

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

SUIT NO: FCT/HC/CV/2872/2018

BETWEEN:

- 1. 99 SERVICE SOLUTION LTD**
- 2. SABASH INTEGRATED SERVICE LTD.....CLAIMANTS/APPLICANTS**

VS

LAMBSTAR LIMITED.....DEFENDANT /RESPONDENT

RULING

By a Motion on Notice dated 18/10/2021, with No. M/6919/2021, brought pursuant to Order 42 Rule 4(i); 43 Rule 1 of FCT High Court (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Hon. Court, the Applicant herein prays for the following reliefs;

1. An Order of this Honourable Court attaching the property known and situate at No.198 Babs Animashaun Street, Surulere, Lagos State covered with Certificate of Occupancy No. 100/100/1983k dated 27th September, 1983 to this Suit, being the security to the loan obtained by the Defendant from the Claimant, pending the determination of the case before this Honourable Court.
2. Any other order or further orders as this Honourable Court may deem fit to make in the circumstances of this case.

The grounds upon which the application is predicated are as follows;

- (c) In the business Agreement, the alter ego of the Defendant used his property located at No. 198 Babs Animashaun Street, Surulere, Lagos with Certificate of Occupancy No. 100/100/1983 as security to the 1st Claimant to hold within the period of the Agreement upon the condition that:

“That the CEO of the 2nd party (Otunba Ade Adelakun) shall hand over his title documents over his property located at No. 198 BABS ANIMASHAUN STREET, SURULERE, Lagos but otherwise known as Plot 198 REIDENTILA (SIC) SCHEME, SURULERE LOCAL GOVERNMENT AREA lying on area approximately 459.769 Square meters edged red and particularly delineated on Plan No. LEDB/982/SD/2A attached to the Certificate of Occupancy No. 100/100/1083 dated 27th September, 1983 as collateral, which the 1st party shall hold within the period of this Agreement and be released upon receipt of both its principal and profit to be realized at the completion of the contract mentioned above.

Provided that in the event that the 2nd Party refused and or neglected to remit both the principal and the profit as provided below, the 1st party reserved the right to proceed and sell the property to recover its funds without recourse to the 2nd party”

- d) The alter ego of the Defendant is now deceased. Properties in his

name including the property used as security for the loan is not likely to fall under the control of the Administrators of his estate.

- e) The Administrators of the Estate could dissipate the property and leave the Plaintiff with pyrrhic victory in the event judgment is entered in the Plaintiff's favour.
- f) Making an order attaching the property pending the hearing and determination of the dispute will meet the justice of the case.

- (a) The Defendant (represented by its alter ego, the Late Otunba Ade Adelokun) approached the 1st Claimant to partner with it to finance a contract that was awarded to the Defendant by the Nigerian Communications Commission.

- (b) After series of deliberations, the 1st Claimant agreed to partner and finance the project in accordance with the dictate of the business Agreement duly entered between the 1st Claimant and the Defendant together with the Addendum.

In support of the application is a 12 Paragraph affidavit and Exhibit NADYAM 1annexed; also filed is a Written Address, which Counsel adopts, in urging the court to grant in the interest of justice.

Responding, the Defendant/Respondent, filed a 4 Paragraph Counter-affidavit on 25/10/2021, sworn to by Azubike Okereke. Also filed is a Written Address, adopts same as their submission with leave of court, submits that the said Exhibit referred was not attached to the processes of the Applicant, and further that the property sought to be attached, is not

subject and does not belong to any of the parties. To grant the application would amount to giving Judgment before the substantive suit. In all pray the court to refuse this application as being premature and grant accelerated hearing.

