

THEFT OF PUBLIC ASSETS IN DEVELOPING COUNTRIES AND THE INEFFECTIVE LEGAL FRAMEWORKS ON CROSS-BORDER ASSET TRACING AND CONFISCATION

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Abstract

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In most developing countries with weak rule of law and fledgling democratic institutions, theft of public assets by public office holders is rampant and has a strong correlation with the excruciating level of poverty and underdevelopment that besiege these countries (Ijewereme, 2013). While a myriad number of reasons may be responsible for this situation, the absence of a mature legal framework as well as the scant availability of sufficiently trained government personnel to trace and recover stolen assets, hidden domestically and abroad, arguably remain contributory factors. Granted that corrupt public office holders are typically enabled by porous (domestic) legal frameworks that provide them wide escape routes for their crimes, contestably however, the laws bordering on confiscation of assets in many foreign countries (safe havens) seem intentionally designed to frustrate any recovery of stolen assets by developing countries. In the aftermath of the COVID-19 pandemic, the rate of stealing public assets by public office holders in developing countries is foreseen to rise astronomically and is likely to deepen their existing levels of poverty and hopelessness (Ayode, 2020). Using Nigeria as an example of a developing country, the paper critically examines the underlying defects in the cross-border legal framework on asset recovery and confiscation and proffers suggestions on how these defects could be remedied.

Keywords: Asset Tracing, Safe Haven, Law Enforcement, Litigation, Mareva Injunction, Freezing Orders, Money Laundering

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1. INTRODUCTION

Theft of public assets by public office holders in Nigeria and many other developing countries is indisputably rampant and destructive to their

fledgling economies. Arguably, in addition to other socio-economic and cultural factors, this situation is also made possible by the lack of a suitable legal framework and insufficient manpower capable of tracing and recovering stolen assets, hidden either in

the domestic economy or in foreign countries. In the case of Nigeria (which this paper uses as a typical example of a developing country), there are many examples of embezzlement of public assets by public office holders: the Nigerian cases of money laundering and embezzlement of public assets, involving Diepreye Alamieyeseigha, James Ibori, Sani Abacha, are extreme but hardly atypical of the experiences of many other developing countries with fledgling democracies and rule of law. Nigeria's cross-border legal framework on asset tracing and recovery is defective given its fragmented nature and undue complexity: in the last analysis, it does not suit the ultimate aim of asset recovery and confiscation considering the ease with which intangible assets are moved across the globe through electronic means.

Arguably, the laws bordering on confiscation of assets in many countries branded as "safe havens" also contribute to the difficulty in recovering stolen assets by the Nigerian government, and the outcome is the devastating level of poverty among its citizenry. Fisher, Cregan, Di Giulio, and Schutze (2011) have pointed out the important links among financial crisis, financial crimes, poverty, and the poor legal framework of a country owing to its lack of capacity to prevent embezzlement of public assets and other forms of public corruption. This paper intends to reawaken consciousness regarding the somewhat abandoned problem of asset embezzlement by public office holders: a condition that is foreseen to worsen due to the COVID-19 pandemic, which has gradually morphed into an economic crisis. In large part, this paper claims or reasonably fears that owing to the corrupt nature of many Nigerian politicians, the economic effects of the pandemic might cause these politicians to become more desperate towards looting and hiding public assets in countries that have intentionally designed porous legal frameworks on money laundering as a measure to encourage foreign deposits and safekeeping of stolen wealth. For the countries christened as "safe havens", the incentive to maintain a lax enforcement attitude toward money laundering laws relates possibly to the indirect financial supports these stolen assets offer to their economies, enabling them to provide credit to their citizenry (consumers and businesses) at low-interest rates: this will worsen the already impoverished condition of Nigeria and other developing countries and create an upsurge in the economic migration of their citizens to other countries. The question remains: *What exactly should be done to enhance the cross-border legal framework in Nigeria for example, in order to increase the success rate of recovering stolen assets by public officials?*

This introductory part is followed by four other sections. Section 2 reviews the literature on asset tracing and recovery in Nigeria and other developing countries, pointing out the common defects in the existing legal frameworks, which scholars have sufficiently established to be responsible for the rampant theft of public assets and the ensuing poverty among the citizenry of developing countries, including Nigeria. In Section 3, the methods and results are stated, while in Section 4, the paper discusses the underlying issues relating to asset tracing, the poor legal frameworks, the helpful role

of "safe haven" countries in hiding assets, and suitable suggestions on how to bypass these challenges. Section 5 is the conclusion.

