

IN THE COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON TUESDAY THE 13TH DAY OF FEBRUARY, 2018
BEFORE THEIR LORDSHIPS:

MODUPE FASANMI
HARUNA SIMON TSAMMANI
NONYEREM OKORONKWO

= **JUSTICE, COURT OF APPEAL**
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APPEAL NO: CA/IB/227^C/2017

BETWEEN:

FIMHAB NIGERIA LIMITED

...

APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA

...

RESPONDENT

JUDGMENT
(DELIVERED BY NONYEREM OKORONKWO, JCA)

This appeal arose from the ruling of the Oyo State High Court presided over by its Chief Judge delivered on 24th January, 2017.

The background facts as contained in the record prepared by the appellant's counsel reveals as follows:

On the 1st February, 2013, 4th February, 2013 and 22nd May, 2013, the Executive Chairman of Economic and Financial Crimes Commission (EFCC) received petitions from 2011/2012 Primary School Teacher Retirees and the Attorney General of Oyo State respectively

calling for investigation into monumental fraud perpetrated in respect of the accounts of the Oyo State Local Government Staff Pension Board by some of the Respondents herein.

The petitions were duly accepted and inquiry carried out revealed inter alia:

- (i) That the 1st, 3rd, 5th, 6th, 8th and 9th respondents were at all material times herein between 2010 – 2011 principal officers of Oyo State Local Government Staff Pension Board; whilst the 7th respondent was the Head of Service, Oyo State Civil Service.*
- (ii) That between 2010 and 2011, the respondents along with others conspired and fraudulently obtained colossal sums of money running into several Billions of Naira from various accounts of Oyo State Local Government Staff Pension Board domiciled at different banks.*
- (iii) That prior to 2010, 1st, 3rd, 5th, 6th, 7th, 8th and 9th had occupied various posts in the Oyo State Public Service where they engaged in acts of fraud.*
- (iv) That 1st and 3rd respondent respectively incorporated 2nd and 4th*

respondents companies as front for concealment of their criminal proceeds.

- (v) *That monies realized from the criminal enterprise were channeled by the respondents directly and through intermediaries to the purchase, development, improvement and administration of various properties.*

*Following investigation, criminal charge No. **1/6EFCC/2013 – Federal Republic of Nigeria Vs. Muili Hakeem Aderemi and 11 Ors** was instituted against 1st, 3rd, 5th, 6th, 7th, 8th and 9th respondents and other persons before the High Court of Oyo State. Arraignment of the accused persons took place before Honourable Justice Bolaji – Yusuf sitting at Court 3 on 7th November, 2013.*

Further, investigation is still on-going in respect of other acts of fraud discovered during the commencement of inquiry

At the instance of the Attorney General of Oyo State vide letter of 22nd May, 2013. The Economic and Financial Crimes Commission took over the investigation and prosecution of the case already charged to court in Charge No. M.1/238C/2013 **Commissioner of Police Vs. Alhaji Hakeem Muili and 29 Ors** wherein.

Upon taking over the case, the Economic And Financial Crimes Commission preferred information against Muili Hakeem Aderemi & 11 Ors in Charge No. 1/6/EFCC/2013 wherein 213 count of conspiracy, obtaining by false pretense, forgery and stealing were preferred against the accused persons therein.

In the course of its investigation activities as shown on page 37 of the Record, the Economic And Financial Crime Commission obtained from the corporate Affairs Commission Certified True Copy of documents which shows that the appellant herein **FIMHAB Nigeria Limited** is over 99% owned by Muili Hakeem Aderemi and his immediate family.

Investigation by the Commission (EFCC) further revealed the extent of property of the said **FIMHAB NIGERIA LIMITED** as shown at pages 8 & 9 of the record herein painstakingly reproduced.

