

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU-ABUJA**  
**ON THURSDAY THE 28<sup>TH</sup> DAY OF NOVEMBER, 2024**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-**  
**ADEBIYI**

**SUIT NO: FCT/HC/CV/3000/2024**  
**MOTION NO: M/13738/2024**

**BETWEEN**  
**UNITED BANK FOR AFRICA PLC -----**  
**CLAIMANT/RESPONDENT**  
**AND**  
**1. ONIDA AGRI & AQUACULTURE SOLUTIONS LTD**  
**2. KIDRON ISREAL -----**  
**DEFENDANTS/APPLICANTS**

**RULING**

Learned Counsel to the Defendants filed a Motion on Notice dated 17<sup>th</sup> October, 2024 brought pursuant Section 36(1) and 44(1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended); Order 43 Rule 3 of Federal capital Territory (Civil Procedure) Rules 2018 and under the inherent jurisdiction of this court praying for the following reliefs;

1. AN ORDER OF THIS HONOURABLE COURT setting aside and/or discharging and/or vacating the Ex-parte Order of this honourable court made on the 12th day of July, 2024.
2. AND FOR SUCH FURTHER OR OTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstances of the case.

The grounds for this application are as follows: -

- a. That the Claimant/Respondent misled this honourable court into making the ex-parte order granted on the 12th day of July 2024.
- b. That the ex-parte application of the Claimant/Respondent which led to the grant of the order made on the 12th day of July, 2024 is calculated to jeopardise the business of the applicants.
- c. That the Claimant/Respondent did not disclose material facts which would have led to the refusal of the application for interim injunction.

- d. That an interim order has a lifespan and should not last till the hearing of the Claimant's claim.
- e. That the Claimant/Respondent should not be allowed to use the court to freeze the account of the applicant with an exparte order indefinitely.

Attached to the motion is an 8 paragraph affidavit in support deposed to by Divine Tobechukwu Nwoye, a legal practitioner in the Law firm of C. C. IGATA & Co., solicitors to the Defendants. Attached to the motion are;

- a. Offer for confirmed LC line/usage credit facility of N70, 446,200.00; Dollar equivalent of \$171,820,00 dated 5/5/2022.
- b. Letter titled RE: TRADE FINANCE FACILITY-REVIEW OF SECURITY DEPOSIT dated May 22, 2024.
- c. Letter titled RE: YOUR OUTSTANDING OBLIGATION ON ACCOUNT NUMBER 3004291665 dated 25<sup>th</sup> June, 2024.
- d. EXTRACT OF MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF ONIDA AGRI & AQUACULTURE SOLUTIONS LTD dated 5<sup>th</sup> May, 2022.
- e. AUTHORITY TO EXERCISE RIGHT OF LIEN AND SET-OFF ON DEPOSIT WITH THE BANK dated 5<sup>th</sup> May, 2022.
- f. EXTRACT OF MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF ONIDA AGRI & AQUACULTURE SOLUTIONS LTD dated 5<sup>th</sup> May, 2022.
- g. MEMORANDUM OF CHARGE OVER CREDIT BALANCE dated 5<sup>th</sup> May, 2022
- h. COMPLAINT ON POOR BIDDING PERFORMANCE dated 12<sup>th</sup> October, 2022.
- i. Letter titled RE: TRADE FINANCE FACILITY-REVIEW OF SECURITY DEPOSIT dated May 31, 2024.
- j. REQUEST TO PURCHASE FOREIGN EXCHANGE dated May 30, 2024.

In the affidavit as it relates to this application the deponent averred that the ex-parte application of the Claimant/Respondent which led to the grant of the order made on the 12<sup>th</sup> day of July, 2024 is crammed with misinformation calculated to deceive the court into granting the order at that particular period with the intention to cause hardship on the Applicant. That the Applicant has not shown good faith in seeking and obtaining the order of the court to freeze the accounts of the Defendants/Applicants. That it would be in the interest of justice to vacate the order of this court made on the 12<sup>th</sup> day of July, 2024.

Also attached is a written address and a reply on points of law. In the written address counsel raised a sole issue for determination to wit;

“Whether in the light of the facts and circumstances of this matter, the Ex-parte Orders of 12<sup>th</sup> July, 2024 ought not to be vacated and set aside”.

