

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI, ABUJA - FCT

CLERK: CHARITY ONUZULIKE
COURT NO. 10

SUIT NO: FCT/HC/GAR/CV/28/2022
DATE: 15/2/2023

BETWEEN:

SOLOMON AGBATAEKWE-RICHMOND, ESQ..... CLAIMANT/
APPLICANT

AND:

1. MT. AUTOS LIMITED
2. MR. MUSTAPHA TIJANI
3. COSGROVE INVESTMENT LIMITED
4. PERSON UNKNOWN

} DEFENDANTS/RESPONDENTS

RULING

(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)

This application vide Motion on Notice number **M/2837/2022** brought pursuant to **Section 36(1)** of the Constitution of the Federal Republic of Nigeria 1999 (as amended), **Order 43 Rule 1 of the FCT High Court (Civil Procedure) Rules 2018** and under the inherent jurisdiction of this Honourable Court seeks for a lone relief to wit;

“An Order of the Honourable Court setting aside/vacating the Mareva Order of Injunction made in Motion No: M/51/2022 on 6th December, 2022 with respect to the property described as 1 (one) unit of 5 (five) Bedroom fully detached Duplex lying and situate at No. 1 Madhur Tripathi Close, CDM 508, Cosgrove Smart Estate, Mabushi District, Abuja, Federal Capital Territory, same Order having been obtained surreptitiously and/or by suppressing from the Court,

relevant facts within the knowledge of the Claimant/Respondent.”

The application is dated and filed on the 19th December, 2022. The grounds upon which this Motion predicated are 7 in number. They are as follows:

- (1) That the Claimant/Respondent obtained the Order for Mareva Injunction by suppressing relevant facts from the Court.
- (2) That the Claimant/Respondent obtained the said Order of Mareva Injunction by suppressing relevant facts from the Court.
- (3) That the transaction between the Claimant/Respondent and the Defendants/Applicants is a contract of sale which damages is sufficient as compensation in the event the claim of the Claimant/Respondent succeeds.
- (4) The offer of the sales of the property in dispute has long been repudiated by virtue of the refusal of the Claimant/Respondent to fulfil his own part of the contract of sales.
- (5) The balance of convenience is against the Claimant/Respondent as the Claimant/Respondent simply intends to deny the Defendants/Applicants peaceful enjoyment of their property by obtaining Order of Mareva Injunction.
- (6) That due to the nature of the prayer sought and granted, Motion *Ex-parte* is improper to have sought for the grant of this particular Order for Mareva Injunction pending the hearing and determination of the suit.

- (7) That is the interest of justice and fair hearing, the Claimant ought to have sought for the Orders through a Motion on Notice or predicate his Motion *Ex-parte* on a Motion on Notice.

In support is 8 paragraphed affidavit deposed to by one Mohammed Bala Yushau, a Litigation Secretary in the law firm of M. I. Dikko & Associates, Counsel to the 1st and 2nd Defendants/Applicants.

Moving the application in Court summarily, the learned Silk, Mr. M. I. Dikko SAN placed reliance on the deposition of the 8 paragraphs affidavit, the exhibits attached that is Exhibits MT1 – MT4 and as well adopted his written address as his oral argument in urging the Court to grant his application and set aside the Mareva Injunction.

He submitted that they were served with a counter-affidavit to which they too have responded to by filing a further and better affidavit and a written address.

On the part of the Claimant/Respondent, Mr. G. N. Eneye who represented the respondent said they have filed a 6-paragraphs of counter-affidavit dated and filed on the 30th January, 2023. He relied on the content of the counter-affidavit, adopted the written address as his oral argument in urging the Court to refuse the application.

The applicant's learned Counsel in his written address submitted one issue for determination to wit:

“Whether in the circumstance of this case, the 1st and 2nd defendants Applicants have made out a case for the setting aside the Order Ex-parte made on the 6th day of December, 2022.”

On the other hands, the Claimant/Respondent equally formulated a sole question for determination which says:

“Whether this Honourable Court ought to be moved to dismiss the Defendant Applicant’s application under the circumstances.”