S/N	DESCRIPTION OF PROPERTY	LOCATION OF PROPERTY
1.	Large expanse of land measuring 1,905,084 Sq. meters comprising of building, farms plants and machineries, motor vehicles, office equipment, furniture and tanks.	Isale Alfa Olomi-Olojuoro Road, Ibadan, Oyo State.
2.	A large expanse of land measuring 11,382 hectares comprising of buildings, farms, poultry and livestock grazing area. Plants and machineries, motor vehicles, office equipment, furniture and tanks.	Alapa Village along Aiyegun-Olojuoro Road, Oluyole Local Government Area, Ibadan Oyo State, registered as 22/22/3614 of the Lands Registry Office at Ibadan, Oyo State.

3.	Property consisting of buildings, farms land, poultry and husbandry pen and livestock grazing area.	Ikumopayi Arubiewe Area, off Iwo Road, Egbade Local Government Area, Oyo State, registered as 21/21/3474 of the Lands Registry Office Ibadan.
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Schedule of Plants and Machineries of Fimhab Nigeria Limited in the three properties listed above.

S/N	DESCRIPTION	MANUFACTURER	VALUE
1.	2 X 27 KVA Generating Set	FG Wilson	₦1, 235,,000.00
2.	60 KVA Generating Set	FG Wilson	₦845,000.00
3.	40 KVA Generating Set	Yoshitaa	₦292,500.00
4.	7.5 KVA Generating Set	Lister	₦234,500.00
5.	30 KVA Generating Set	Lister	₦ 636,500.00
6.	8 KVA Generating Set		₦162,500.00
7.	2.8 KVA Generating Set		₦ 29,250.00
8.	2 x 110 KVA Generating Set	Perkins	₦ 5,850.00
9.	88 KVA Generating Set	Perkins	₦2,275.000.00

Schedule of Vehicles of Fimhab Nigeria Limited in the three properties listed above;

S/N	DESCRIPTION	MAKE	REGISTRATION NO.
1.	Tipper	Lay-land DAF	
2.	Tipper	Mack	XC 105 YRE

3.	Tipper	Mack	XC 104 YRE
4.	Car	Toyota Corolla SWD	AS 950 NRK
5.	Pick Up	Toyota Tundra	AX 190 NRK
6.	Pick Up	Toyota Hilux	PC 815 AAA
7.	Pick Up	Deer Cabin	BB 957 BDJ
8.	Jeep	Ford Expedition	CM 29 MUS
9.	Car	Civic VTI	
10.	Car	Honda Accord I-VTEC	HB 98 AAA
11.	Car	Honda Accord LX	AT 221 BDJ
12.	Pick Up	Qinggi	XQ 403 APP
13.	Van	Chevrolet Express	AJ 32 YRE

The commission conceiving that the property of the appellant company **FIMHAB NIGERIAL LIMITED** were connected or were proceeds of the crime the subject of their investigation, pursuant to Section 28 and 29 of the Economic and Financial Crimes Commission (Establishment Act) act proceeded to trace and attach the property of the appellant comprised in the schedule under reference and having so attached the property under the said statutory provision went ahead to seek and procure an interim attachment order from the High Court of Oyo State per Esan J.

Conceiving that it is an incorporated company under the companies and Allied Matters Act and that as such corporate entity, it was neither arrested nor charged with any criminal offence neither is it being

investigated by the commission, it, the appellant applied to the High Court of Oyo State for an Order to set aside the order of attachment made on 16th February, 2014 as afore-hinted. It was this application that came before the Oyo State Chief Judge which was refused in a composite ruling delivered 24th January, 2017 which led to this appeal vides Notice of Appeal filed 31st March, 2017 raising eight (8) grounds of appeal from which the following issues for determination were distilled as follows:

- i. Whether the learned trial Chief Judge was right in holding that the respondent complied with the provisions of Sections 28 and 29 of the Economic and Financial Crimes Commission Establishment Act, 2004, (See Grounds 1 and 2 of the Notice of Appeal).*
- ii. Whether the provisions of Sections 28 and 29 of the Economic and Financial Crimes Commission Establishment Act, 2004 can apply to the properties of the Appellant who is not standing trial in Charge No. I/6EFCC/2013 and which properties were not acquired with the proceeds of any crime. (See Grounds 3 and 4 of the Notice of Appeal).*
- iii. Whether determining the Motion to set aside the interim order would amount to determination of the issues meant to be determined at the end of the investigation and trial of the substantive*

criminal charge for which the Appellant is not standing trial. (See Ground 6 of the Notice of Appeal).

