

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA-ABUJA
ON TUESDAY THE 28TH DAY OF NOVEMBER, 2023**

**SUIT NO: FCT/HC/CV/6315/2023
MOTION NO: M/10269/2023**

BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI

BETWEEN

GUARANTY TRUST BANK LIMITED.....CLAIMANT/APPLICANT

AND

**1. OAM FURNITURES LIMITED }
2. ALIYU MARTHA AINA }.....DEFENDANTS/RESPONDENTS**

AND

**1. ACCESS BANK PLC
2. ASO SAVINGS & LOANS PLC
3. CITIBANK NIGERIA LIMITED
4. ECOBANK OF NIGERIA PLC
5. FIDELITY BANK PLC
6. FIRST CITY MUNUMENT BANK PLC
7. FIRST BANK OF NIGERIA PLC
8. HERITAGE BANK PLC
9. KEYSTONE BANK PLC
10. POLARIS BANK PLC
11. STANBIC IBTC PLC
12. STERLING BANK PLC
13. STANDARD CHARTERED BANK PLC**.....GARNISHEES

- 14. SUNTRUST BANK NIGERIA LIMITED
- 15. UNITED BANK OF AFRICA PLC
- 16. UNION BANK PLC
- 17. UNITY BANK
- 18. WEMA BANK PLC
- 19. ZENITH BANK PLC
- 20. MONIEPOINT MICROFINANCE BANK
- 21. PAYCOM (OPAY)
- 22. PROVIDUS BANK LIMITED

.....GARNISHEES

R U L I N G

The applicant filed a motion ex parte with motion no: M/10269/2023 dated 31/05/2023 and filed 1/6/2023. The motion is brought pursuant to Order 35 Rule 1, Order 42 Rules 1, 2 and 3, Order 43 Rule 2 of the High Court of the Federal Capital Territory Civil Procedure Rules, 2018 and under the inherent Power of this Honourable Court. Orders sought are:

1. **An Order** of this Honourable Court granting leave for the issuance of a Writ of Summons for a claim for the recovery of a liquidated money demand under the undefended list.
2. **An Order of Mareva Injunction** preventing/retraining the 1st and 2nd Defendants/Respondents with Bank verification number-22179716456 or their agents, successors-in-title, assigns or legal representative from carrying out transactions, dealing with, dissipating, withdrawing from or disposing the funds of the 1st and 2nd

defendants/respondent domiciled with the 1st to 22nd respondent banks, pending the hearing and determination of the substantive suit.

3. And for such Order or Further Order this Honorable Court may deem fit to make in the circumstances.

The application is anchored on eight (8) grounds contained on the face of the motion paper with affidavit of 24 paragraphs deposed to by Bukola Adenusi of Guaranty Trust Bank, an employee to the Claimant and also the account officer to the 1st defendant, annexed with 13 exhibits marked exhibit GTB – GTB 13. In line with the rules of this court, the applicant also filed written address in support of their application. Issue formulated therein for the determination and properly argued upon is: **Whether having regards to the circumstances of this case, this honourable court ought not to grant the reliefs sought in this application.**

The learned counsel to the claimant/applicant Onifade Taiwo Esq canvassing the issue on behalf of the applicant placed reliance on order 35 Rule 1 of the High Court of the Federal Capital Territory, Civil Procedure Rules 2018 which state out the procedure for placing writ on the undefended list. The counsel set out two pre – condition for the grant of this application thus:

1. It must be for a claim to recover a debt or liquidated money demand.

2. The affidavit must show the grounds of the claims and that the applicant believes that the defendant has no defence to the claims.

He supported his submission with judicial authorities wherein the court listed the procedural steps for placing and hearing suit on the undefended list as follows:

- a. The Claimant/Applicant files an application for the issuance of a writ of Summons for a claim for liquidated money demand. The Claimant/Applicant's application must be accompanied by an affidavit setting forth the grounds on which the claim is predicated and stating that in the belief of the claimant/applicant or deponent to the affidavit, the defendant has no defence to the claimant/applicant's claim.
- b. The Court to whom the Applicant's application is made considers it *ex parte* without hearing argument, to determine whether to hear the suit under the undefended list or to transfer it to the general cause list to be dealt with accordingly.
- c. If the Court is satisfied that there was good grounds for believing that there is actually no defence to the Claimant/Applicant's claim, the court enters the suit for hearing in the undefended list. The writ of summons is marked as such and a date for hearing is stated on it. Thereafter all of the Court processes are served on the

defendant who if he desires to defend the suit must deliver to the Registrar a written notice of his intention to defend the suit together with an affidavit disclosing a defense on the merit. Cited **Bona V. Textile vs. A.T.M PLC (2013)2 NWLR (PT1338) 357.**

It is submitted that the content of the affidavit of the applicant shows the claim to be liquidated money demand of N12, 668, 474.68(Twelve Million, Six Hundred and Sixty-Eight Thousand, Four Hundred and Seventy-Four Naira, Sixty-Eight kobo) owed to the Claimant/Applicant by the defendants; and that the Claimant believes that the defendants have no defence to this action. Finally, it is the submission of the applicant in this regard that he has complied with the requirements of the law as shown in the affidavit and the exhibits attached thereto to be entitled to the first relief.