Summarily, learned counsel submitted that the law is clear that where the Applicant suppressed fact to obtain an order, the said order is liable to be discharged when it is discovered that there was such suppression of facts. That an Applicant for interim injunction has a duty to show that he will suffer more loss than the Defendant(s) if the order is not granted which the Claimant did not. That the balance of convenience was clearly against granting an order to freeze the accounts of the Defendants/Applicants but the Claimant willfully refused to disclose material facts to the court. that the act of the Claimant securing this order prior to the court vacation by exparte application is contrary to the right of fair hearing of the Applicants. Counsel relied on the following authorities; **Chellarams Plc v. UBA Plc (2022) LPELR-57845 (CA)**; **AMAEHULE & ORS V. JUMBO & ORS (2024) LPELR-62472 (CA)**; **Section 36(1) of the 1999 Constitution (as Amended)**; **Polaris Bank Ltd V. Bellview Airlines Ltd & Anor (2021) LPELR-56258 (CA)**; **UTB LTD & ORS V. DOLMETSCH PHARMACY (NIG) LTD (2007) LPELR-3413 (SC)**. In their reply on points of law counsel also raised a sole issue for determination to wit;

“Whether the application of the Applicant is frivolous and ought to be dismissed”.

Learned counsel in summary, submitted that the law is that where a party seeking and obtaining an injunction including a Mareva injunction as claimed by the claimants in this instance fails to disclose some facts or had made some misrepresentation in the course of the grant of the injunction, such an injunction on the realization of the non-disclosure or misrepresentation or misrepresentations has to be discharged. Counsel submitted that this court has the inherent powers and from the authorities cited in this address to grant this application and urged the court to set aside and/or vacate and/or discharge the ex-parte order made on the 12th day of July, 2024 with cost against the claimant/respondent. Counsel relied on the following authorities; **EFCC v. Eze & Ors (2024) LPELR62564(CA) (Pp. 32-33 paras. F)**; **R-Benkay Nigeria Ltd v. Cadbury Nigeria Ltd (2012) LPELR-7820(SC) (Pp. 38-39 paras. D)** and **University of Calabar v. AMCON & Ors (2024) LPELR-62596(SC) (Pp. 31-32 paras. B-B)**

In opposition, the Claimant/Respondent filed a written address wherein counsel raised an issue for determination as thus;

“Whether this application is not frivolous and ought to be dismissed”.

In summary, learned counsel submitted that the facts deposed to by the Defendants/Applicants in the affidavit in support of their motion are irrelevant to the consideration of the subject application. That they are facts relevant for the determination of the substantive suit. Counsel submitted that it would not be necessary for a respondent to file a counter affidavit to oppose a motion where his grounds of opposition are on points of law. Counsel then submitted that the law is trite that the primary duty of the court in any matter is to preserve the res or subject matter of the litigation from waste or dissipation till the conclusion of the suit. Counsel submitted that the Claimant has no duty whether in law or otherwise to state in her processes before the court prior to or at the point of seeking for the order to preserve the res in this case, facts suggesting that the Defendants disputes the Claimant's claim. Thus, it is of no moment to bring an application to set aside an order of Mareva Injunction on the basis that the Defendant contests the Claimant's claim neither does it amount to suppression of facts or misleading the court because the Claimant did not disclose that the Defendant disputes or may dispute the claim. Counsel further submitted that the claimant met all the requirement of the law and this honorable court rightly exercised its discretion by granting the order to preserve the claimed sum in this suit from being dissipated or spent by the Defendants while this suit is pending before this court. Counsel relied on; **ROYAL EXCHANGE ASSURANCE (NIG) LTD V. ASWANI TEXTILE (1992) LPELR-2960 (SC) P.P 17-18; IGWE & ORD VS KALU & ORS (1993) LPELR 1456 (SC) P. 14; UNITED SPINNERS NIG. LTD VS CHARTED BANK (2001) LPELR 3410 (SC) P.19; Order 42 Rules 1 (1) and 4 (1) of the Rules of this Court, 2018; INJUNCTIONS AND ENFORCEMENT OF ORDERS, AFE BABALOLA, OFR CON SAN, at page 135; COMPACT MANIFOLD & ENERGY SERVICES LTD VS WEST AFRICA SUPPLY VESSELS LTD (2017) LPELR 43437 (CA).**

First and foremost, I do agree with counsel to the Claimant/Respondent that most of the paragraphs of the affidavit in support of this application are irrelevant to the issue at hand which is the ‘setting

aside of the order of court'. Hence the irrelevant paragraphs were discountenanced.