2. LITERATURE REVIEW

Nigeria is still categorized as a developing country, and its economy is currently battling a fall with the effects of the COVID-19 pandemic (Ayode, 2020). According to the corruption perception index by Transparency International (2020), Nigeria ranked 149th out of 180 that were assessed and scored a low point of 25%. Thus, based on objective ratings, the level of corruption among public office holders, often leading to the theft of public assets has sustained an alarming rate since the 1980s (Obuah, 2010). A 2010 data shows that more than \$400 billion has been looted by the leaders amounting to about "six times the total value of resources committed to rebuilding Western Europe after the Second World War" (Azeez, 2011, p. 312). Sadly, since Nigerian government officials are often the beneficiaries of economic and financial crimes, there is little or no incentive to develop the country's financial intelligence to a point it could successfully curb the theft and laundering of assets outside the country (Lawal & Tobi, 2006).

As observed by the Federal Action Task Force (FATF) (2016), owing to the gaps which appear to have been intentionally left to facilitate the looting of public assets and hiding them abroad, terrorist groups, such as Boko Haram and other corrupt and fraudulent individuals, have been exploiting these gaps in the legal framework to acquire public assets illegally, and effectively hiding them in the formal and informal sectors of Nigeria's economy (BBC, 2006; Europol, 2020). Similarly, the above-mentioned groups launder the illegally obtained assets to foreign countries for "safe keeping", with many disguised layers to frustrate genuine tracing and recovery efforts (Azelama, 2002; Ijewereme, 2013; Waziri, 2010). Transparency International (2018) had also reported the many unfortunate instances where public office holders acquired public assets illegally, and the countries where those assets were successfully hidden.

Akçay (2006), points out how this level of public corruption reduces a developing country's economic growth by poisoning its long-term domestic and foreign investments. Yet, notwithstanding that theft of public assets is rampant in Nigeria and has ravaged its economy, the relevant institutions in charge of economic crimes, e.g., the Economic Financial Crime Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC), have not been able to make any remarkable success in tracing and recovering most of the stolen and hidden assets. Azelama (2005) observed that oftentimes, politicians successfully bribe the law enforcement agents in order to avoid being investigated and prosecuted (Aluko & Adesopo, 2003; Ijewereme, 2013). In this circumstance, the Nigerian law enforcements appear typically ill-equipped or simply unable to launch thorough and effective investigations that will lead to successful recoveries (UNODC, 2007, p. 26).

One of the defects of Nigeria's legal framework on cross-border asset tracing and confiscation relates to the immunity from suit privilege conferred on a sitting president and governors of states under

section 308 of the 1999 Constitution which creates a moral hazard as well as fertile soil for theft of public assets: the Constitution does not allow for any court-related investigations or actions against these categories of office holders while they are in office. In addition, even after their political tenures have ended, the incoming executive government usually protects their corrupt allies who are out of power, especially if they belong to the same political party. Where an incoming president or governor belongs to a different political party from their predecessors, proceeding against the outgoing president or governor with litigations on grounds of corruption and asset embezzlement is typically viewed as a political trial, which could create or exacerbate political tensions in the country. Due to the religious and cultural diversity of Nigerians, a significant number of the citizens hardly view issues objectively, but along religious and ethnic lines (Human Rights Watch, 2011). The result of all this is that many stolen and hidden assets are never traced and recovered unless owing to a fortunate stroke of serendipity, they are returned out of benevolence by the countries where these assets were hidden for a long time as were the cases of money laundering by Diepreye Alamiyeseigha, James Ibori, and the famous financial loots by Sani Abacha (Monfrini, 2008; Ijewereme & Dunmade, 2014).