It is the argument of the learned Silk, that the Courts have the inherent jurisdiction to set aside its Orders or decisions under certain circumstances. Relying on the case of **OWAH & ANOR VS. ACCESS BANK PLC & ANOR (2013) LPELR – 23519 (CA)** where it was held as follows:

“Courts of record have the inherent jurisdiction to set aside their Orders or decisions under certain appropriate circumstances which include:

- (1) When the decision or order is obtained by fraud or deceit either in the Court or one or more of the parties.***
- (2) When the decision or order is a nullity***
- (3) When it is obvious that the Court was misled into making the decision or granting the order under a mistaken belief that the parties consented to it.***
- (4) Where the decision or Order was given in absence of jurisdiction or***
- (5) Where the procedure adopted was such as to deprive the decision of the character of a legitimate adjudication.***
- (6) Where there is fundamental irregularity. See AGBOMAGBO & ANOR VS. OKPOGO & ORS. (2005) LPELR – 11409 (CA).***

He also submitted that it is trite law that where an Applicant conceals from the knowledge of the Court, facts which if brought to the knowledge of the Court, an application would ordinarily not be granted. Orders obtained from such conduct are so obtained surreptitiously and upon discovery of same, can be set aside by

application. He called in and the case of **SKYE BANK VS. GTB (2020) LPELR – 50529 (CA)**.

Another contention he canvassed is that has the Claimant/Respondent brought the Application through a right mode? He answered in the negative. And argued that the Claimant/Respondent was wrong to have sought for the Orders through Motion *Exparte* without affording the defendants right to fair hearing and without predicating the said Motion *Ex-parte* on a Motion on Notice. He said *exparte* Order is only granted for a short period of time maximum of seven days and should be filed with a Motion on Notice. He referred to **Order 43 Rule 3(1) of the FCT High Court Civil Procedure Rules 2018**.

On the part of learned Counsel to the Claimant/Respondent, he first attacked some paragraphs of the supporting affidavit by submitting that paragraphs 4(b), (c), (d), (k), 5 (a), (b), 6 and 7 offend the provision of Section 115 (2) of the Evidence Act and as such they should be expunged for being legal argument and conclusions.

Secondly, he submitted that the Court is empowered with the requisite jurisdiction to grant the Mareva Orders of Injunction as sought and granted. He referred to Section 6(6) (a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He equally submitted that the nature of a Mareva Order is one of an Interlocutory Order of Injunction brought and obtained through an *Ex-parte* Application. It is even an Interim Judgment and is *sui genens*. He relied on the cases of **I. F. C. VS. DSNL OFFSHORE LTD (2008) 7 NWLR (PT. 1087) 592; AMERICA SPECIFICATIONS AUTOS LTD VS. AMCON (2017) LPELR-44016; AKINGBOLA VS. CHAIRMAN EFCC (2012) 9 NWLR (PT. 1306) 419; EFE FINANCE HOLDINGS LTD VS. OSAGIE, OKEKE, OTEGBOLA & CO. (2000) 5 NWLR (PT. 658) 536 and Order 42 (4) (1) of High Court of the Federal Capital Territory Abuja (2018)**.

I have considered the arguments, contentions and submissions of both learned Counsel for and against the grant of this application praying the Court to set aside the Mareva Order of Injunction granted or made on the 6th day of December, 2022.

In the submissions of the learned Counsel in their written addresses, I can decipher three points as being the cardinal points to be resolved to know whether or not this application will succeed or is bound to fail. They are:

- (1) Suppression of facts
- (2) Mode of Application and lastly
- (3) Lifespan of this Mareva Injunction

Assuming without conceding that those paragraphs of supporting affidavit are statement of facts and did not violate Section 115 (2) of the Evidence Act and with due to respect the learned SAN, I have gone through the supporting affidavit severally and I have not seen a paragraph that states categorically the supposed and alleged suppressed facts.

The most important paragraph of the supporting affidavit is paragraph 4 of the affidavit.

For instance, paragraphs 4(d), 4(e), 4(g), 4(h), 4(i) and 4 (j), depositions in all these paragraphs are made known to the Court vide supporting affidavit to the *Ex-parte* application that was granted by the Court.

