



**Follow The Money:**  
**Leveraging Worldwide Freezing  
Orders As A Viable Strategy For  
Assets Recovery In Nigeria**

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## ABSTRACT

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The interdependence of economic activities of sovereign States together with the breakthrough in technology has reduced the world into a global village. This breakthrough enhances the speed of international commercial activities and eases the viability of the world economy. However, it also encourages flexibility of international borders which is instrumental to quick dissipation of assets. In salvaging this situation, judicial networking has proven to be one of the major international means to combat cross-border asset dissipation and concealment. Amongst the viable tools in judicial networking to combat this menace is the Worldwide Freezing Orders (WWFOs).

Drawing on case studies and legal analyses, this paper investigates the practicalities and challenges associated with enforcing WWFOs in Nigeria's legal terrain. Furthermore, the article assesses the impact of WWFOs on enhancing transparency, accountability, and the deterrence of financial crimes in Nigeria. In the same vein, it examines the role of international cooperation, legislative frameworks, and judicial mechanisms in facilitating the enforcement process. By highlighting successful enforcement strategies and identifying areas for improvement, this study aims to provide insights for policymakers, legal practitioners, and stakeholders involved in asset recovery in Nigeria.



## INTRODUCTION

The best form of asset tracing and recovery is to follow the money. It is more than a cliché that money always leaves a trail. It is possible for money to be transformed into real assets and tangible products or to be used as payment for services. However, there is always a link to be trailed for recovery. Money is also current and flexible, hence it can be quickly dissipated, wasted, or moved from one jurisdiction to another in disguise. The aim will be to blind the Court and recovery authorities from determining the source. The goal will be to frustrate a litigant from benefiting from his effort in litigation or inhibiting any possibility of recovery. Any judgment, no matter how soundly crafted, is nugatory if enforcement is impossible. Therefore, it becomes the duty of the Court to protect the subject matter of litigation where there is a reasonable suspicion of imminent risk of destruction, dissipation, or depletion attributable to the defendant in possession. As such, the jurisprudence upon which the idea of freezing orders is founded is preservation.<sup>1</sup>

Mareva injunction is the most potent form of freezing order and the Nigerian Court of Appeal expatiated on the nature and purpose of Mareva injunction in the case of **Efe Finance Holdings v. Osagie, Ors and Co.**<sup>2</sup> 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 is also to secure assets for execution of an anticipated judgment.**

The concept of territoriality of the judicial power under the Constitution of the Federal Republic of Nigeria, 1999 (as amended),<sup>3</sup> limits the reach of the Orders of the Nigerian Court to assets and individuals within Nigeria.<sup>4</sup> Generally, courts operate within their statutory jurisdiction and that is why the issuance of Freezing

<sup>1</sup>See *Mareva Compania Naviera v. International Bulk Carrier Ltd* [1975] Lloyd's Rep. 509. See also the case of *Akingbola v. E.F.C.C.* [2012] 9 NWLR (pt. 1306) 475. Various Rules of Courts in Nigeria have provisions for preservation. See for instant, Order 28 of the Federal High Court (Civil Procedure) Rules, 2019.

<sup>2</sup>(2000) 5 NWLR (Pt. 658) 536.

<sup>3</sup>See section 4 (1) of the Nigerian Constitution which states that: "the judicial powers of the Federation shall be vested in the Courts to which this section relates, being Courts established for the Federation."

<sup>4</sup>See the case of *Heyden Petroleum Limited v. Top Leader Shipping Inc* (2018) LPELR-46680(CA), where the Court of Appeal stated that:

Generally, the powers of the Courts are limited by their territorial boundaries or jurisdiction. Thus, a judgment pronounced by the Court of one jurisdiction may have no force or effect beyond its own territory except in situations where other jurisdictions have agreed to allow such judgment enforceability within their own territories presumably through reciprocal agreements to that effect based principally on principles of reciprocity and obligation.

Orders with extraterritorial effect is an exception. This is a similar trend among the global community to preserve respect for the sovereignty of States.<sup>5</sup> However, the sophistication introduced into international business justifies a need for a more radical preservative approach to the prevention of asset stripping and dissipation. Especially, in serious cases of Ponzi Scheme, cross-border commercial relationship, blockchain, and decentralized finance where assets may have been placed in foreign accounts or located in a foreign jurisdiction or in space wherein the debtor is completely removed from the jurisdiction of the Local Court or any Courts at all. A WWFO allows a Respondent's assets located across the world to be frozen, rather than those limited to the jurisdiction where the Order is issued.

