

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO. ANUHCV2025/0200

BETWEEN:

- 1. SINOVAC BIOTECH LTD. (a company registered in Antigua and Barbuda)**
- 2. ORBIMED PARTNERS MASTER FUND LIMITED (a company registered in Bermuda)**
- 3. 1GLOBE CAPITAL, LLC (a company registered in Delaware, United States of America)**

Applicants/Claimants

and

- 1. VIVO CAPITAL LLC (a company registered in California, United States of America)**
- 2. VIVO CAPITAL FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 3. VIVO CAPITAL SURPLUS FUND VIII, L.P. (a limited partnership registered in Delaware, United States of America)**
- 4. VIVO CAPITAL FUND IX, L.P. (a limited partnership registered in Delaware, United States of America)**
- 5. PRIME SUCCESS, L.P. (a limited partnership registered in Cayman Islands)**
- 6. CEDE & CO (a limited partnership registered in New York, United States of America)**

Respondents/Defendants

Appearances:

Mr. Craig Jacas for Complainant/ Respondent
Dr. Dorsett for 2nd- 4th Respondent Applicants
Ms. Cheryl Lee Bolton for 5th Respondent

2025: July 8th

RULING ON STAY OF EXECUTION

- [1] **BAKRE, J.:** This Ruling is in respect of an application for stay of execution of the Ruling of this court delivered on the 7th day of July 2025, wherein an order of Interim Injunction was against the Respondents/Applicants.
- [2] Upon the delivery of the ruling of this court granting an order of injunction to restrain the Respondents from voting the alleged wrongfully allotted shares at the meeting of 8th July 2025 amongst several other things, counsel for the 2nd to the 4th respondent announced that he would want to move an application to stay the order pending an appeal to the court of appeal.
- [3] The honorable court reminded counsel that such an application could only be moved where there is an appeal filed and subsequently told the counsel to do the needful. The court thus stood the matter down for counsel to file his papers.
- [4] Upon the recall of the case, counsel for the 2nd to 4th Respondent/Applicants told the court that processes had been filed and he would want to move the application.

- [5] On the other hand, counsel to the Claimant/ Respondent requested for twenty four hours to respond to the processes filed.
- [6] At the hearing of the application the next day, Counsel to the applicant relied on the provisions of the Rule at Order 26. Rule1 sub rule 2 (q) and (y) to submit that the court has general powers to manage its proceedings.
- [7] Counsel also relied on various authorities like NB vs. Harigen LBC (2012) FLR 125, C- Mobile vs. Huawei Technologies a decision of the Eastern Caribbean Supreme Court of appeal.
- [8] Counsel stated the principle upon which the court will consider a stay in this regard. Counsel stated that there are five issues to be considered. These are the circumstances of the case, the recognition that a stay is an exception rather than the norm, the recognition that the appeal may become nugatory if not granted, the application of a balance of harm test to determine the effect on the judgment creditor and the prospect of success of the appeal.
- [9] These positions were stated both in the C-mobile case and the other cases and I shall consider them.
- [10] I have read all these cases. I have looked at the circumstances of the case while I was considering the issue of whether to grant an interim injunction.

- [11] I consider that the grant of a stay in this instance would be warranted in the face of an exceptional circumstance. I expected the applicant for stay to present what makes this an exceptional circumstance and all that he stated was that the meeting would hold in a few hours and that the appeal would be rendered nugatory if a stay is not granted.
- [12] It is my view that this position binds both parties. If a stay is granted, the beneficiary of the order of interim injunction would also forever lose the benefit of the interim injunction which the meeting would present and the whole essence of the order will be defeated. I thus do not consider that the urgency which led to the grant of the injunction in the first place, should be the exceptional circumstance required for the grant of the stay.
- [13] Also this court considers the balance of harm test. I stated in the ruling granting the interim injunction that the balance of convenience is in favour of the claimants/ applicant. I do not see any reason to hold otherwise. It is clear and I state again that if the other of interim injunction was not stayed, a situation of complete helplessness would be foisted on the company. This position is clear from the facts presented by all the parties in the action. A simple understanding of the issues at stake shows this.
- [14] It is clear that there is a very desperate bid by the applicant in this application to wrestle the control of the company without allowing the issue of the validity of the shares to be determined. This court should not allow itself to be used to frustrate the essential substance of this entire case.

[15] I have looked at the notice of appeal, the appellant seem to be attacking the jurisdiction of the court. It is my view that the ruling and order against which an appeal was lodged was not on an issue of jurisdiction and thus that issue could not have emanated from the ruling appealed against.

[16] This notwithstanding, I believe sincerely that a grant of this application for stay will be a mockery of all that has been done in this case and foist a situation of complete helplessness on the entire case.

[17] The conditions for the grant of stay of judgment set in the cases cited by the application in this application were thus not met.

[18] It is in this view that the application for stay is refused. The order of interim injunction delivered on the 7th of July 2025 still stands.

That is the order of this court.

Tunde A. Bakre
High Court Judge



By The Court

Registrar