's statutory power to direct unitisation.

In any event, the Plaintiff's third relief is one which claims accounts from the Defendants in respect of all monies, revenue and proceeds received or accrued by Defendants for their exploration and production activities in the Sankofa field from the year 2009, when Defendants commenced exploration of the said field till date. The Plaintiff therefore claims a right to funds resulting from the exploration and production activities engaged in by the Defendants. It remains to be determined whether or not the Plaintiff will make out their case at the trial. Pending the trial, the practice and the rules of the court permit a party to invoke the Court's jurisdiction for interlocutory orders. It is provided by Order 25 rule 2(3) of the rules of Court that:

> *"(3) Where the right of a party to a specific fund is disputed, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured."*

The provision above quoted therefore requires the Court to exercise its discretion for purposes of deciding whether the Plaintiff's claim to a right to part of the funds, proceeds or revenue earned by the Defendants from their exploration and production activities in the contract area should be preserved or otherwise *"secured"* as the rule of Court puts it.

A reading of sub rule (4) of rule 2 of Order 25 will confirm that the Court's power to make an order on an application before the Court is made only when the Court thinks it just so to do. The said provision therefore says that;

> *"(4) An order under this rule may be made on such terms as the Court considers just."*

For purposes of determining the application before the Court, the Court finds the case of **General Development Co. Ltd. VS. Rad Forest Products Ltd. [1999-2000] 2 GLR 178 CA** very useful. In that case, there was an application for stay of execution of the orders of the trial High Court and inter alia, the detention *and preservation of the items which were the subject-matter of the suit* between the parties and for the appointment of a receiver and manager to manage the items pending the determination of the suit. Benin JA *(as he then was)* held at pages 182-183 that the relevant considerations which go into the granting of an application for an order for *preservation* or detention or both are as follows;

i. *the order must be made against the person in possession or custody of the property in dispute.*
ii. *the property must be the subject matter of this suit.*
iii. *the property in dispute must be property in respect of which the Plaintiff shews a prima facie title in order that preservation is ensured until the rights of the parties can be finally determined.*
iv. *the order will be granted so long as there is something which ought to be done to ensure the security of the property.*
v. *the order will be made in order to preserve the subject-matter of the suit from destruction.*
vi. *the court will also grant an order in court to preserve the subject-matter from depreciation physically or in value.*

In the above cited case, it was held that the grounds above set out are by no means exhaustive and that other grounds may unfold due to a particular case under

consideration. It is not necessary to examine all of these principles but applying the tests stated above to the instant case, the Court will make the following findings.

(a) *The first test which relates to the question whether or not the order prayed for, if made, is against the person in possession or custody of the property in dispute, must be answered in the affirmative. The order prayed for is directed against the Defendants who, as the Plaintiff complains have custody of the funds, proceeds or revenue earned from the exploration and production activities in the areas in which the petroleum is accumulated.*

(b) *The second question relates to whether or not the property, which are the funds, proceeds or revenue earned by the Defendants from their exploration and production activities in the areas in which the petroleum is accumulated is the subject matter of the suit. The answer to this question is also in the affirmative. The reliefs claimed by the Plaintiff includes a prayer for accounts for those funds, proceeds or revenue earned by the Defendants from their exploration and production activities in the areas in which the petroleum is accumulated.*

(c) *Thirdly, and most importantly, has the Plaintiff established that it is prima facie entitled to order of preservation? The Court will answer this question also in favour of the Plaintiff. Apart from prudent exploitation of a nation's resources, the statutory provisions of section 34 of Act 919 are designed to protect what is known in the law and practice of oil and gas law as correlative rights. This is the right of each contractor to have an opportunity equal to that afforded other contractors to recover the equivalent of the amount of recoverable petroleum from a common pool. In the United States case of* ***Wronski Vs. Sun Oil W.W.2d 564, 509-70 (Nich Ct. App 1979)****, it was held that; "The right to have a reasonable opportunity to produce one's just and equitable share of oil in a pool is [a] common-law right … "*

The Court will now consider whether the order is necessary in order to preserve the subject-matter of the suit from destruction. In this case, funds are involved. These funds may not be capable of physical destruction as with other species of property but may be

capable of dissipation in such a way that the party entitled to them may legitimately deem the funds are destroyed. In the business world, things change fast. The Defendants may suddenly go bankrupt and no one wishes them that. The Defendants could also complicate matters by various schemes of mergers, amalgamations among others. All these could have implications for the Plaintiff. This question must also therefore be answered in favour of the Plaintiff.