I have carefully read and considered all the processes filed and the submissions on both sides of the aisle and the issue for determination is;

**“Whether the Applicants has furnished sufficient facts and legal ground(s) to allow the court set aside its order delivered on 12<sup>th</sup> July, 2024”.**

It is trite that a Court has the inherent powers to set aside its own order under certain conditions. These conditions were restated in the case of **CITEC INTERNATIONAL ESTATES LTD & ORS V. JOSIAH OLUSOLA BIODUN FRANCIS & ORS (2014) LPELR-22314 (SC) P.36 PARAS. A-C**, where the Apex Court opined that:

*"... Where a judgment of this Court or an order thereof is adjudged a nullity, a party affected thereby is entitled to have it set aside ex debito justitiae. The Court has inherent jurisdiction or power to set aside its own order or decision made without jurisdiction if such order or decision is in fact a nullity or was obtained by fraud or if the Court was misled into granting same by concealing some vital information or facts." Accordingly, the law is settled that all the superior Courts created or established by the Constitution and other statutes possess inherent powers to set aside their judgments/orders in appropriate cases."*

Therefore, an Applicant seeking to set aside an order of court has the responsibility of placing sufficient materials before the Court to warrant granting the application. Once an Applicant can show good and sufficient cause, the application will be granted in the interest of justice.

The Applicant in this case is seeking for an order setting aside *mareva* injunction issued by the court on 12<sup>th</sup> July, 2024; the Applicant is therefore duty bound to satisfy this Court with cogent facts stated in the affidavit in support of this application as setting aside an order of Court is not granted as a matter of course or on flimsy grounds. From the affidavit before this court in support of this motion (as relates to this application), the Applicant stated thus: -

5. That I know as a lawyer that the *ex-parte* application of the Claimant/Respondent which led to the grant of the order made on the 12<sup>th</sup> day of July, 2024 is crammed with

misinformation calculated to deceive the court into granting the order at that particular period with the intention to cause hardship on the applicant.

6. That as a lawyer, I know that the applicant has not shown good faith in seeking and obtaining the order of the court to freeze the accounts of the defendants/applicants.
7. That it would be in the interest of justice to vacate the order of this court made on the 12th day of July, 2024.
8. That I depose to this witness statement on oath in good faith conscientiously believing and knowing the content to be true and correct to the best of my knowledge and in accordance with the Oaths Act 2004.

Also, the grounds on which this application was brought are that the Claimant/Respondent misled this honourable court into making the ex-parte order granted on the 12th day of July 2024; That the ex-parte application of the Claimant/Respondent which led to the grant of the order made on the 12th day of July, 2024 is calculated to jeopardise the business of the applicants; That the Claimant/Respondent did not disclose material facts which would have led to the refusal of the application for interim injunction; That an interim order has a lifespan and should not last till the hearing of the Claimant's claim and that the Claimant/Respondent should not be allowed to use the court to freeze the account of the Applicant with an exparte order indefinitely.

The question that begs to be answered is whether the facts as reproduced above are enough to persuade this court to set aside its order of 12<sup>th</sup> July, 2024 against the defendants.

The contents of the affidavit evidence in support of the application are bereft of convincing facts to sway this court to set aside its order. Not only are the facts unsatisfactory, it is clearly empty as the Defendants has not disclosed the alleged facts suppressed by the Claimant and how the Claimant misled the court into making the order. Mere averment of these facts are not sufficient. In this instant application the Applicant has not furnished the court with evidential proof establishing the concealment of facts as alleged.

However, this court while granting the mareva injunction had inserted an omnibus clause which is reproduced below: -

Paragraph 6:-“The above orders can always be varied upon proper application by the applicants to allow the applicant to withdraw

funds in order to meet urgent and pending financial obligations if need be”.

The above clause was not included in the application for marevainjunction;however, I am aware of the implications of a marevainjunction on an account and I had also taken into consideration that the Respondent/Defendant is a company hence I found it imperative to include the clause No. 6 reproduced in the grant for mareva injunction.Consequently, the applicants are at liberty to utilize the above clause whenever the need arises and also at liberty to file to have it set aside on emergence of cogent facts to sway the court to set same aside.

In view of all the above, the application before me, to set aside the order of this honourable court made 12<sup>th</sup> July, 2024, is hereby refused.

**Parties:** Claimant representative is present. 2<sup>nd</sup> Defendant is present and representing the 1<sup>st</sup> Defendant.

**Appearances:** I. K. Anyalewechi appearing for the Claimant. C. C. Igata appearing for the defendants. Blessing Ezeora appearing for the 3<sup>rd</sup> Respondent.

**HON. JUSTICE M. R. OSHO-ADEBIYI**  
**JUDGE**  
**28<sup>TH</sup>NOVEMBER, 2024**