- iv. Whether the Court has the power to set aside an interim order granted under Section 28 of the Economic and Financial Crimes Commission Establishment Act, 2004. (See Grounds 5 and 7 of the Notice of Appeal).*
- v. Whether the learned trial Chief Judge reviewed the application of the Appellant in his Ruling and/or considered the facts placed before the Court in the Affidavit evidence of the Appellant. (See Grounds 8 and 9 of the Notice of Appeal).*

Consideration of issues

Issues I, II and III are all connected with Section 28 and 29 of the Economic and Financial Crimes Commission (Establishment) Act, 2004. The Sections provide as follows:-

Investigation of assets and properties of a person arrested of an offence under this Act, etc.

- (a) Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person*

*acquired as a result of such economic
The assets or properties of person
arrested for an offence under this Act
has been seized; or*

- (b) *Any assets or property has been seized
by the Commission under this Act,
The Commission shall cause an ex-parte
application to be made to the Court for
an interim order forfeiting the property
concerned to the Federal Government
and the Court shall, if satisfied that
there is prima facie evidence that the
property concerned is liable to
forfeiture, make an interim order
forfeiting the property to the Federal
Government.*

*or financial crime and shall thereafter cause to
be obtained an interim attachment order from
the Court.*

Interim forfeiture order

Where:-

The statutory provisions have been espoused in **Chinelo Nwaigwe vs. Federal Republic of Nigeria (2009)16 NWLR (pt. 1166) 169** move particularly in **Dangebar vs. Federal Republic of Nigeria (2014) 12 NWLR (pt. 1422) at 575**

Under Section 28, it seems to me that where a person is arrested for an offence, the Commission is empowered by statute to trace and attach property of the person acquired as a result of such economic and financial crime.

To trace is to search for property or chose of another in the hand of another in an identifiable form as where a trustee or manager has received trust money and misappropriated or is otherwise morally guilty **Bahin vs. Hughes (1886) 31 Ch.D 300 at 395**

Tracing is an equitable principle and under it property can be traced to mixed funds so long as they are identifiable. See **Re Diplock (1948) Ch. 465; Ministry of Health vs. Simpson (1951) AC 251.**

Being statutorily so empowered under Section 28 as aforesaid, the EFCC was able to trace the alleged stolen fund to the appellant FIM HAB Nigeria Limited. That itself connects the appellant with Section 28 of the EFCC and with the person it has arrested for stealing such funds Muili Hakeem Aderemi who with his immediate family owns about 99.9% of the shared of the appellant.

The property of a limited liability company is its own independently of its shareholders because an incorporated company is bestowed with a distinct legal personality since **Salomon vs. Salomon and Co. Ltd (1997) AC 22 House of Lords.**

But over time, circumstances began emerge where in appropriate circumstances it became imperative to lift the corporate veil and see the

person or persons behind the masquerade. See **Lord Denning rendering the veils of incorporation in Littlewoods Mail Order Stores Ltd vs. Inland Revenue Commissioners (1969) 3 All ER 442; (1969) WLR 1241 Jones vs. Lipman (1962) 1 All ER 442.**

There is a principle in Equity that Equity will not allow a statute to be used as an engine of fraud. Having empowered the Commission (EFCC) to trace, it means it can trace allegedly stolen fund or property into the closets of a limited liability company and under the Section 28 of the Act attach such property. It is an aspect of lifting the veil of incorporation. In **Akinwunmi O. Alade vs. Alice (Nigeria) Ltd & Anor,**

As I indicated, appellant is a family company with the 1st accused Muili Hakeem Aderemi, its Managing Director being the majority shareholders and his Wife and Children holding the rest of the shares. There is so much property in the appellant's possession and the said accused person is accused of stealing over six billion naira along with other. He has been under the arrest of EFCC who had statutory power to trace and attach. Section 28 of the Act carried with it in a proper case the power to lift the veil of incorporation in the business of tracing. That is what it did in this case.

