ASSET TRACING AND ASSET RECOVERY IN NIGERIA: TOWARDS A MORE EFFECTIVE LEGAL FRAMEWORK

A. INTRODUCTION

In the ever-evolving field of asset tracing and recovery, whether for the enforcement of judgments or the recovery of the proceeds of crime, the concealment and dissipation of assets remain among the most significant challenges confronting courts, creditors, and enforcement agencies worldwide. Capital moves freely across borders, offshore structures proliferate, and wealth can be transferred anywhere in the world within seconds. The risk that a judgment creditor may secure a favourable judgment only to find nothing left to enforce against has never been greater. This is especially true in fraud, corruption, and high-value commercial cases, where defendants often go to extraordinary lengths, sometimes deploying considerable legal and financial expertise, to place their assets beyond the reach of justice.

Asset tracing and recovery have become central to effective dispute resolution. They are not merely supplementary remedies but, in many cases, the very reason litigation is worth pursuing at all. Among all available tools, few are as powerful as the Mareva injunction (now commonly called a freezing order) and its extraterritorial extension, the worldwide freezing order. Developed by the English Courts and widely adopted across common law jurisdictions, these equitable remedies empower courts to prevent a defendant from disposing of or dealing with his assets while a claim is pending.

Nigerian courts have increasingly embraced these instruments. The Supreme Court's decision in *Sotuminu v Ocean Steamship (Nig.) Ltd*[1] firmly established the availability of Mareva injunctions in Nigeria. Yet despite this progress, the full potential of these remedies remains constrained by jurisdictional limitations, institutional weaknesses, and legislative gaps. These are not abstract concerns; they are practical barriers that undermine the effectiveness of asset recovery in Nigeria.

[1] (1992) 5 NWLR (Pt. 239) 1

This article examines the evolution and application of freezing orders in Nigeria as vital tools for asset tracing and recovery. It explores the legal principles underpinning these remedies, identifies the practical challenges that constrain their effectiveness, and proposes concrete reforms to strengthen Nigeria's asset recovery framework. The discussion proceeds in five parts: the nature of asset tracing and recovery; the global development of freezing orders; Nigeria's legal framework; practical enforcement challenges; and actionable recommendations for reform.

B. UNDERSTANDING ASSET TRACING AND ASSET RECOVERY

Asset Tracing

Asset tracing is the investigative process of finding, tracking, and locating hidden or misappropriated assets. It involves following financial transactions and records to determine true ownership and current location. The challenge is that defendants rarely make this easy. They hide assets through complex corporate structures, offshore accounts, nominee shareholders, and intricate trust arrangements.[2]

Asset tracing is fundamental to the success of any recovery action. Without it, even the strongest legal claim may prove practically worthless. A judgment creditor who cannot identify the nature, location, or ownership of a defendant's assets is left with little more than a paper judgment, regardless of the merits of the underlying case. Effective asset tracing therefore requires a multidisciplinary approach, combining forensic accounting, financial intelligence, legal analysis, and strategic use of procedural discovery orders such as the Norwich Pharmacal order[3] and the Bankers Trust order.[4]

Asset Recovery

Asset recovery completes what tracing begins. It is the process by which proceeds of crime are recovered and repatriated to their country of origin or returned to their rightful owners. This involves both domestic enforcement mechanisms and international cooperation frameworks.[5] Recovery encompasses the full spectrum

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[2] *Perron-Collins, Harrison. "What is Asset Tracing? A Comprehensive Guide." Hartford Advisers, 4 September 2024, https://www.hartford.co.uk/post/what-is-asset-tracing-a-comprehensive-guide.*
[3] *Norwich Pharmacal Co v Customs and Excise Commissioners [1974] AC 133.*
[4] *Wolverhampton City Council v London Gypsies and Travellers [2023] UKSC 47.*
[5] *NCAC Coalition. "Asset Recovery." UNCAC Coalition, https://uncaccoalition.org/learn-more/asset-recovery/.*

of legal proceedings, from interim preservation orders to the recognition and enforcement of foreign judgments. While tracing follows the asset trail, recovery secures the actual return of value. In cross-border disputes, a successful tracing exercise may reveal assets dispersed across multiple foreign jurisdictions. International cooperation becomes indispensable; no single court can compel a bank in another country to freeze assets without appropriate legal mechanism.[6]

Why Preservative Orders are essential

Without preservative orders, the delay inherent in litigation would routinely be exploited. Defendants would simply move assets beyond reach, leaving successful claimants with worthless judgments. Globalisation has only intensified this challenge. Assets in transnational fraud, corruption, and commercial disputes are increasingly dispersed across multiple jurisdictions through complex corporate and trust structures.