## FREEZING ORDERS AND WORLDWIDE FREEZING ORDERS

In simple terms, Freezing orders and Worldwide Freezing Orders (WWFOs) are restrictive orders prohibiting certain levels of dealings and interaction with the subject matter of a dispute pending before a Court of Law or an Arbitral panel. These orders may be sought and obtained before the commencement of the Proceedings in extraordinary circumstances of exigencies.<sup>6</sup>

Therefore, freezing orders may be interim or interlocutory orders restraining a Respondent from disposing of, or adversely dealing with, its own assets until the determination of a Suit filed against it. The purpose of a freezing order is not to punish a Respondent, but it is to preserve the assets, the subject matter of a dispute for the successful party at the end of litigation.<sup>7</sup> There are several variations of these Orders including interim injunction, interlocutory injunction, and mandatory injunction. There is also the Mareva injunction and Anton Piller injunction.<sup>8</sup> The common factor to these orders is that the Respondent cannot deal adversely with the assets until the Court has decided except for a mandatory injunction which may reverse an act already done. There is another variant of freezing orders referred to in this paper as statutory freezing Orders.<sup>9</sup>

The radicality of the statutory freezing orders is a result of the intention to combat

<sup>5</sup>Even the English Court had to debate the issue of territoriality under section 37(3) of the Supreme Court Act, 1981.

<sup>6</sup>See the pronouncement of Obande Festus Ogbuinya, JCA at pages 19 – 21, paragraphs A -C in *Chellarams Plc v. UBA PLC* (2022) LPELR-57845(CA).

<sup>7</sup>See "A Practical Guide to Freezing Orders" (The 2IG Commercial Fraud Team, March, 2023). Available at [https://www.2ig.co.uk/wp-content/uploads/2023/04/2IG\\_Practical\\_Guide\\_to\\_Freezing\\_Orders\\_March\\_2023.pdf](https://www.2ig.co.uk/wp-content/uploads/2023/04/2IG_Practical_Guide_to_Freezing_Orders_March_2023.pdf). Retrieved on 24/4/2024.

<sup>8</sup>The Anton Piller achieves a very different purpose. It preserves the evidence and material facts from being destroyed by the Respondent. It is usually used in an action for the infringement of intellectual property. See section 38 of the Copyright Act, 2022.

<sup>9</sup>These are Orders that the Courts are permitted to make pursuant to the specific provisions of the Statutes. For instance, section 50 of the Asset Management Corporation of Nigeria Act, 2010 (as amended) provides that:

Where the Corporation has reasonable cause to believe that a debtor or debtor company has funds in any account with any eligible financial institution, it may apply to the Court, before or at the time of filing of an action for debt recovery or other like action or at any time after the filing of an action, and before or after the service of the Originating process by which such action is commenced on the debtor or debtor company, by motion ex parte for an interlocutory order freezing the debtor or debtor company's account. The freezing orders despite granted ex parte will subsist till judgment unless expressly discharged by the Court.

the menace of debtors setting up unreasonable obstacles to make recovery difficult.<sup>10</sup> In many situations, legal and statutory development is forced out of reaction to the social problems for the purpose of coping with the social menace. The development of Worldwide Freezing Orders is not farfetched from the law trying to grapple with the social menace.

Worldwide Freezing Orders are traceable to English law. They are built on the same preservative jurisprudence as the Mareva injunction. Their uniqueness is contained in their viability to attach assets outside the jurisdiction of the Court that makes the orders. Just like the current judicial disposition in Nigeria, Freezing Orders were completely territorial in England. The English Court had the power only to restrict adverse dealing within the English Court's jurisdiction.