By way of analysis, paragraph 4(d) of the instant application corresponds with paragraphs 23 and 32 of the supporting affidavit to the *Ex-parte* application. As for 4(e) is to 5, 4(g) is to 25, 4(h) is to 32, 4(i) is to 32 and 4(j) is to 22 and 34.

For avoidance of doubt, it would not be out of place to quote paragraph 4(d) of the instant Motion and the corresponding paragraph in the supporting affidavit to the *Ex-parte* Application.

Paragraph 4(d) says:

“That the transaction between the Claimant/Respondent and the Defendants/Applicants is a contract of sale of the property described as 1 (one) unit of 5 (five) Bedroom fully detached Duplex lying and situate at No. 1 Madhur Tripathi Close, CDM 508, Cosgrove Smart Estate, Mabushi District, Abuja, Federal Capital Territory which damages is sufficient as compensation in the event the claim of the Claimant/Respondent succeeds. The offer of the sales of the property in dispute has long been repudiated by virtue of the refusal of the Claimant/Respondent to fulfil his own part of the contract of sales”

Paragraph 23 says:

“That following further negotiations between the Claimant/Applicant and the Defendant Respondents, on 7th October, 2022, the 1st Defendant/Respondent made renewed offer for the sale of the said 5 Bedroom fully detached Duplex, known and described as and particularly described as No. 1 Madhur Tripathi Close, CDM 508, Cosgrove Smart Estate, Mabushi District, Abuja, Federal Capital Territory which damages is sufficient as compensation in the event the claim of the Claimant/Respondent succeeds. The offer of the sales of the property in dispute has long been repudiated by virtue of the refusal of the Claimant/Respondent to fulfil his own part of the contract of sales”.

Paragraph 23 says:

***“That following further negotiations between the Claimant/Applicant and the Defendant/Respondents, on 7th October, 2022, the 1st Defendant/Respondent made renewed offer for the sale of the said 5 Bedroom fully Detached Duplex, known and described as and particularly described as No. 1 Madhur Tripathi Close, CDM 508, Cosgrove Smart Estate, Mabushi, District, FCT – Abuja to the Claimant/Applicant at the rate of N250,000,000 (Two Hundred and Fifty Million Naira).*”**

Paragraph 32 says:

***“After receiving the letter referred to in paragraph 34 above, the 1st Defendant/Respondent accepted to extend the date for the full and complete payment of the total sum of N250,000,000.00 (Two Hundred and Fifty Million Naira) for the purchase of the property under reference and according wrote to the Claimant/Applicant on Tuesday 22nd November, 2022 and giving the Claimant/Applicant between that Tuesday 22nd Friday 25th November, 2022 before 4:00pm to make full payment failing which the contract may be deemed revoked and the Claimant Applicant’s deposit returned to him.”*”**

From above quoted paragraphs, it is obvious that those paragraphs are saying the same thing. No fact is suppressed as alleged by the applicant.

Secondly, the question here is, can this type of Application could be brought vide Motion *Exparte*?

The case of **AKINGBOLA VS. CHAIRMAN EFCC (Supra)** cited by the Claimant/Respondent has answered this question positively.

The Appellate Court in the above case held inter-alia thus;

“It is indeed a well settled principle, that in all Mareva Injunction applications the factors that ought to 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;***
- (ii) The application should be made expeditiously (with dispatch).***

Thirdly, whether this Mareva Injunction lingers on and effective pending the determination of the suit?

Again, the Court of Appeal in the case of **ASSET MANAGEMENT GROUP LTD VS. GENESIS CORP. LTD & 2 ORS. (2000) LPELR-12050 (CA)** held as follows:

“The purpose of a Mareva Injunction is to restrain a defendant against whom a suit is pending from removing or dissipating any of his assets within jurisdiction which may be utilized to satisfy any Judgment that may be pronounced against him. In essence, therefore a Mareva Injunction is anticipatory in nature. It seeks to ensure that any Judgment which the Court may give against a defendant (the anticipated Judgment debtor) can be satisfied from his assets.....”

From the above reasons, I have no slightest hesitation in dismissing this application for lacking in merit. I so hold.

SIGNED
S. B. Belgore
(Judge) 15/2/23