Additionally, although bulk of the cases involving money laundering, tracing, and recovery of assets from abroad occur in the context of committed crimes; sometimes, it could originate from a civil dispute whereby the assets of a debtor claiming to be impecunious are traced domestically and internationally, eventually recovering them towards satisfaction of their judgment debts. As observed by Ronald and Golumbic (1998), even though the civil and criminal contexts of asset tracing and recovery pose an enormous challenge, the challenges posed by the latter context are much more overwhelming even for experienced practitioners, and of course, requires more resources and careful measures.

In October 2003, the United Nations Convention against Corruption was adopted by its General Assembly. Nigeria signed this Convention in December 2003 and subsequently enacted two important pieces of legislation: the Economic and Financial Crimes Commission (EFCC) Act 2004; and the Money Laundering Act 2004. In other words, until 2004, Nigeria lacked any dedicated legislation or institution in charge of investigating financial frauds and recovery of stolen assets (Ijewereme, 2015). Shover and Honaker (1992) researched the linkages between the propensity to commit financial crimes and the strength of existing legal frameworks and punishment for such crimes. Thus, in the case of Nigeria, the lack of a suitable legal framework against theft of public assets had partially resulted in the theft of assets worth over \$US 400 billion by some Nigerian politicians.

In February 2020, the US Department of Justice facilitated the return of \$US 300 to Nigeria, being part of the stolen assets by its former military head of state, Sani Abacha (US Department of Justice, 2020). Aderole (2013), Human Rights Watch (2011), VOA (2012), and Roberts (2015) have outlined some specific cases of money laundering cases involving notable Nigerian public office holders, including

Diepreye Alamiyeseigha, (former Governor of Bayelsa State) and James Ibori (former governor of Delta State) who were convicted of money laundering crimes, and had respectively looted about \$US 55 million and \$US 250 million. Several tactics for hiding stolen assets have evolved over time. As Cellular (2003) and Harvey (2014) noted, presently, it is commonplace to see financial crimes involving the creation of offshore sham companies and legal trusts especially in countries whose economies notoriously thrive on laundered and stolen assets. These countries, which Kahn (2000) christened “safe havens” intentionally leave little or no measures in place for tracking down money laundering activities, with the sole aim of defeating even the most furious and energetic chase.

Hornsby and Hobbs (2007) offer a critical insight regarding how laundered assets or proceeds therefrom are typically managed in offshore countries. In Nigeria, for instance, once corrupt office holders have successfully moved illegally acquired assets to foreign safe havens or financial centers of the world, the funds are usually managed by highly experienced fund managers, who invest them into myriad business opportunities, including purchases of expensive real estates, shares, and personal properties, sometimes using several identities that frustrate any efforts to trace back the properties to the original criminal/wrongdoer (UNODC, 2007; Jimu, 2009; Transparency International, 2017; Sahara Reporters, 2020). In the case of company shares being traded on the floors of security exchanges, the ease of sale via electronic platforms and the quick conversion of proceeds into other forms of asset, make the work of asset tracers extensively difficult and sometimes, futile (FATF, 2019).

Most asset tracing investigations are executed in the context of committed crimes: the usual but ineffective method of Nigerian law enforcement agents is to engage in a hot media pursuit of the wrongdoer and dissipate vast resources in obtaining freezing orders from a Nigerian court. Oftentimes, this approach produces a harvest of dead leaves because freezing orders, compared to the highly transient nature of the assets being pursued, are typically ineffective due to the possibility that the targeted assets will probably be moved out to foreign jurisdictions where the obtained orders will not automatically have effect unless registered in their courts for recognition and enforcement. Thus the targeted assets could be moved out of jurisdiction even before the freezing orders are effectively registered, thereby creating a wild goose chase scenario of using good money to chase after bad money (Knoetzl & Marsch, 2008).

