

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

**BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE**

<b>COURT CLERKS:</b>	<b>JAMILA OMEKE &amp; ORS</b>
<b>COURT NUMBER:</b>	<b>HIGH COURT NO. 25</b>
<b>CASE NUMBER:</b>	<b>SUIT NO. FCT/HC/CV/472/25</b>
<b>DATE:</b>	<b>13/7/2021</b>

**BETWEEN:**

ASO SAVINGS & LOANS PLC.....PLAINTIFF

**AND**

(1). MERCURY RESOURCES LTD	}.....DEFENDANTS
(2). DAVID INYANG	

**APPEARANCES:**

Jeffery Ogbaji Esq for the Plaintiff/Applicant.

**RULING**

By a Motion Ex-parte with Motion No: M/12623/2020 dated 2<sup>nd</sup> day of December 2020, and filed on 3<sup>rd</sup> day of December 2020, brought pursuant to Order 42(1) and (2) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018; Section 257 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and under the inherent jurisdiction of this Court; the Applicant herein prayed the Court for the following:

***“(1). AN ORDER OF THIS HONOURABLE COURT attaching the property belonging to the Defendant/Applicant together***

*with appurtenances thereto known as Block C, No. 2, Lakeview Homes Kado, Abuja with Certificate of Occupancy No. B813z-539br-e6b4u-20 pending the hearing and determination of the substantive suit.*

- (2). AN ORDER OF THIS HONOURABLE COURT FOR MAREVA INJUNCTION** *restraining the Defendant/Respondent from dealing with or alienating howsoever (whether by assignment, lease, mortgage or other third party interest) of the property listed in relief 1 above pending the hearing and determination of the substantive suit.*
- (3). AN ORDER OF THIS HONOURABLE COURT** *directing the bailiff(s) of this Honourable Court, officers and men of the Nigeria Police Force and officials of the Plaintiff/Applicant to enter into the property listed in Relief 1 above for the purpose of carrying out and executing the Orders contained inventories of the contents thereof to seal and safeguard the property listed in relief 1 above pending the hearing and determination of the substantive suit.*
- (4). AN ORDER OF THIS HONOURABLE COURT** *directing the Assistant Inspector General in Charge of Abuja (Zone 7); the Commissioner of Police Abuja FCT and men under their control to provide security and assistance to the bailiff(s) Sheriff of this Honourable Court for the enforcement and execution of the Orders made herein.*

The grounds predicating the application are as follows: -

- “1. That sometimes in November 2016, the Plaintiff/Applicant filed Originating processes in this suit and served the Defendant/ Respondent with same.**
- 2. That after receiving the originating processes the Defendant/Respondent responded to the said processes by filing his Statement of Defence.**

- 3. That between March 2009 and October, 2015 the Plaintiff/Applicant granted loan facilities to the Defendant/Applicant.**
- 4. That as at 2015 the Defendant/Respondent is indebted to the Plaintiff/Applicant in the sum of N37, 114, 425.99k (Thirty Seven Million, One Hundred and Fourteen Thousand, Four Hundred and Twenty Five Naira, Ninety Nine Kobo) being the total amount due, unpaid and outstanding against the Defendant/Respondent by virtue of credit facilities obtained by the Defendant/Respondent from the Plaintiff/Applicant.**
- 5. Despite numerous demands and entreaties by the Plaintiff/Applicant, the Defendant/Respondent have failed, refused and/or neglected to pay the outstanding debt to the Plaintiff/Applicant.**
- 6. That the Defendant/Respondent is the owner of the property enumerated in Relief 1 with respect to which the Plaintiff/Applicant is seeking an Order of possession from this Honourable Court.**
- 7. That the Plaintiff/Applicant herein is making surreptitious moves to sell off the property stated in Relief 1 above used as security for the loan facility granted to the Defendant by the Plaintiff/Applicant.**
- 8. That the original title documents of the said mortgaged property are currently in the possession of the Plaintiff/Applicant.**
- 9. The Plaintiff/Applicant has reasonable cause to believe that if the Defendant/Respondent is not restrained by this Honourable Court, the Defendant/Respondent will alienate or otherwise create third party interests on the property listed in this application.**

**10. Unless the Defendant/Respondent is restrained from alienating or tampering with the property enumerated in this application it will be impossible for the Plaintiff/Applicant to recover the debt owed to it by the Defendant/Respondent in the event that the substantive suit succeeds in favour of the Plaintiff/Applicant.”**

In support of the Plaintiff/Applicant's application is an Affidavit of 7 paragraphs deposed to by Cecilia Oglagu a Litigation Secretary in the Law Firm of Springfield Solicitors Counsel to the Plaintiff/Applicant. Annexures marked Exhibits A and B as well as a Written Address dated 3<sup>rd</sup> day of December 2020.

Now, I have carefully considered this application, the reliefs sought, the grounds predicated same, the Supporting Affidavit, the two Exhibits annexed as well as the Written Address in support of the application.