In response, domestic legal systems and the international community have developed an increasingly robust framework for asset preservation and recovery, comprising judicial innovations, international conventions, and mechanisms for cross-border cooperation. Within the common law tradition, the worldwide freezing order has emerged as the most powerful and effective judicial tool for preserving assets pending the determination of substantive proceedings. By restraining a defendant from dealing with assets wherever they may be located, it safeguards the integrity of the judicial process and enhances the prospects of meaningful judgment enforcement.

C. THE RISE OF FREEZING ORDERS: A GLOBAL PERSPECTIVE

The Birth of Mareva Injunction

The Mareva injunction takes its name from the decision of the English Court of Appeal in *Mareva Compania Naviera SA v. International Bulkcarriers SA (1975)*,[7] where Lord Denning MR, for the first time, granted an injunction restraining a defendant shipowner from removing assets from England pending the determination of a charterparty dispute. What began as a narrow prohibition,

[6] *United Nations Convention Against Corruption (UNCAC), Chapter V.*
[7] *2 Lloyd's Rep. 509*

preventing foreign defendants from removing assets from the court's jurisdiction, has since evolved into a broad and powerful remedy.

The nature and purpose of Freezing Orders

The freezing order is fundamentally preventive, not punitive. It does not determine the rights of the parties; it merely preserves the *status quo* so that the court's ultimate judgment is not rendered worthless. The order operates *in personam* against the defendant personally, restraining conduct rather than conferring proprietary rights on the claimant.

The substantive requirements for obtaining a freezing order are well-established across common law jurisdictions. An applicant must demonstrate:

a. A recognisable cause of action meriting protection
b. A good arguable case on the merits
c. The existence of assets within or outside the jurisdiction
d. A real risk of dissipation, that the assets will be removed, concealed, or disposed of.[8]

The risk of dissipation must be objectively assessed. It cannot be inferred merely from the existence of assets abroad.[9] Courts consider evidence of past dishonesty, the nature of the assets, the defendant's financial conduct, and the absence of any legitimate commercial explanation for proposed transfers.[10]

Critically, the applicant must make full and frank disclosure of all material facts, including those adverse to their own case.[11] Failure to do so may result in the order being discharged even if the applicant would otherwise have been entitled to it and may expose the applicant to damages under their undertaking as to damages. See *Brink's-MAT Ltd v. Elcombe* [12]

The Worldwide Freezing Order

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[8] *Freezing orders: what must be proved?, Practical Law Dispute Resolution, Practice Note, Thomson Reuters Practical Law (UK), available at: https://uk.practicallaw.thomsonreuters.com/5-567-4066*
[9] *Third Chandris Shipping Corporation v Unimarine SA [1979] QB 645, per Lord Denning MR*
[10] *Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft GmbH & Co KG [1984] 1 All ER 398*
[11] *Broad Idea International Ltd v Convoy Collateral Ltd [2021] UKPC 24*
[12] [1988] 1 WLR 1350]

The territorial expansion of the mareva injunction into the worldwide freezing order represents a quantum leap in international asset recovery. In *Derby & Co Ltd v Weldon* [1990][13] and *Babanaft International Co SA v Bassatne* [1990],[14] the English Court of Appeal confirmed that the court's *in personam* jurisdiction permitted it to restrain a defendant from dealing with assets anywhere in the world, even those located outside England and Wales. The worldwide freezing order has since become an essential in international asset recovery. It enables the claimants to freeze a defendant's global asset pool, preventing them from exploiting jurisdictional boundaries to frustrate enforcement.

Commonwealth jurisdictions, including Australia, Singapore, Hong Kong, and Canada, have embraced both the domestic and worldwide variants of the remedy. Their courts have developed sophisticated jurisprudence on issues such as the treatment of third parties holding frozen assets,[15] the provision of living and legal expenses, and the scope of the *Babanaft*[16] proviso, (which limits the order's extraterritorial effect on third parties located outside the jurisdiction).

The jurisprudence on worldwide freezing orders in Nigeria remains relatively underdeveloped. This is largely attributable to the territorial limits of the judicial authority of Nigerian courts. As a general principle of public international law, the jurisdiction of a municipal court does not ordinarily extend beyond the territorial boundaries of the state that established it. This principle is reflected in section 6(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which vests the judicial powers of the Federation in the courts established under the Constitution. Implicit in this constitutional arrangement is that Nigerian courts exercise judicial authority primarily within the territorial confines of Nigeria and do not, as a matter of course, issue orders with direct extraterritorial effect.