This Court does not find it necessary to embark on any discussion of the other principles. This is because, the rest of the matters essentially dovetail into the ones just discussed. The oft cited case of **Vanderpuye Vs. Nartey [1977] GLR 428-435,** which is mostly cited in our jurisdiction in injunction applications was a case in which the Appellant applied for an order for the interim protection of property pending the final determination of the case between the parties. The application was dismissed by Griffiths-Randolph J. on the ground that the Appellant failed to show a reasonably fair or strong prima facie case in support of his application. A second application by the Appellant alleging that he had discovered material which entitled him to move the court in a fresh application on the same issue was dismissed by Edusei J. on the ground that the Appellant had already brought a similar application unsuccessfully on the same issue. It was held on appeal that the governing principle for the determination of such applications should be whether on the face of the affidavits there is the need to preserve the status quo in order to avoid irreparable damage to the Applicant and provided his claim is not frivolous or vexatious. The question for consideration in that regard resolves itself into whether on balance greater harm would be done by the refusal to grant the application than not.

There is no doubt in my mind that this is a case in which it is proper to grant the application before the Court. From the provisions of Order 25 rule 2(4) earlier referred to, the Court is not required in an interlocutory application of this nature to go into the merits of the issues involved in the substantive claim. The court was only required to find from the affidavit evidence whether it would be just or convenient to make an order for the interim preservation of the property.

I shall therefore grant the application but only to the extent that the order hereby made shall affect funds, income, proceeds or revenue earned by the Defendants from their exploration and production activities subject to the deduction of all necessary statutory payments from today, the 25th day of June 2021, until the final determination of the substantive action or further order.

I take notice that the Defendants have contested this application on several grounds, arguing among others that the grant of the instant application will severely jeopardize their business. They have contended that should this application be granted, the Defendants will suffer the following hardship;

i. *The Defendants' ordinary course of business shall be hampered, as they will be forced to cease production.*

ii. *Cessation of production implies that Respondents would be unable to pay its contractors for services and goods contracted for thus jeopardizing these contracts, including failure to pay employees.*

From the affidavit evidence before the court, there are no convincing explanations for these hardships alleged. The arguments suggest that the application before the Court will in effect restrain the Defendants from any or further exploration and production activities. The Court relates to this argument well. In **Suit Number CM/BFS/1149/2019** this Court took note of the fact that some jurisdictions have effectively replaced orders for preservation with injunctions. The Court however pointed out that in our jurisdiction, the distinction remains intact. The application before the Court does not seek to and does not suggest even remotely that the Plaintiff desires an injunction to restrain the Defendants from carrying out any production or exploration activities in the Sankofa Field. Such an application may not have been outrageous given that the Plaintiff contends that the Defendants' exploration and production activities affect the Plaintiff's resources. The question as to whether it would have been just and equitable to grant such an order of injunction would be another matter.

As the court has already noted that the manner in which the prayer for preservation is couched on the face of the motion paper is too wide in scope. Apart from the Court's observation that as a corporate entity the Defendants are required to comply with certain specific statutory obligations arising out of funds, revenue and monies earned, paid to and/or accruing to them from the exploration and production of petroleum from the Sankofa Field, it is clear from the Plaintiff's own case that the Plaintiff is not claiming all the funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field. The Plaintiff is only claiming that it is entitled to part of it. The Plaintiff's case in the substantive suit before the Court arises from its claim to a share in petroleum exploited by the Defendants in the Sankofa Field as a result of the straddling in the hydrocarbon accumulation in areas of exploration and production.