Similarly, in Nigeria, the unconcealed nature of investigative operations could promptly alert wrongdoers, and induce them to create a smokescreen over stolen assets. A better approach (as used in more experienced jurisdictions) is to channel focus towards recovering the stolen assets with effective but covert investigative techniques that will not necessarily alert the wrongdoers and cause them to relocate assets to “safer” jurisdictions. For effectiveness, in the author’s opinion, the recovery of stolen assets using covert means should be considered more crucial over “media trials” that

often gives immediate satisfaction, but hardly enough evidence to arrest and punish the suspects: instead give the criminal suspects invariably acquire abundant time to hide assets and clean off any marks that might lead to their identification for the alleged crimes. Irrespective of the available legislation on money laundering and financial crimes, the Nigerian government has not fared well in preventing theft of public assets due to systemic corruption: possibly, the pieces of legislation were primarily enacted to improve Nigeria's image in the international arena.

The United Kingdom (UK) arguably serves as a good model, which Nigeria and other developing countries can emulate. Generally, in the UK and other common law jurisdictions, criminal law bestows the onus on the accuser to prove beyond a reasonable doubt that the accused person committed an alleged offence. However, in the case of asset tracing where evidence is normally difficult to obtain due to the possible multi-layers of disguise, it is often challenging to achieve a conviction, let alone a confiscation of stolen assets. This often leaves the criminals to enjoy the fruits of their crimes. In the UK, the Proceeds of Crime Act 2002, particularly sections 327 to 329, as amended by the Serious Organised Crime and Police Act 2005, and the Criminal Finances Act 2017, constitute the major legal framework for fighting money laundering activities. Before the intolerable reaction of the UK government in 2018, London was already being described as the global capital for money laundering and illicit drug trade (Gayle, 2015; Hanning & Connett, 2015).

In a 2015 speech in Singapore, David Cameron reassured his "[d]etermination to ensure that the UK must not become a safe haven for corrupt money from around the world. We need to stop corrupt officials or organised criminals using anonymous shell companies to invest their ill-gotten gains in London property, without being tracked down [...] There is no place for dirty money in Britain. Indeed, there should be no place for dirty money anywhere. That is my message to foreign fraudsters: London is not a place to stash your dodgy cash" (UK Home Office, 2015). In January 2018, the UK government introduced the Unexplained Wealth Orders (UK Home Office, 2018), which is an investigative order issued to any of the authorized law enforcement agents: it enables the relevant enforcement agents to obtain interim freezing orders against suspected politicians or officials from outside the European Economic Area (EEA) or their affiliates deemed to be politically exposed persons.

Contrary to the established practice in the criminal law of many jurisdictions, the Unexplained Wealth Order (UWO) adopts the reversed burden of proof approach that necessitates an authorized enforcement agent acting within a UWO framework to require a political person suspected to have embezzled public assets to explain how they came to own a property in the UK that is worth 50,000 GBP or more, which could not have been acquired by the suspect's lawfully known source of income. If the suspect is not able to furnish satisfactory evidential proof of ownership, the property could be deemed a proceed of corruption and consequently confiscated.

In 2020, top banks in the UK reinforced their commitment to continue the fight against money laundering and terrorist financing through programs that assist in information gathering and tracing and recovering stolen assets (Commercial Crime Services, 2020). The UWO framework creates a regime that makes it comparably easier to trace and recover stolen assets by reversing the burden of proof, as well as boosting the investigatory powers of the authorized enforcement agents to discover and initiate a process for conviction and confiscation. If the UWO is properly enforced, properties seized from corrupt Nigerian politicians and those of other developing countries will be returned to their respective governments especially if there are existing mutual legal assistance treaties between the developing countries and the UK. In addition, Nigeria and other developing countries afflicted seriously with the corruption of public office holders could consider adoption of the UK approach as a domestic remedy towards recovering stolen assets from politicians, which they had hidden within the domestic economy.