Order 35 of the rules of this Honourable Court which the application is premised upon state thus:

“(1): Where an application in Form 1 as in the Appendix is made to issue a writ of summons in respect of a claim to recover a debt or liquidate money demand, supported by an affidavit stating the grounds on which the claim is based and stating in the deponent’s belief that there is no defence to it, the Judge in chambers shall enter the suit for hearing in what shall be called the “**Undefended List**”.

(2): A writ of summons for a suit in the undefended List shall contain the return date of the writ.

The facts of the case as shown from the affidavit in support is that the 2nd defendant acting for and on behalf of the 1st defendant requested for a loan facility for which the sum of N10, 000, 000.00 (Ten Million Naira) was approved by the claimant and paid into the 1st defendant's account with the claimant on the 19th of April, 2021, with the understanding that the defendants will liquidate the entire loan and interest within six (6) months. However, that the defendants defaulted in furnishing the loan facility from the 19th of May, 2021 and has consistently continued to remain in default and that the loan and the interest thereto currently stands at the sum of N12, 668,474.68 (Twelve Million, Six Hundred and Sixty-Eight Thousand, Four Hundred and Seventy-Four Naira, Sixty-Eight kobo). In considering whether the writ should be place under the undefended list in line with Order 35 of the rules of this court reproduced above, I am guided by two factors: (a) the writ must be a claim to recover a debt or liquidated money demand. (b) The defendant has no defence to the claim. In order to ascertain whether the writ is one that can be place under the undefended list, I have to closely examined the claims of the claimant, affidavit in support of this application and the various exhibits

Having considered the entire averment particularly, paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 34, 35, 36, 37 vis-à-vis exhibit GTB5 (letter of demand), GTB7, GTB10, GTB11 etc. and the averment in paragraph

38 that the defendants have no defence to this suit; I am satisfied and have come to the conclusion that the suit of the claimant against the defendant is for recovery of debt and is a liquidated money demand. I therefore based on the above facts considered this suit as one suitable to be brought under order 35 of the rules of this court. I therefore hold that the claimant/applicant is entitled to relief 1 (one).

For an order of Mareva Injunction, the claimant/applicant relied on order 42 rules 1, 2 and 3 of the High Court of the Federal Capital Territory Civil Procedure rules and submitted that this court has the power to grant the relief. He further refer the court to paragraphs 18 – 22 of their affidavit in support and cited the case of **A. I. C Ltd v. NNPC (2005)LPELR-6(SC)**, wherein the court per D. O. Edozie JSC, held in page 33-34 paras. F-B thus:

“The doctrine of Mareva Injunction operates to stop a defendant against whom a plaintiff has a good arguable claim from disposing or dissipating his assets pending the determination of the case or pending payment to the plaintiff. The injunction can also be granted against anybody who is in possession of the defendant's assets. In support of this proposition, I am refer to the case of **Sotuminu v. Ocean Steamship (1992)5 SCNJ 17 – 22, (1992)5 NWLR (PT.239)1** where this court held per **NNaemeka-Agu, JSC** that the High Court of Lagos State has the jurisdiction and power to entertain and in appropriate cases grant a Maveva injunction as was developed by the High Court of Justice in England in 1975.”

In other words, Mareva injunction is a remedy against the particular evil of the defendant who causes his assets to be removed from jurisdiction or disposes of same before judgment. It is granted to provide some form of security to the plaintiff whenever it is just and convenient to do so. The claimant /applicant listed out some paragraphs of affidavits he wants to court to critically consider:

Para 18: That the said indebtedness is due and outstanding.

Para 19: That the defendants have no interest to repay the loan facility and accruing interest and have subscribed to using other financial institutions to continue business at the detriment of the claimant.

Para 20: That there is a real risk that the defendants will remove and dispose of their funds domiciled with the 1st to 20th Respondent banks so as to make them unavailable or untraceable in the event of judgment in the claim being obtained against them.

Para 21: That the balance of convenience is on the side of the Claimant.

Para 22: That the claimant undertakes as to damages.

Upon considering the entire averment of **Bukola Adenusi** vis-à-vis order 42 rules 1(1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 and the argument advanced by the learned counsel in his written address and knowing the stance of law that an order for mareva injunction is not meant to determine the

rights of parties but a decision temporary in nature for the preservation of the properties and to prevent dissipation or further dissipation and/or dealing with the properties which could render the judgment of a court nugatory. See **Kotoye V. CBN & Ors (1989)1 NWLR (PT.98) 419 at 442**. I therefore found merit in this application, and is hereby granted.

Flowing from the aforesaid I make the following orders:

1. Leave is granted for the issuance of a Writ of Summons for a claim for the recovery of a liquidated money demand under the undefended list.
2. An order of Mareva Injunction is hereby made preventing/restraining the 1st and 2nd defendants/respondents with bank verification number **22179716456** or their agents, successors-in-title, assigns or legal representative from carrying out transactions, dealing with, dissipating withdrawing from or disposing the funds of the 1st and 2nd Defendants/Respondents domiciled with the 1st to 22nd Respondent banks, pending the hearing and determination of the substantive suit.

.....
HON. JUSTICE A.I. AKOBI
28/11/2023