

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**ON WEDNESDAY THE 4<sup>TH</sup> DAY OF FEBRUARY, 2020.**

**BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI**

**SUIT NO. CV/882/2020**

**MOTION NO: M/4489/2020**

**SUN MICRO SYSTEM LIMITED ----- CLAIMANT/ APPLICANT**

**AND**

**1. HUGO CARRION**

**2. ENGR. CARLOS ORIAKHI-----DEFENDANTS/RESPONDENTS**

**3. TERRATEST FOUNDATION NIGERIA LTD**

### **RULING**

By a motion ex parte filed 22/01/2020 and predicated on Section 15 (3) and 30 of the High Court of the Federal Capital Territory, Abuja, Act; Order 42 Rules (1), (4) and (8) of the FCT High Court (Civil Procedure Rules) 2018 and under the inherent jurisdiction of the Honourable Court, the Claimant/Applicant seek for the following reliefs:-

1. An interim order of Mareva injunction restraining the Defendants, whether by themselves, their agents and/or privies however described from removing, selling, disposing of, wasting, dissipating or moving its under-listed assets, equipment and property under any guise whatsoever out of Plot 252 Katampe Extension District, Cadastral Zone B19, Abuja, or taking outside the jurisdiction of this

Honourable Court any proceed or income derived from the sale or disposal of any or all of the assets, equipment and property of belonging to the Defendant, as listed in attached schedule, pending the hearing and determination of the motion on notice already filed.

2. An order authorizing and directing the Deputy Sheriff or Bailiff of this Honourable Court to enter into the parcel of land known Plot 252 Katampe Extension District, Cadastral Zone B19, Abuja and take over, detain and preserve the assets, equipment and property therein pending the hearing and determination of the Motion on Notice.
3. An order authorizing and directing the Deputy Sheriff or Bailiff of this Honourable Court to enter into the parcel of land known as Plot 252 Katampe Extension District, Cadastral Zone B19, Abuja and inspect the land and take inventory of all the assets, equipment, property and physical developments therein.
4. And such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

The application is supported by a 35 paragraph affidavit deposed to by Alphonsus Oshiole, annexed is 5 Exhibits and a Written Address.

At the hearing of the application on 29/01/2020, counsel adopted their Written Address as their oral submissions for the applications.

It is the argument of learned counsel for the Claimant/Applicant that Defendants/Respondents who are foreigners are their tenant Plot 252 Katampe Extension District, Cadastral Zone B19, Abuja and is in arrears of rent for over five (5) years. That they are going out of business and

folding their operations in Nigeria. That the Defendants/Respondents are about to sell off their physical assets and convert same to cash. That unless the orders sought are granted, the Defendants/Respondents will sell off the assets and take the proceeds outside the jurisdiction of this Honourable Court hence this application seeking the intervention of this Honourable Court so that the assets of the Defendants/Respondents will be inventoried and preserved pending the hearing and determination of this suit.

The doctrine of Mareva Injunction operates to stop a Defendant against who Plaintiff has a good arguable claim from disposing of or dissipating his assets pending the determination of the case or pending payment to the Plaintiff. The injunction can be granted against anybody who is in possession of the Defendant's assets.

Above was quoted by Edozie, JSC in the case of *A.I.C LTD VS N.N.P.C (2005) 5 S.C (Pt. 11) 60*.

It is indeed manifest that Mareva Injunction applies in principle to a creditor who has a right to be paid the debt owing to him, even before he has established his right as getting judgment for it, if it appears that the debt is due and owing, and therefore there is a danger that the debtor may dispose of his assets so as to defeat it before judgment. Under such a circumstance, the court has the jurisdictional competence to grant such an application.

In the case of **COMPACT MANIFOLD & ENERGY SERVICES LTD V. WEST AFRICA SUPPLY VESSELS SERVICES LTD (2017) LPELR-**

43537(CA) on the Principles governing the grant of a mareva injunction the Court of Appeal held;

"In an application for mareva injunction, the Applicant has the burden to establish by relevant and cogent facts in the supporting affidavit all of the following, to wit: a. He has an action against the Defendant within jurisdiction. b. He has a good arguable case. c. The Defendant has assets within jurisdiction and must give the particulars of such assets. d. There is a real and imminent danger that the Defendant will remove the assets from jurisdiction and thereby render nugatory any judgment which the Plaintiff may obtain. e. He must give a full and frank disclosure of all material facts relevant to the application. f. He must show that the balance of convenience is on his side. g. He must be prepared to give an undertaking as damages..."

Also in **AKINGBOLA V. THE CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION (2012) LPELR-8404(CA** it was stated that;

"... It is indeed a well settled principle, that in all mareva injunction applications, the factors that ought to be borne in mind are that - (i) The application should be made ex parte. This is absolutely so, because secrecy from the defendant is most fundamental; and (ii) The application should be made expeditiously (with dispatch)..."

I have considered the affidavit in support of application ex-parte filed by learned counsel for the Claimant/Applicant seeking an Order of Mareva Injunction against the Defendant.

In doing so, I have reviewed Exhibits “AA”, “AB”, “AC”, “AD” and “AE”, respectively. **Exhibit “AA”** is offer of terms of grant/conveyance of approval of Plot No. 252, Katampe District Abuja to Sun Micro System Ltd, **Exhibit “AB”** is a Judgment of the FCT High Court between the Plaintiff/Applicant, the Minister of FCT and The Federal Capital Development Authority, **Exhibit “AC”** is a letter from Hakeem Kareem & co (Legal Practitioners) representing the Plaintiff/Applicant addressed to the Managing Director of the 3<sup>rd</sup> Defendant/Respondent dated 19/10/16, **Exhibit “AD”** is a letter from Hakeem Kareem & Co (Legal Practitioners) representing the Plaintiff/Applicant addressed to the Managing Director of the 3<sup>rd</sup> Defendant/Respondent title “Notice of Increase in rent” and **Exhibit “AE”** pictures of a fence with inscription on the wall (Plot 252) and other pictures of drilling machine and other equipments.

The Claimant/Applicant deposed in paragraph 30 of their affidavit in support of this motion for interim mareva injunction and I reproduce as follow;

“30.The Claimant/Applicant undertakes to indemnify the Defendants/Respondents and make good any loss, injury or damage they may suffer or incur upon the grant of the preservative orders sought, should it eventually turn out that the orders ought not to have been granted by this Honourable Court”.

In the light of the above Relief 1 is hereby granted as prayed, reliefs 2 and 3 are in tandem with reliefs 2 & 3 on the motion on notice and same will be addressed in the course of hearing the motion on notice.

I hereby order as follows:-

I hereby grant an Order of Mareva injunction restraining the Defendants whether by themselves their agents and/or privies however described from removing, selling, disposing of, wasting, dissipating or moving its under-listed assets, equipment and property under any guise whatsoever out of Plot 252 Katampe Extension District, Cadastral Zone B19, Abuja, or taking outside the jurisdiction of this Honourable Court any proceed or income derived from the sale or disposal of any or all of the assets, equipment and property belonging to the Defendant, listed hereunder pending the hearing and determination of the motion on notice already filed;

1. Foundation Equipment
2. Erosion Equipment
3. Drilling Equipment
4. Dumpers
5. Steel pipes
6. Containers
7. Tractors and
8. Mobile workshop

**Parties:** Absent

**Appearances:** Ifunanya Oranuba appearing with M. U. Okeke for the Applicant.

**HON. JUSTICE M. OSHO-ADEBIYI**  
**JUDGE**

**4<sup>TH</sup> FEBRUARY, 2020**