However, the restrictive approach was jettisoned in the cases of **Banaff International Co SA v Bassatne and Another**,<sup>11</sup> **Republic of Haiti v Duvulier**,<sup>12</sup> **Derby and Co Ltd v Weldon (No 1)**,<sup>13</sup> and **Derby and Co Ltd v Weldon (Nos 3 and 4)**<sup>14</sup> which enlarged the jurisprudence and birthed what is now known today as "Worldwide Freezing Orders". In **Derby and Co Ltd v Weldon (Nos 3 and 4)**,<sup>15</sup> all the members of the English Court of Appeal drew attention to the increasing commercial and financial sophistication of the age, the increasing mobility of assets, and the interchangeability of modern international companies and concluded that the Courts had to develop their practices to meet the problems posed.<sup>16</sup>

The WWFOs like all other forms of freezing orders are granted to preserve the assets of a Respondent.<sup>17</sup> The effect transcends territorial boundaries and may bind non-party custodians of the assets of the Respondent. Fundamentally, there are two major stages where WWFOs may be granted. Ordinarily, it was accepted that an Applicant may apply for WWFOs after judgment had been granted. Post-judgment WWFOs preserve the subject matter from being disposed of by the Respondent until the execution of judgment. The preservative orders are seen as holding orders until the judgment creditor is able to commence enforcement proceedings in the foreign jurisdiction.<sup>18</sup> However, the Court also may exercise the jurisdiction to grant WWFOs in real exigencies where the Orders would prevent asset stripping and dissipation pending the trial of a

<sup>10</sup>Asset Management Corporation of Nigeria (AMCON) enjoys the privilege to apply to the Court for Statutory Freezing Orders.

<sup>11</sup>[1990] Ch. 13; [1989] 2 W. L. R. 232.

<sup>12</sup>[1990] QB 20; [1989] 2 W. L. R. 261.

<sup>13</sup>[1990] Ch. 48; [1989] 2 W. L. R. 276.

<sup>14</sup>[1990] Ch. 65; [1989] 2 W. L. R. 412.

<sup>15</sup>Supra.

<sup>16</sup>David Capper, "Worldwide Mareva Injunction" (The Modern Law Review, Vol. 54, No. 3, May 1991) available at <https://www.jstor.org/stable/1096926>.

<sup>17</sup>Sarah Murray "Worldwide Freezing Orders." Available at <https://www.stevens-bolton.com/site/insights/briefing-notes/worldwide-freezing-orders>. Accessed on 24/04/2024.

<sup>18</sup>See David Capper at p.333 and Banaff International Co SA v Bassatne and Another (Supra).

Suit. This is pre-judgment WWFOs.<sup>19</sup> This aligns squarely with the general purpose of an interim or interlocutory injunction.

An objective examination of the Nigerian legal system would establish a real need for a commercially exigent order that may be enforceable outside Nigeria for the protection of assets removed from the jurisdiction of the Court. Nigerian Courts are readily eager to make freezing orders over assets within the Nigerian jurisdiction in both Civil and Criminal Actions. However, there is a culture of extreme care in allowing WWFO over assets outside Nigeria, especially in Civil matters.<sup>20</sup> The Nigerian Courts have granted WWFOs in corruption charges. For instance, in the case of **EFCC v. Akingbola**,<sup>21</sup> the Federal High Court as far back as 2009 granted a WWFO on assets in Lagos, Accra in the Republic of Ghana, England, and Dubai in the United Arab Emirates. Also, in the case of **EFCC v. Deziani, Aluko & Omokore**<sup>22</sup> the Federal High Court granted a WWFO on assets in Nigeria, Canada, Switzerland, England, and the USA.<sup>23</sup>

However, there is no reported case demonstrating the judicial disposition of the Nigerian Courts towards the enforcement of a WWFO made outside the Nigerian jurisdiction over assets within Nigeria.<sup>24</sup> However, it is noteworthy that there is a logical basis to believe that global interdependence should motivate the Nigerian Court to be receptive to the possibility of giving judicial efficacy to any such order for proper judicial networking and assistance.

For instance, Arbitration Proceedings appear to enjoy some special considerations. A Nigerian Court may be allowed to make a preservative freezing order in respect of an Arbitration where the seat of Arbitration is the Federal Republic of Nigeria or is in another country.<sup>25</sup> However, there is nothing to indicate that the freezing order will cover assets not within the jurisdiction of the Nigerian Court. It is believed that where any such order is made in favour of a Claimant in an Arbitration Proceeding, the Claimant may take enforcement proceeding in the Country where the arbitration proceeding is conducted. It becomes the discretion of an enforcement Panel or the local Court in the Country to give effect to the preservative freezing order.