3. RESEARCH METHODS

The paper utilizes the doctrinal method of research in legal studies, by critically examining the challenges in the legal framework for asset tracing and confiscation of stolen public assets by public office holders who from the perspective of agency theory are abusive of the information asymmetry and insider information in their possession (Magnanelli, Pirolo, & Nasta, 2017). Where necessary, it uses case law to show the attitude of courts in these issues. It also uses secondary data (scholarly materials), and data from official reports of governments and non-governmental organizations to ascertain the existence of gaps and complexities in the existing legal framework and how the outcome has amplified the level of theft of public assets in developing countries, especially Nigeria. It uses a discursive-analytical method to expose these gaps and reasonably persuade the law and policymakers towards adopting a more suitable legal framework that will ensure a higher rate of a successful recovery of stolen assets. Through a comparative analysis of the Nigerian and UK legal frameworks, the paper reasonably establishes the suitability of the UK approach — the reverse burden of proof under its UWO regime, which disregards the established procedure in the law of evidence which normally imposes the burden of proof on a person that alleges the existence of a fact: under Nigerian criminal law, the prosecutor bears this burden by proving alleged guilt of the offender beyond a reasonable doubt. Under the UK unexplained wealth regime, however, the accused (politician/public office holder) is required to prove their alleged innocence in matters relating to embezzlement of public assets.

At the end of the comparative legal analysis, it was reasonably established that the existing legal framework in Nigeria and by extension other developing countries *vis-à-vis* asset tracing and recovery is complex and ineffective and therefore encourages asset embezzlement by the public office holders. An example of the complexity relates to the over-dependence on litigation and court-given

Mareva Injunction and other forms of subpoenas as sole remedies to recover and confiscate stolen assets. This method of recovery is ineffective due to the delay in obtaining these court orders compared to the speed of relocating stolen assets via electronic means. It was also found that the more established rules of criminal procedure and evidence law on burden of proof invariably assist public office holders in stealing and hiding assets since these procedural rules require the injured country to prove beyond a reasonable doubt before the allegedly stolen assets can be confiscated. However, the paper finds that if a reverse burden of proof is used (solely in this type of matters), the onus shifts to the criminal suspects (public office holder) to prove their innocence which relieves the state from too many expenses and increases their likelihood of recovering and confiscating stolen assets.

4. RESULTS AND DISCUSSION

To ensure effectiveness, investigating authorities in Nigeria *vis-à-vis* asset tracing and recovery should follow the following phases in the sequence discussed here. The first is the pre-investigative phase whereby the source of information regarding the wrongdoer and the stolen assets is evaluated by investigating authorities in order to ascertain their true value, a thorough examination of the surrounding facts: if properly assessed, the facts will reveal whether a cause of action exists and capable of being redressed. As Argentiero, Bagella, and Busato (2008) opined, this stage is crucial and must be carefully scrutinized: a misdirection could lead to a total waste of the resources budgeted for the process, and in the final analysis, could discourage the investigating team from attempting new (perhaps genuine) cases in the future. In addition, given the foundational nature of this phase, all pertaining contradictions in respect of assumptions or claims must be reconciled, and the truth firmly established before proceeding to the investigative phase — the second phase.

The investigative phase is arguably the most challenging stage: it involves tracing the assets to their final locations. This would involve collaborative efforts of the foreign financial institutions where the suspected assets are located, the real estate and company registries, and the companies where the relevant shares are being held (Wincorn, 2013). Of course, success rates would normally depend on the overall size of effort invested by the country toward unearthing the hidden assets (Gnutzmann, McCarthy, & Unger, 2010). As much as possible, this phase must be conducted in an extremely covert manner and should involve a Mutual Legal Assistance (UNODC, 2019) from the relevant institutions in the jurisdictions where the suspected criminal assets are located. Irrespective of the existence and widely subscribed United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substance (United Nations, 1998), this stage is still fraught with challenges and often encounters indirect oppositions from the financial institutions in the jurisdictions where the alleged stolen assets are held. Favarel-Garrigues, Godefroy, and Lascoumes (2011) and Kidwai (2006) have studied the assisting roles of banks in money laundering

cases and their typical reluctance in cooperating with the investigative processes. Yet, any cooperation from financial institutions in respect of their customer alleged to have laundered money must tiptoe carefully on the local legislation and data privacy laws that protect a banker-customer confidentiality agreement, which in many cases, will require a supervening court order (subpoena) to be overridden. However, obtaining a subpoena order frequently occurs in the context of pending litigation, which could sufficiently alert the other party (wrongdoer/defendant), especially if the latter is clandestinely acting in cooperation with the relevant financial institutions.