The Nigerian Court of Appeal reaffirmed this principle in ***Heyden Petroleum Limited v. Top Leader Shipping Inc. (2018) LPELR-46680(CA)***, observing that:

[13]*Derby & Co Ltd v Weldon [1990] Ch 48*
[14]*Babanaft International Co SA v Bassatne [1990] Ch 13*
[15]*Banco Nacional de Commercio Exterior SNC v Empresa de Telecommunicaciones de Cuba SA [2007] EWCA Civ 662*
[16] *Babanaft International Co SA v Bassatne [1990] Ch 13*

"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."

Notwithstanding this general rule, Nigerian courts have, in exceptional circumstances, granted freezing orders with extraterritorial dimensions. A notable example is the proceedings commenced by the Economic and Financial Crimes Commission against Erastus Akingbola, in which the Federal High Court, on 31st December 2009, granted an order restraining Dr. Akingbola from dealing with assets linked to him in Nigeria, England, Dubai, and Ghana. Although the order purported to extend to assets situated outside Nigeria, its practical effectiveness depended not on the unilateral authority of the Nigerian court but on the willingness of the courts in those foreign jurisdictions to recognise and give effect to it.

Accordingly, the grant of a worldwide freezing order is only the first step; its effectiveness is an altogether different question. As the Court of Appeal further recognised in *Heyden Petroleum*, a judgment or order of a Nigerian court does not automatically have legal force beyond Nigeria's borders. Its enforcement in a foreign jurisdiction depends on the applicable domestic laws of that jurisdiction, principles of private international law, and, where relevant, reciprocal enforcement arrangements, judicial comity, or the recognition procedures prescribed by the foreign court. A worldwide freezing order issued by a Nigerian court therefore operates, in practical terms, as an order directed at the defendant personally. Its capacity to preserve assets located abroad ultimately depends on the cooperation and recognition of the courts in the jurisdictions where those assets are situated.

D. FREEZING ORDERS IN NIGERIA

As a common law jurisdiction, Nigeria's equitable and common law remedial framework derives from principles developed under English law. This occurred through a series of reception statutes including the English Laws Act, the Interpretation Act, and various High Court Laws and the enduring influence of English jurisprudence. The constitutional structure vests judicial powers in the courts.[17] The equitable jurisdiction to grant injunctions, including interlocutory injunctions to preserve assets, is well-established. It is exercised by the Federal

[17] *Section 6, Constitution of the Federal Republic of Nigeria 1999 (as amended); Section 13, High Court Law of Lagos State, Cap H1, Laws of Lagos State 2015*

High Court, the High Courts of States, and the High Court of the Federal Capital Territory.

The Sotuminu Decision

The recognition of the Mareva injunction in Nigeria was confirmed by the Supreme Court in the landmark decision of *Sotuminu v Ocean Steamship (Nig.) Ltd*.[18] The Court affirmed that Nigerian courts possess the inherent jurisdiction to restrain defendants from dissipating assets to defeat a legitimate claim. Subsequent decisions have consolidated this position.[19]

The Supreme Court of Nigeria in *Sotuminu v. Ocean Steamship (Nig.) Ltd*[20] held that:

> *"Because by its very nature, a Mareva injunction could be open to abuses, the Courts are ever conscious in its grant and before it could be granted, the applicant must show the following:-*
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> *a) that he has a cause of action against the defendant which is justiciable in England;*
> *b) that there is a real and imminent risk of the defendant removing his assets from jurisdiction and thereby rendering nugatory any judgment which the plaintiff may obtain;*
> *c) that the applicant has made a full disclosure of all material facts relevant to the application;*
> *d) that he has given full particulars of the assets within the jurisdiction;*
> *e) that the balance of convenience is on the side of the applicant; and*
> *f) that he is prepared to give an undertaking as to damages.*
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> *If the applicant fails to satisfy the court in any of the above pre-conditions, the Mareva injunction ought not to be granted."*

Procedural Framework

The procedural framework for obtaining freezing orders is governed by the Civil Procedure Rules of the relevant court.[21] Applications are typically made *ex parte* in

[18] *Sotuminu v. Ocean Steamship (Nig.) Ltd (1992) 5 NWLR (Pt. 239)*
[19] *A.I.C. LTD v. NNPC (2005) LPELR-6(SC) (Pp 63 - 64 Paras A - B)*
[20] *(1992) 5 NWLR (Pt. 239) 26, paras. D-H*
[21] *Order 28, Federal High Court (Civil Procedure) Rules 2019; Order 42, High Court of Lagos State (Civil Procedure) Rules 2019*

the first instance, given the obvious risk that a defendant notified of an impending application might accelerate the very dissipation the order seeks to prevent. The court may impose conditions on the grant of the order, including limits on the value of assets frozen, carve-outs for ordinary living expenses and professional legal fees, and disclosure obligations requiring the respondent to identify and disclose assets.