<sup>19</sup>See Republic of Haiti v Duvulier (Supra).

<sup>20</sup>Elsewhere in this Article, it is noted that this is based on the territoriality of Judicial Power usually stipulated in the Constitution to ensure the anarchical nature of the international community and the sovereignty of States.

<sup>21</sup>See <https://cbn.gov.ng/out/2009/publications/pressrelease/gov/akingbola.pdf>. Accessed on 7/5/2024.

<sup>22</sup>Sahara Reporters, Petroleum Minister, Deziani Allison Madueke, Accused of Blowing N2 Billion on Private Jets, 9 August 2013, <http://saharareporters.com/2013/08/19/petroleum-minister-deziani-allison-madueke-accusedblowing-n2-billion-private-jets>. Accessed on 14/05/2024.

<sup>23</sup>By Olaoye Olalere S.P.A. Ajibade & Co. Nigeria: Effects of Worldwide Freezing Order on Worldwide Web Transactions and Assets: Extraterritorial and Equitable Considerations.

<sup>24</sup>This is having regard to the conditions for the enforcement of foreign judgment in Nigeria. The Nigerian Court majorly allows for registration in Nigeria of a final monetary judgment of a superior Court.

<sup>25</sup>See sections 19 and 20 of the Arbitration and Mediation Act, 2023.



## THE LEGAL BASIS FOR THE GRANT OF WORLDWIDE FREEZING ORDERS

The jurisdiction to grant a WWFO is derived from the equitable jurisdiction of the Court. Therefore, it is largely based on the discretion of the English Court under the principle of *exceptional necessity*.<sup>26</sup> Being a class of equitable relief, an Applicant for WWFOs will have to establish the necessity for the preservative orders enforceable outside the jurisdiction of the Court warranting the exercise of the discretion of the Court. Importantly, the Court must have jurisdiction over the subject matter in respect of which the WWFOs are sought. It is a cliché that jurisdiction gives life to adjudication. Therefore, it is important to bring the application together with the Suit before the appropriate Court.<sup>27</sup>

WWFOs are a creation of purposive interpretation of Statutes and offsprings of case laws in England. The case laws have also established the conditions for the grant of WWFOs, although very similar to the conditions for granting other freezing orders. These conditions are necessary to ameliorate the possible impact the orders may have on a judicial system and to prevent the orders from being made frivolously and vexatiously. In an English case, freezing orders and WWFOs were referred to as **“nuclear weapons” of the law**.<sup>28</sup> This description shows the potency of the orders to cause huge difficulties, inconvenience, and discomfort to the Respondent.

Therefore, an Applicant for WWFOs must show that the orders are necessary for the protection of a legal right and eventual Judgment of the Court for execution and there is a good arguable case on the underlying dispute. The Applicant must show in addition that a worldwide freezing order is sought because (a) there are no assets or insufficient assets within the jurisdiction to satisfy his claim and (b) there are grounds for belief that there are assets outside the jurisdiction.<sup>29</sup> The Applicant has to demonstrate that the assets may be dissipated, disposed of, or wasted by the Respondent in possession. This is usually expected to be “something more than fanciful.”<sup>30</sup> So, to amount to sufficient satisfaction of this requirement, the proof must be cogent and show that the

<sup>26</sup>See 21G Commercial Fraud Team “A Guide to Freezing Orders” available at [https://www.21g.co.uk/wp-content/uploads/2023/04/21G\\_Practical\\_Guide\\_to\\_Freezing\\_Orders\\_March\\_2023.pdf](https://www.21g.co.uk/wp-content/uploads/2023/04/21G_Practical_Guide_to_Freezing_Orders_March_2023.pdf). Accessed on 24/04/2024.

<sup>27</sup>In the UK, it is implied that Section 44 of the UK Arbitration Act 1996 (the Arbitration Act) and Section 37 of the Senior Courts Act 1981 give the English Court the statutory backing for WWFOs. See N. H. Andrews “Freezing Foreign Assets by Mareva Injunctions” [The Cambridge Law Journal, Vol. 48, No. 2 (Jul., 1989), pp. 199-201]. See Damian Honey, Nicola Gare, and Caroline West “Prevention of Asset Stripping: Worldwide Freezing Orders” [Global Arbitration Review, May 17, 2023] available at <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/prevention-of-asset-stripping-worldwide-freezing-orders>. Retrieved on 24/04/2024.