In the light of the above observations, the Court will grant the application only in part. In its application for stay of proceedings before the Court filed on 17th September 2020, the 2nd Defendant attached to its affidavit in support, the agreement marked Exhibit 'RD1'. A reading of the agreement will show that the Defendants are required to make certain statutory payments from the funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field. These are set out particularly in Articles 10 and 12 of the Petroleum Agreement.

Article 10 (1) (a) deals with the royalties payable by Respondents. It provides that:

> *"ten percent (10%) of the Gross Production Crude oil shall be delivered to the state as Royalty pursuant to the provisions of the Petroleum Law provided that if the accumulation within the area is located in water depth of four hundred meters (400m) (about one thousand and three hundred and twelve feet (1,312 ft) or more the Royalty shall be seven and one half per cent (7.5%)".*

This royalty payment is either paid in crude or cash as per Article 10(1) (a). Article 12 then provides for the remaining statutory payments due from Defendants. These payments are:

i. *Income tax in accordance with the Income Tax Act 2015 Act 896.*
ii. *The additional oil entitlement to the GNPC.*
iii. *Any payment for rental of Government property, public lands or for the provisions.*
iv. *Surface rentals to the state pursuant to section 18 of the Petroleum Act.*
v. *Withholding tax of 5% payable to subcontractors.*
vi. *Taxes, duties and fees or other impost of a minor nature, and amount insofar as they do not relate to the stamping and registration of the agreement or the assignment or any contract in respect of the Petroleum Operations between Contractor and any subcontractor.*

The royalty and statutory payments provided for in articles 10 and 12 of the Petroleum Agreement are accordingly exempted from any order of preservation herein made by the Court.

In this case, granted even that Plaintiff were able to prove its case against the Defendants, the Plaintiff will only be entitled to half of any funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by Defendants from the Sankofa Field. Though the maxim, equality is equity is an applicable standard applied by the Courts, this court will order that 30% of all funds, revenue and monies earned or to be paid to and/or accruing from the exploration and production of petroleum by the Defendants from the Sankofa Field shall be preserved and in the interest of the parties be deposited into an interest-bearing account with a bank to be agreed between the parties.

The order that 30% of all funds, revenue and monies earned, paid to and/or accruing from the exploration and production of petroleum by the Defendants from the Sankofa Field be preserved, takes into account the fact that the documentation before the court so far reveals that the Plaintiff is to be entitled to 54.545%. This is stated in Exhibit '**J**' attached to the supplementary affidavit in support of the application. At the end of the trial, it may well be that this ratio is presumptuous. However, this being an interlocutory application which seeks to balance the equities of the parties pending the final determination of the

substantive issues between them, the preservation of 30% of the revenue as hereinbefore ordered is in the view of this court fair and just. As the Plaintiff is not required at this stage to prove that the action will by all means succeed, this order will ensure that the Defendants and particularly, the 1st Defendant as operator of the field shall continue to have access to funds for its operational costs to meet its recurring business expenditure, such as servicing the fees of the subcontractors and payment of other service providers. In this regard, the business operations of the Defendants will be secured to avoid any likelihood of a shutdown of their operations. In the event that the Plaintiff's action fails upon the final determination of this suit, the funds preserved together with the accrued interest shall be released to the Defendants. For the avoidance of doubt, this order for preservation as aforesaid shall take effect from today, the 25th day of June 2021. Subject to the above orders, the application is granted on the terms as hereinbefore ordered.

(SGD.)

MARIAMA SAMMO (MS.)

JUSTICE OF THE HIGH COURT

Counsel

Sean Poku Esq. holding brief of Thaddeus Sory Esq. for Plaintiff/Applicant - Present

Kimathi Kuenyehia Esq. with Kwesi Danso Amoah Esq., James Afedo Esq., Moses Acheampong Esq. and Philip Nyarko Esq. for 1st Defendant/Respondent – Present

Ace Ankomah Esq. with Daad Akwesi and Esi Quargraine for 2nd Defendant/Respondent- Present

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.....REGISTRAR

HIGH COURT

COMMERCIAL DIVISION, LCC-ACCRA