Beyond the civil sphere, Nigeria's legislative framework also confers extensive powers of asset preservation in criminal proceedings. The Administration of Criminal Justice Act, 2015 ("ACJA") empowers courts to make orders for the custody, preservation, and, where appropriate, the interim forfeiture of property connected with the commission of an offence pending the conclusion of criminal proceedings. In particular, the Act empowers a court to order that any property in respect of which an offence appears to have been committed be taken into custody or otherwise preserved pending the determination of the trial.[22] The Advance Fee Fraud and Other Fraud Related Offences Act similarly empowers Courts to prohibit the disposition of property where a *prima facie* case has been made out against a person.[23] The Economic and Financial Crimes Commission (Establishment) Act 2004 grants the EFCC the power to apply for the interim forfeiture of assets reasonably believed to be proceeds of crime.[24] These statutory powers are designed to prevent the concealment, dissipation, or destruction of assets that may ultimately become liable to forfeiture upon conviction, thereby safeguarding the integrity of the criminal justice process and ensuring that the proceeds and instrumentalities of crime remain available for confiscation or restitution.

In practice, Nigerian Courts have deployed freezing orders across a range of commercial and fraud-related disputes, including recovery of banking facilities, money laundering, and corporate fraud. The increasing frequency and sophistication of such applications is a testament to the growing centrality of interim asset preservation in complex litigation.

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[22] *Sections 330, Administration of Criminal Justice Act 2015*
[23] *Section 16, Advance Fee Fraud and Other Fraud Related Offences Act, Cap A6, Laws of the Federation of Nigeria 2004*
[24] *Sections 27 and 28, Economic and Financial Crimes Commission (Establishment) Act 2004*

E. CHALLENGES IN ASSET RECOVERY AND ENFORCEMENT

Despite the availability of these asset preservation mechanisms, the practical recovery of assets in cross-border disputes remains fraught with significant challenges. The complexities of transnational asset ownership, conflicting legal regimes, and the limits of judicial cooperation can frustrate even the most carefully planned enforcement strategy.

Territorial Problem

The most fundamental challenge is the territorial limitation of domestic court orders. A freezing order granted by a Nigerian court operates as a personal injunction against the defendant and, subject to the principles governing its extraterritorial effect, does not directly bind assets or persons located outside Nigeria. Enforcing the order against assets in a foreign jurisdiction requires separate recognition and enforcement proceedings, which are governed by the laws of the foreign state. In the absence of bilateral enforcement treaties or statutory reciprocity arrangements, Nigerian judgments may not be readily enforceable in many jurisdictions where Nigerian fraudsters have chosen to keep their assets.

Offshore Architecture Problem

Another challenge arises from the deliberate concealment of assets through layered offshore structures. Defendants who anticipate litigation or regulatory action routinely employ a combination of offshore holding companies, discretionary trusts, nominee shareholders, and bearer instruments to obscure the true beneficial ownership of assets.[25] The practical effect is that, by the time a freezing order is granted, the assets may have passed through several layers of intermediaries, each located in a different jurisdiction, making both tracing and recovery enormously complex and expensive.

The Delay Problem

A third challenge, endemic to the Nigerian justice system and well-documented, is the delay in litigation and enforcement. Prolonged interlocutory proceedings,

[25] *Financial Action Task Force (FATF), 'Guidance on Asset Recovery' (FATF, Paris, 2023) <https://www.fatf-gafi.org> accessed 14 June 2026*

appeals from orders granting or refusing interim relief, and the general pace of litigation in Nigeria can significantly erode the value of a freezing remedy. A freezing order obtained but not expeditiously prosecuted to judgment leaves both parties in a state of costly and uncertain suspension.

The Digital Asset Problem

A fourth and rapidly emerging challenge is the use of cryptocurrencies and other digital assets to conceal and transfer value. Decentralized digital currencies, together with the broader ecosystem of non-fungible tokens, decentralized finance protocols, and privacy coins, present novel difficulties for asset tracers.