Likewise, the interlude between filing a suit and applying for a subpoena against a third party holding assets for the wrongdoer-defendant might be sufficient for the latter to darken the smokescreen or relocate the assets to other jurisdictions (Knoetzl & Marsch, 2008). Correspondingly, a viable remedy might lie in filing a suit and simultaneously applying for subpoenas and freezing orders, in the hope that the wrongdoer-defendant(s) are not alerted quickly enough to relocate assets. Another observed fact that deserves mention is that the court system of some jurisdictions that are notorious for being safe havens (Kahn, 2000), typically protect the wider agenda of the other arms of government, because the illicit assets operating in their economies no doubt increase cash flows and access to affordable credit, which help their citizens to borrow at very low-interest rates to do business and create jobs (Fitzgibbon & Hallman, 2020). In furtherance to the foregoing, a court in the jurisdiction where stolen assets are located might put up a reluctant attitude and be quick to aggressively puncture carefully obtained pieces of evidence and render them inadmissible, so as to preclude the assets from leaving their country (Cellular, 2003).

It should be emphasized that at the second stage, the asset tracer should mainly be bothered by the obtainment of sufficient evidence. This is because, normally, courts of justice around the globe present themselves as being blindfolded and unbiased umpires, and would typically be reluctant to seize any alleged criminally acquired assets on lightweight evidence that fails the standard of proof in a criminal allegation, i.e., proof beyond a reasonable doubt. This means that adequate care must be taken to ensure that the evidence being gathered in the jurisdictions where the criminal assets reside are obtained in such a manner that renders them admissible to a trial court. Once sufficient evidence is gathered in respect of all, or some of the assets of the wrongdoer, the third phase would set in.

The third phase marks the commencement of litigation. In most legal systems, a person cannot be rid of their property until a valid court order has precisely been obtained to confiscate the property. In doing so, the principles of natural justice and the requirement to follow the due process of law must be applied: in effect, justice must not only be done but must be manifestly seen as done (Ulph, 2010). This certainly would include the basing of court decisions on the assessment of facts and evidence adduced by both parties (Brun, Gray, Scott, & Stephenson, 2011). Above all, as Chief Justice Wool opined in *R v. Benjafield*, 2001, once a suit has been

commenced, depending on the jurisdiction, a freezing order should normally be obtained to freeze the criminal assets toward insuring against their onward dissipation by the wrongdoer until the final decision of the court is reached and enforced.

The fourth and final phase relates to the disposition of any recovered or confiscated assets. The case of *Mareva Compania Naviera S.A. v. International Bulkcarriers S.A.*, 1975, introduced the restraining order known as the Mareva Injunction, which is interlocutory in nature. In Nigeria, the UK, and some other common law jurisdictions with similar socio-legal experience with Nigeria, it is possible to apply for a Mareva Injunction once an action has been commenced in court, to amongst other things, freeze the assets to which the defendant has a beneficial interest in, and preclude them from being removed outside the jurisdiction of court until a final judgment is rendered and enforced (Tajti & Iglkowski, 2018). Based on the court decisions in *Angel Bell*, 1980, and *Republic of Haiti and others v. Duvalier and others*, 1989, a Mareva Injunction could target specific assets if they are known, but in a scenario where the nature or quantum of assets are unknown, the more realistic measure would be to apply for a more ambitious Mareva order that covers every asset of the wrongdoer located around the globe (the Worldwide Freezing Order), requiring the wrongdoer to inform the court before dissipating or moving any of the restricted assets outside the ordering court's jurisdiction.