<sup>28</sup>See Bank Mellat v. Nipour [1985] FSR 87 (CA), 92 (Donaldson LJ).

<sup>29</sup>See 21G Commercial Fraud Team “A Guide to Freezing Orders” available at [https://www.21g.co.uk/wp-content/uploads/2023/04/21G\\_Practical\\_Guide\\_to\\_Freezing\\_Orders\\_March\\_2023.pdf](https://www.21g.co.uk/wp-content/uploads/2023/04/21G_Practical_Guide_to_Freezing_Orders_March_2023.pdf). Accessed on 24/04/2024.

<sup>30</sup>See Les Ambassadeurs Club Ltd v Songvo Yu [2021] EWCA Civ 1310. Cited in See 21G Commercial Fraud Team “A Guide to Freezing Orders” available at [https://www.21g.co.uk/wp-content/uploads/2023/04/21G\\_Practical\\_Guide\\_to\\_Freezing\\_Orders\\_March\\_2023.pdf](https://www.21g.co.uk/wp-content/uploads/2023/04/21G_Practical_Guide_to_Freezing_Orders_March_2023.pdf). Accessed on 24/04/2024.

Judgment of the Court may generally go unsatisfied due to the artificial construct of the Respondent. The point was convincingly expressed by Lord Donaldson MR and Neill LJ in **Derby and Co Ltd v Weldon (Nos 3 and 4)**<sup>31</sup> that the grant of an extraterritorial Mareva injunction in an appropriate case is consistent with the underlying purpose of the Mareva jurisdiction, which is to prevent the Court's Orders from being rendered ineffective by the Respondent's disposal of assets. As Lord Donaldson said:

**The fundamental principle underlying this jurisdiction is that within the limits of its powers, no court should permit a defendant to take action designed to ensure that subsequent orders of the court are rendered less effective than would otherwise be the case . . . In a word, whilst one of the hazards facing the plaintiff in litigation is that, come the day of judgment, it may not be possible for him to obtain satisfaction of that judgment fully or at all, the court should not permit the defendant artificially to create such a situation.**

Finally, the Court weighs the competing equities in granting freezing orders and WWFOs. The balance of convenience or equity must favour the applicant before the Court makes a worldwide freezing order. However, in practice, if an Applicant is able to establish that there is an existing right that deserves the protection of the Court, there is a good arguable case and real risk of dissipation of the assets of the Respondent, it will likely be implied that it is just and reasonable to grant the freezing orders over foreign assets of the Respondent.

## **PROCEDURE FOR THE GRANT OF WORLDWIDE FREEZING ORDERS**

WWFOs are very strategic orders which an Applicant must meticulously analyse before applying to the Court for them. The Applicant should seek the professional service of an investigator or asset tracer to have a fair idea of the existence of assets offshore that the Orders may attach. The Applicant should also bear the duty of full and frank disclosure in mind. This is premised on the ground that an application for WWFOs will most likely be made without notice to the Respondent.<sup>32</sup>

<sup>31</sup>Supra.

<sup>32</sup>See *Oak Tree Financial Services Ltd v Higham* [2004] EWHC 2098 (Ch), where Laddie J held that giving notice of the applicant's intention to apply for a freezing order was wholly inappropriate.



Finally on this point is the need for the Applicant to provide an undertaking for damages. The Applicant must undertake to compensate the Respondent for any loss that may arise from the execution of the WWFOs if the Orders were wrongly obtained. Where the Order wrongly pushes a Respondent into receivership, the Applicant will be liable to compensate the Respondent up to the value of the Company immediately before the freezing orders were made.<sup>33</sup>

## ENFORCEABILITY OF WORLDWIDE FREEZING ORDERS

The apparent challenge with WWFOs is the enforceability of the Orders. Every State on the international plane is independent and sovereign. Each State establishes a Government comprised of the Judiciary responsible for the interpretation of its laws and making of judicial orders. A worldwide freezing order appears to encroach on the State's independence. In **Ashtiani v Kashi**,<sup>34</sup> one of the challenges pointed out by Dillon LJ was that the Mareva injunction was intended to be territorial under section 37(3) of the Supreme Court Act and pointed out the impracticability of enforcing the Order outside England.