In the Written Address of the Applicant, settled by Abdul Mohammed (SAN), only one (1) sole issue was formulated for determination;

“Whether the Applicant is entitled to the interventions of the court by the grant of Mareva Injunction”

In the Written Address of the Defendant/Respondent, settled by Friday Iburu Esq. formulated only one (1) sole issue was formulated, for determination;

“Whether the Applicant have complied with the Rules and the Principles of Mareva Injunction to warrant the Honourable Court grant the application for attachment of property”

I have carefully considered this instant application, the submission of both Counsel, and the judicial authorities cited; and the court finds that only one (1) issue calls for determination;

“Whether or not the Applicant has made out a case for the grant of Mareva Injunction sought on this instant”

The grant or otherwise of this application is an exercise of the court’s discretion which exercise should be done judicially and judiciously, taking cognizance of the facts before it. See case of Anachebe Vs Ijeoma (2015) ALL FWLR PT 784, 183.

In this instant, the Applicant's Counsel content and replying on Order 42 Rule 4(1) and judicial authorities, submits that this court has the power to preserve property pending the delivery of the judgment of the court. Referred to the English case of *Mareva Compagnia Naviera Vs International Bulk Carriers S.A* (1975) Lloyd's Report 509; and following the C.A in the case of *ACB Ltd & Or Vs Awogboro & Or* (1990) LPELR – 15155 (CA); and *Sotuminu Vs Ocean Steamship (Nig) Ltd* (1992) 5 NWLR (PT. 239) Pg. 1 @ 25. Further submits in line with the principle of preservation of property, in this instant the property, subject of this application, is the property used as collateral in the contract in the suit before this court, and should be protected so that nothing happens to it whilst the case is pending. In all urge the court to grant having satisfied the conditions for the grant of the relief sought.

It is the contention of the Defendant/Respondent this court cannot grant the reliefs over a property that does not belong to any of the parties. Submits that by the Rules relied, it is not absolute, that a clear reading of the said Rules, will show that as a condition, it must be shown that the property sought to be attached is part of the subject matter and one of the parties must be in possession; further that in this instant, the owner of the property is not a party to the Suit, neither has it been shown that the property is in possession of the Defendant. In all urged the court to refuse this application, to do otherwise, would amount to making a pronouncement at this Interlocutory stage at the expense of the substitutive Suit. Commended the court to the following judicial authorities; *Anton Piller K.G Vs Manufacturing Processes Ltd* (1976) 1 All E.R 779;

Aboseldehyle Laborites Plc Vs Union Merchant Bank Ltd (2013) 54 (PT. 1) NSCOR – 112 @ P. 148.

This court has stated the conditions and purpose of the grant of the reliefs sought. This application is hinged on Order 42 Rule 4 (1) of the Rules of court, and on a clear reading of the said Provisions, firstly, the exercise of the grant is discretionary of the court, secondly, the order sought for preservation is the subject of the action and thirdly, the property must be in possession of any party to such action. To consider whether the said property is subject of the action and in possession of any of the parties, recourse must be made to the processes before the court, which the court is empowered to do. See Agbareh Vs Mimrah (2008) ALL FWLR PT 409, 559

A clear perusal of the Writ of Summons, Statement of Claim and the Business Agreement including this Addendum, it is clear that the property cannot be traced to the Defendant in this Suit, neither is it on record that the owner of the property, now deceased, was made a party to the Suit, through subject of the Business Agreement.

Ques; Can this court grant an Order of Mareva Injunction against a property not owned by any of the parties, rather the alter ego who was not made a party to the Suit. I think not.

What is more the Claimant in nowhere is their Statement of Claim stated that the said property is in possession of the Defendant.

Having so found, it is the firm view of this court that rather than granting this application, the appropriate order is to grant, accelerated hearing of this Suit. I so order

HON. JUSTICE O. C. AGBAZA

Presiding Judge

2/3/2022

APPEARANCE:

ABDULHAMEED MOHAMMED (SAN) WITH UMAR FAROUK YAKUBU; NURA ABDULRAHMAN; A.A. UMAR AND ABDULGANIYU. K. LAWAL FOR CLAIMANT/APPLICANT.

FRIDAY IBURU FOR THE DEFENDANT/RESPONDENT