Courts are aware of the possibility that some assets of a wrongdoer are genuine; thus, in granting a general Mareva order with a worldwide effect, one of the numerous preconditions of obtaining it (apart from undertaking to pay damages in the event the application is frivolous), is the applicant's ability to convince the court that the assets which form the cause of action, face a real risk of being dissipated or taken out of jurisdiction, and will thus render the court's final judgment barren (Kennedy, 2006; Tajti & Iglkowski, 2018, pp. 15-17).

An interesting component of Mareva Injunction is its *in personam* nature, which binds only the party to whom it is made (Gallant, 2005). It also has an extended ability to bind a third party residing within the jurisdiction, whom the assets subject of the Mareva have been transferred to (*in a bona fide* circumstance) by the defendant. Without this ability to bind a third party transferee, the Mareva could easily be rendered insignificant: a defendant that is allowed to use the assets subject of a Mareva pending the court's final judgment, might transfer the assets to a third party who is within the jurisdiction and such third party, free from the stranglehold of the court, could proceed to transfer the assets outside the court's jurisdiction where the defendant will have unrestrained access to them. In *Saraki v. Kotoye*, 1989, the Nigerian Supreme Court restated the entrenched perspective that because a Mareva Injunction is an equitable order which a court grants when it is "just and convenient" to do so, it is possible, indeed likely, that an applicant for a Mareva Injunction could adduce a sufficient measure of evidence, showing real risks of dissipating assets and transferring them outside the jurisdiction. Yet irrespective of reasonably convincing evidence, a court could refuse

the application on a discretionary basis, provided it feels or believes that it is not "just and convenient" to do so (Tajti & Iglkowski, 2018, p. 15).

Unfortunately, if a court in the jurisdiction where the criminal assets are located is unhelpful and refuses to grant the relevant freezing orders regardless of a deserving circumstance, the asset tracing and recovery process would likely become unsuccessful and outrageously expensive in the final analysis. Similarly, even if a Mareva Injunction is granted, it is not a concrete assurance that the defendant will not tamper or dissipate the assets: the consequence of disobeying a court order *in personam* as a contempt of court is usually a committal to prison, payment of fines, or forfeiture of assets if they are still within the court's jurisdiction. Because a Mareva Injunction is not an *in rem* order, the assets for which the wrongdoer has legal titles may validly be acquired by a *bona fide* purchaser for value without notice, and the so-called *bona fide* purchaser could actually be a crony of the wrongdoer. Thus, in the foregoing circumstance, the claimant would not be entitled to damages against the defendant who has violated the court order; neither will he be able to recover the assets if they had been acquired by a *bona fide* purchaser for value without notice before the court issued an order that would have appeared in any collateral registry to destroy the *bona fide* purchaser defense.

The overarching lesson for Nigeria and other developing countries with similar challenges is that, in addition to a freezing order, the country's (for instance, Nigeria's) investigating authority should continue to monitor the assets subject of a Mareva and report any suspicious activity to the court handling the matter before the assets are dissipated. Some crafty defendants might forestall a court proceeding by commencing another suit in a different jurisdiction, with the aim of raising the issue of *lis pendens*: i.e., the court where the claimant's case is being heard would then be made to dissipate enormous time in adjudicating on issues of the proper forum and *lis pendens* (Brown, 1984). In that case, the claimant should in addition to the Mareva Injunction, simultaneously ask the court to grant them an anti-suit injunctive order against the defendant, which would disable the latter from commencing an action against the claimant in another jurisdiction during the pendency of the action against the defendant (Bermann, 1990). Similarly, even where the assets being traced have been sold, some efforts should be dedicated to finding out any relationship nexus between the buyer and the wrongdoer, no matter how blurred the connecting links have been made.