However, the subsequent judicial consideration correctly placed the issue of territory. It is important to note that injunctions are equitable orders and are in personam. As explained in **Banaff International Co SA v Bassatne and Another**,<sup>35</sup> the WWFOs impose an obligation on the Respondent to obey the Order of the Court even outside the jurisdiction of the Court. An enforcement proceeding is not brought against a third party, it is against the person of the Respondent who had an obligation to obey the Order of the Court.

This correctly explains the equitable nature of WWFOs. So, the issue of enforceability by third parties in an offshore jurisdiction is not a bar to the grant of WWFOs because it may not be necessary for the offshore courts to enforce the Order if the Respondent obeys it fully and any ancillary disclosure orders made further to the WWFOs. The Court may apply sanction directly to the Respondent who resists compliance with the order of the Court. In that case, there is no encroachment on the sovereignty of the foreign jurisdictions.

<sup>33</sup>See *Johnson Control Systems Ltd v Techni-Track Europa Ltd (in administrative receivership)* [2003] EWCA Civ 1126.

<sup>34</sup>[1987] QB 888.

<sup>35</sup>supra.

Furthermore, there may be reciprocity of enforcement pursuant to an international treaty, and in this case, the offshore court may coordinate the enforcement of the WWFOs.<sup>36</sup>

## NIGERIAN EXPERIENCE AND FUTURE DIRECTIONS

The current approach to accessing WWFO in civil litigation in Nigeria is to commence a Suit in Nigeria and on the basis of this Suit, the Claimant will apply to the U.K. Court to seek and obtain a WWFO over the assets of a Respondent within the English Jurisdiction and who has assets in that Jurisdiction. It is not clear if a case could be made to a Nigerian Court to grant a WWFO in a debt or asset recovery matter.

However, there is no known case law articulating the jurisprudence in Nigeria that a Nigerian Court cannot make a freezing order that may affect a Respondent's assets outside Nigeria.<sup>37</sup> It is not clear whether a Nigerian Court would make any such order in a Civil matter but the Nigerian Courts under the Economic and Financial Crimes Commission (EFCC) Act and Money Laundering (Prohibition and Prevention) Act have made WWFOs.<sup>38</sup> However, there is a possibility that in a proper circumstance with adequate articulation of the jurisprudence surrounding WWFO, a Nigerian Court may not hesitate in making a Worldwide freezing order in a civil suit. For instance, **section 13 of the Federal High Court Act, 2004** provides that:

- 1) The Court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.**
- 2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.**
- 3) if, whether before, or at, or after the hearing of any civil cause or matter, an application is made for an injunction to prevent threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is**

<sup>36</sup>For instance, the UNCITRAL Model Law on Insolvency allows for judicial co-ordination and assistance. See <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf>. Accessed 25/04/2024.

<sup>37</sup>Although the Court of Appeal takes the issue of territoriality seriously in the case of *Heyden Petroleum Limited v. Top Leader Shipping Inc* (2018) LPELR-46680(CA).

<sup>38</sup>See the Akingbola and Deziani's cases.

**sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under the colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.**

The provision of section 13 of the Act appears general and it is not only restricted to assets within Nigeria. A literal and purposive interpretation of the provisions would agree with the reasoning that a Nigerian Court may grant an injunction in all cases so long the Court thinks it is just or convenient. This provides a statutory basis for an order freezing a Respondent's assets outside the Nigerian jurisdiction.

Another incredible feature of an injunction is that it is an equitable relief. Equity acts in personam is a very helpful maxim that will operate to allow a Nigerian Court to make a WWFO in respect of the assets of a Respondent subject to the jurisdiction of the Nigerian Court. Therefore, where an injunctive order is made, it is made against the conscience or person of the Respondent who has the obligation to fulfil the order. Since a Nigerian Court can act against a person and his property, since an injunction is an equitable relief in personam, there is a logical and legal basis for a Nigerian Court where it thinks just or convenient to make an order freezing assets outside the Nigerian jurisdiction of a person who has submitted to the Court's jurisdiction.