While blockchain technology is in principle transparent, the pseudonymous nature of wallet addresses, the widespread availability of mixing services, and the cross-chain interoperability of many digital assets render tracing and freezing technically demanding. Nigerian Courts, like their counterparts in many jurisdictions, have yet to develop a comprehensive jurisprudence on the freezing of digital assets, and the absence of clear procedural guidance creates significant uncertainty for practitioners.

F. RECOMMENDATIONS AND THE WAY FORWARD

The analysis above points to several concrete reforms that would materially strengthen Nigeria's asset recovery framework and align it with international best practices.

Strengthened Judicial Capacity

There is an urgent need to strengthen judicial and institutional capacity in the specific area of asset tracing and freezing order practice. This would encompass dedicated judicial training on the procedural and substantive requirements for freezing orders, the use of forensic evidence in asset tracing applications, and the cross-border dimensions of worldwide freezing orders. Courts equipped with specialist commercial lists and experienced judges are better placed to handle the complexity and urgency that characterise these applications.

International Co-operation

Nigeria must significantly strengthen its international cooperation infrastructure. This includes ratifying and domesticating the key international frameworks that govern mutual legal assistance in civil and criminal asset recovery,[26] negotiating bilateral enforcement treaties with jurisdictions commonly used as havens for Nigerian proceeds of corruption and fraud, and strengthening the Mutual Legal Assistance capacity of the Federal Ministry of Justice and the EFCC. The experience of the United Kingdom, which has developed a robust non-conviction-based asset recovery regime under the *Proceeds of Crime Act 2002*, and that of the European Union, which has established harmonised cross-border freezing and confiscation mechanisms under Regulation (EU) 2018/1805,[27] offer instructive models for strengthening Nigeria's asset recovery framework.

Clear Rules for Digital Assets

The Courts and the legislature must develop clearer and more coherent rules for the tracing and freezing of digital assets. Courts should recognise that;

i. proprietary claims can attach to fungible digital assets,
ii. wallet addresses can be the subject of disclosure orders
iii. exchanges can be restrained by third-party debt orders.

Legislative intervention to provide an express statutory basis for digital asset freezing orders would significantly reduce the uncertainty that currently beclouds these applications.

Shift in Litigation Culture

Finally, practitioners and litigants should make fuller, more strategic, and more innovative use of the interim asset preservation remedies already available under Nigerian law. In complex fraud and asset recovery proceedings, a carefully designed preservation strategy implemented at the earliest stage of litigation can be as critical to a successful outcome as the substantive merits of the underlying claim. By securing assets before they can be concealed or dissipated, such measures enhance the effectiveness of the judicial process and ensure that a favourable judgment is capable of meaningful enforcement.

G. CONCLUSION

[26] *United Nations Convention Against Corruption (UNCAC), GA Res 58/4, UN Doc A/RES/58/4 (31 October 2003) Arts 54–55*

[27] *European Union Directive 2014/42/EU on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union, OJ L 127, 29.4.2014*

Asset tracing and recovery occupy a position of fundamental importance in the effective enforcement of civil and criminal judgments. In an increasingly globalised financial system, where capital can be transferred across jurisdictions with remarkable speed and sophistication, the value of a successful cause of action ultimately depends on the practical ability to identify, preserve, and enforce against a defendant's assets. A judgment, however sound in law, is of little practical value if it cannot be executed.

Mareva injunctions and worldwide freezing orders have consequently emerged as among the most effective judicial tools for preserving assets pending the determination of proceedings and safeguarding the integrity of the judicial process. Nigerian courts have increasingly recognised and applied these remedies, demonstrating a growing willingness to deploy equitable measures to prevent the frustration of justice. Nevertheless, their full potential will only be realised through deliberate reforms aimed at strengthening the legal framework governing cross-border asset preservation, enhancing judicial cooperation, improving access to financial intelligence, and streamlining enforcement mechanisms.

Nigeria possesses both the legal tradition and the institutional foundation to become a leading jurisdiction for asset tracing and recovery in Africa. By drawing on the rich body of jurisprudence developed in England and other common law jurisdictions, while adapting those principles to the realities of the Nigerian legal system, the legislature and the courts can build a more robust and effective asset recovery regime. Such a framework would ensure that those who seek to conceal or dissipate assets beyond the reach of justice are met with a legal system capable not only of adjudicating rights but also of securing meaningful and effective remedies.