Indeed, Mareva Injunction operates to stop a Defendant against whom a 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. On this premise, I refer to the case of **AIC LTD V NNPC (2005) LPELR – 6 (SC) per Edozie JSC, at PP. 33 – 34, Paras F – B; SOTUMINO V OCEAN STEAMSHIP (NIG) LTD & ORS (1992) 5 SCNJ, 17- 22.**

Likewise, on what an Applicant must show to be entitled to the grant of an Order of Mareva Injunction in his favour, the Court of Appeal has held in the case of **AIC LTD V EDO STATE GOV & ANOR (2016) LPELR -40132, Per Oniyangi J.C.A at PP. 43 -44, Para E,** as follows:-

**“...BY the very nature of the injunctive relief, an Applicant must show that he has a cause of action against the Defendant which is justifiable that there is a real and imminent risk of the Defendant removing his asset from jurisdiction and thereby rendering nugatory any judgment which the Plaintiff may obtain, that the Applicant has made a full disclosure of all material facts relevant to the application, that he has given full particulars of the assets within the jurisdiction, that the balance of convenience is on the side of the Applicant, and that he is prepared to give an undertaking as to damages.”**

See also the case of ***DUROJAIYE V CONTINENTAL FEEDERS LTD (2001) 10 NWLR (Pt. 722) 657; I.F.C LTD V DSNL OFFSHORE LTD (2008) 7 NWLR (Pt. 1087) 592.***

Now, in the instant case, it is clear from the Plaintiff/Applicant's supporting Affidavit, particularly paragraphs 5(b)(c)(d)(e) and (f) among others, that a mortgage facility was granted to the Defendant/Respondent on the 31<sup>st</sup> day of March, 2009 and booked on the Defendant's account number – **0135718273.**

That, as at November 2017, the Defendant is indebted to the Plaintiff/Applicant in the sum of **N37, 114, 425.99k (Thirty Seven Million, One Hundred and Fourteen Thousand, Four Hundred and Twenty Five Naira, Ninety Nine Kobo)** being the total amount due, unpaid and outstanding against the Defendant/Respondent by virtue of the loan facility obtained by the Defendant/Respondent from the Plaintiff/Applicant.

It is averred that the said mortgage was secured with the Certificate of Occupancy described and known as Block C, No. 2, Lakeview Homes, Kado, Abuja with Certificate of Occupancy No. 6813z -539br-e6b-4v-20 annexed as Exhibit B.

Further it is averred in paragraphs 5(i)(j)(k)(l) and (m) as follows:-

- “(i). That the Defendant/Respondent herein is making surreptitious moves to sell off the property used as security for the loan facility.***
- (j). That Plaintiff/Applicant has reasonable cause to believe that if the Defendant/Respondent is not restrained and the property attached and seized by this Honourable Court, the Defendant/Respondent will alienate or otherwise create third party interests on the property listed in this application.***
- (k). That if the Plaintiff/Respondent is not restrained from alienating or tampering with the property enumerated in this application it will be impossible for the Defendant/Applicant to recover the debt owed to it by the***

***Defendant/Respondent in the event that the substantive suit succeeds in favour of the Plaintiff/Applicant.***

- (l). That the Plaintiff/Applicant has a legal right to be protected by this Honourable Court.***
- (m). That the Plaintiff/Applicant undertakes to indemnify and pay the Defendant/Respondent damages for any loss/injury caused by the Plaintiff/Applicant's application."***

Therefore, in the circumstances, it is my considered opinion that the Plaintiff/Applicant has satisfied the Court to be entitled to the grant of Relief No. 2, i.e the Order of Mareva Injunction.

Having said that, I have observed that Relief No. 1, seeks for an Order of this Court attaching the property in question pending the hearing and determination of the substantive suit.

However, it is my humble view that at this stage of the proceedings the Plaintiff/Applicant's claim is yet to be established since the matter is yet to be concluded.

Therefore, it is only after a party's right is firmly established that an Order of Attachment by a Writ or like command be ordered to effectively seize the property. A Mareva Injunctive, however, even if relates to a particular asset, is a relief which is a preservative Order, even though it operates in rem.

On this premise, I refer to the case of ***EFE FINANCE HOLDING V OSAGIE, ORS AND CO (2000) 5 NWLR (Pt. 658) 536***, where the Court held as follows: -

***"Mareva Order is in reality a security for judgment. Its purpose is not only merely to preserve the res as ordinary injunctions do. It is more than just that. It's also to secure assets for execution of anticipated judgment. In this sense, the Mareva procedure may be likened to the procedure for the arrest of a ship and the related concept of the sister ship action. The order operates in rem and takes effect from the moment it is pronounced on every asset of the Defendant in relation to which it is granted."***

Therefore, all that the Injunction achieves is in truth to prohibit the owner from doing certain things in relation to the asset.

Therefore, I do not think Relief No. 1 should be considered by the Court at this stage of the suit. I so hold.

Likewise, I have also noted that Relief No. 3 seeks Order of Court for inventories of the contents of the property and to seal and safeguard the property listed in Relief No. 1 pending the hearing and determination of the substantive suit.

It is my opinion that this relief as well should ordinarily come into effect if and when Plaintiff/Applicant's claims are firmly established at the end of the substantive suit.

However, Relief No. 4, no doubt is one that ought to be granted by the Court as it is ordinarily tied to Relief No. 2 the Mareva Injunction.

Therefore, without further ado, I find that the application is meritorious and I grant Reliefs no. 2 and 4. While Reliefs 1 and 3 are dismissed.

***Signed:***

***Hon. Justice Samirah Umar Bature***  
*13/7/2021*