Just as noted elsewhere, the granting of the freezing orders is not dependent on whether a third party will obey the Order, it is sufficient if the Order may be enforceable against the person of the Respondent subject to the jurisdiction of the Court. The efficacy of this provision will greatly limit the ability of contractual delinquents and financial crime suspects to move around the world and spend the proceeds of their fraudulent activities.

Currently, the Nigerian jurisprudence recognises the potency of a Mareva injunction in curbing financial crime and other contractual delinquencies. In **Akingbola v. E.F.C.C.**,<sup>39</sup> the Court of Appeal extensively highlighted the efficacy of Mareva injunction.<sup>40</sup>

Furthermore, it appears that under section 28 of the Economic and Financial Crimes Act, 2004, the Court may be empowered at the Application of the EFCC

<sup>39</sup>[2012] 9 NWLR (pt. 1306) 475. In the case, the Federal High Court had granted a Mareva injunction freezing the account and assets of the Appellant. The Appellant filed this appeal against the ex parte order of the Federal High Court. The Appeal was dismissed.

<sup>40</sup>The Court, per Akaahs JCA at page 501 stated that:

At the time the respondent applied for the order ex parte of Mareva injunction, the appellant was still at large as he had not been arrested. It was alleged that he was evading arrest and had abandoned his home at Millerton Street, Ikoyi and even absconded from the country with large sums of money. The Respondent had expressed the fear that the assets listed in the schedule for the ex parte Mareva injunction could be frittered away, dissipated, disposed of or removed from the long arm of the law if the injunction was not granted. At the time the appellant was charged to court, he was still at large and it was only after the court granted the ex parte Mareva injunction that he surfaced.

to make an interim attachment order over all the assets and properties of a suspect of a financial crime. Since the provision does not limit the coverage of the Order of the Court to the assets and properties within Nigeria, it appears that it is a proper statutory basis for a WWFO in respect of financial crimes.<sup>41</sup>

The policy consideration for a Nigerian Court would be whether the making of a freezing order over assets outside the Nigerian jurisdiction would amount to a vain order that will unlikely achieve any practical purpose. This consideration may not necessarily arise to prejudice the discretion of the Court on a proper understanding of the operation of equitable reliefs. The Supreme Court of Nigeria in the case of **Kubor & Anor v. Dickson & Ors**<sup>42</sup> explains the concept so aptly in relation to an injunction as follows:

**It is settled law that an injunction is a judicial process or mandate operating in personam by which, upon certain established principles of equity, a party is required to do or refrain from doing a particular thing. An injunction is also a writ framed according to the circumstances of the case, commanding an act that the Court regards as essential to justice or restraining an act that it deems contrary to equity and good conscience.**<sup>43</sup>

In a nutshell, what an injunctive order requires is that a person should not do a particular act including dissipating assets outside the jurisdiction of the Court and disclosing any such assets to the Court. The equitable reliefs are to be enforced against the Respondent and the fact that it cannot be enforced against a third-party recipient of the Order does not make the order vain so long the circumstance of the case justifies the making of any such order.

<sup>41</sup>The Court has indeed made a World Wide Freezing Order on the application of EFCC in Akingbola and Deziari, Aluko & Omokore's cases based on the provisions of section 28 of the EFCC Act.

<sup>42</sup>[2012] LPELR-9817(SC)

<sup>43</sup>Per Walter Samuel Nkanu Onnoghen, JSC (Pp. 39 - 40 Paras E - A)



## CONCLUSION

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WWFOs are a very useful tool in asset tracing and recovery. Freezing orders are usually accompanied by an order for disclosure. A Respondent may be compelled to provide sworn statements containing a schedule of assets belonging to him outside the jurisdiction of the Court and the recipients of the Orders may provide such information which will generously assist in asset tracing and recovery or the effectual enforcement of the judgment of the Court. It is without a doubt that there is no statutory prohibition of WWFO in Nigeria, the only thing missing is the appropriate trigger for legal expansion.

The paper has examined the concept of freezing order and the modification as well as the improvement introduced by the English Court by providing for a WWFO which may freeze a Respondent's assets outside the jurisdiction. The paper also considers the evidentiary requirements for the grant of the Order. It has also considered the possibility of the Nigerian justice system looking at networking with the international community and becoming receptive to the enforcement of a WWFO.

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