A thorough examination of Section 28 of the EFCC Act shows that where a person has been arrested for an offence under the Act, the duty to trace and attach by the Commission arises. The jurisdiction of the court to set aside will only arise where there was no arrest for an offence under the Act.

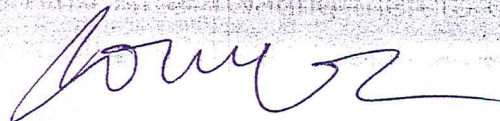
owner of the property shown in schedule 2 above, so all the requirements of Section 28 of the Act are amply satisfied.

I therefore resolve those issue I, II and IV against the appellant.

For issue No. III and V Section 28 of the Act is concerned with ***interim Attachment*** and in matter relating thereto every court including this cognizant of the interim nature of the seizure or attachment must be careful in assessment, evaluation and comment in order not to prejudice issues that are yet to arise.

I read the entire judgment or ruling of the Learned Chief Judge and I am satisfied that he applied the relevant principles and came to the proper conclusion.

All issues having been resolved against the appellant, the appeal lacks merit and is dismissed.



**NONYEREM OKORONKWO,
JUSTICE, COURT OF APPEAL.**

COUNSEL:

Patience Nwankwo (Miss) for the Appellant

Respondent is not represented by counsel.

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MODUPE FASANMI

I had the privilege of reading in draft the leading judgment of my learned brother **Nonyerem Okoronkwo, J.C.A.**

I agree entirely with the reasoning therein and the conclusion arrived thereat. The appeal lacks merit and ought to be dismissed. The appeal is hereby dismissed by me and the ruling of the lower court delivered on the 24th of June, 2017 is hereby affirmed by me


MODUPE FASANMI
JUSTICE, COURT OF APPEAL.

APPEAL NO: CA/IB/227^C/2017

HARUNA SIMON TSAMMANI, JCA


I had the privilege of reading in advance a copy of the judgment delivered by my learned brother, **Nonyerem Okoronkwo, JCA.**

My learned brother has concisely and with clarity resolved the issue arising in this appeal. Section 28 of the Economic and Financial Crimes Commission (Establishment) Act clearly gives power to the Commission (E.F.C.C.) to trace and attach any asset and properties of any person arrested for an offence under the Act, where the commission suspects that such asset or property has been acquired from the proceeds of crime. The Court shall then, upon application of the E.F.C.C, cause such asset or property to be, in the interim, forfeited to the Government. See **Section 29 of the E.F.C.C. Act (supra).**

The provisions of Sections 28 and 29 of the E.F.C.C. Act are very clear and need no other tool of statutory construction to interpret same. A literal interpretation will suffice. See **Essai Dangabar v. Federal Republic of Nigeria (2012) LPELR – 19732 (CA)**. In the case of **A.G; Ondo State V. A. G; Federation (2002) 9 NWLR (pt.772) 222**, the Supreme Court validated the provisions of Sections 28 and 29 of the Act.

It is clear that the assets and properties were suspected to have been acquired by Muili Hakeem Aderemi who was being tried for offences under the E.F.C.C Act. The learned trial Chief Judge of Oyo State was therefore right when he refused to set aside the order of interim attachment earlier made on the 16/2/2014.

I therefore agree with the reasoning and conclusion of my learned brother that the appeal has no merit. Consequently, it is hereby dismissed.


HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.