In addition to the Mareva Injunction, the Anton Piller established in the landmark decision of *Anton Piller KG v. Manufacturing Processes Ltd & Ors*, 1976, is a search and discovery order that enables an applicant to enter premises and discover hidden assets: this order is also available in many common law jurisdictions, and these two types of order [Mareva and Anton Piller] can be helpful in locating and preserving any identified stolen assets until a final judgment of court is rendered and enforced (Staines, 1983). It should be noted that a confiscatory decision of court against the illegally obtained assets would normally lead to the disposition phase, whereby the confiscated

assets are attached by a writ of *feri facias* (or its functional equivalent), sold, and the proceeds repatriated to the victim-country in conformity with both the domestic and international law on asset sharing. Based on the foregoing discourse, this paper argues that owing to the difficulty posed by the mainstream legal framework on tracing and recovery of assets located abroad by developing countries, the UK UWO regime remains arguably an efficacious legal framework for these developing countries due to its reverse burden of proof system that has the potential to boost the chances of recovering stolen assets by public office holders by making them assume the burden of proving their innocence.

5. CONCLUSION

Needless to say, the choice of the UK and its legal framework as a model for Nigeria and other developing countries *vis-à-vis* cross-border asset tracing and confiscation is hinged partly on the merit of the UK's progressive laws in combating this anomaly as discussed above, and partly due to the fact that Nigeria and many developing (common law) countries borrowed their legal systems from the English common law. Thus, in terms of legal framework Nigeria shares quite a lot of similarities with the UK and can easily transplant and adapt some of the legal remedies that have been developed in the UK to fight theft of public assets by public office holders.

Especially for developing countries, asset tracing and recovery can be tedious, costly, and overwhelming due to the complex legal framework as discussed above. Evidently, the complexity of the existing legal framework is exploited by finance and legal experts who are usually hired by corrupt public office holders to design a complex façade of legitimacy that makes their wrongdoing difficult to discover by law enforcement. Notwithstanding its tediousness, if legitimate governments are able to engage experienced professionals who know exactly how to trace and recover stolen assets, a tremendous amount of time and resources will be saved whilst still improving the chances of success. In addition, the need to enter into mutual legal assistance cooperation with the financial intelligence unit in the countries where criminally obtained assets from developing countries are regularly hidden is indispensable for successful recoveries.

Nigeria and other developing countries need to develop viable tools for tracing and recovering stolen public assets: as these developing countries become severely impacted by the COVID pandemic, their public office holders will more likely increase

their rates of stealing and hiding assets abroad and thus increase the rate of poverty and crimes. The EFCC — Nigeria's investigative authority for money laundering or its equivalent in other developing countries, should recruit experts in this regard and engage more in conscious and covert operations: it takes time and expertise to gather evidence that a trial court in a foreign jurisdiction where stolen assets are located can accept for the purpose of conviction and confiscation. Nigeria and other developing countries should also enact pieces of legislation that emulate the reverse burden of proof philosophy in the UK's UWOs. Most politicians in developing countries get astronomically richer while serving in public positions after they had likely stolen public assets and hidden them successfully away from detection and seizure. In the circumstance, even if there is insufficient evidence to satisfy the general standard of proof beyond a reasonable doubt, they could be made to explain how they acquired so much wealth while in public service, in deference to the reverse burden of proof. With local legislation requiring politicians to prove the source of their unexplained wealth, the amount of time it regularly takes to gather evidence in order to confiscate the stolen assets would be grossly reduced, and this will also have an *ex-ante* discouraging effect to steal public assets, and might over a period of time, create a good culture of public service that is diametrically opposed to what is currently, and largely obtainable in Nigeria and most developing countries.

Finally, this paper is arguably innovative and has highlighted at least one important issue that impedes development in developing countries — the systemic corruption that results in rampant theft of public assets by public office holders needs to be urgently tackled to contain the consequent widespread of poverty in these countries. The innovativeness of the paper is in showcasing the defects in the existing legal frameworks and their insufficiency in fighting this systemic ill. Evidently, there could be other contributory factors to this problematic condition other than a poor legal framework: for instance, other researchers could inquire on the socio-economic and cultural reasons underscoring the rampant theft of public assets in developing countries and what solutions exist for the problem. Being research that borders on legal issues, its limitation is on the exclusive reliance on secondary data, court decisions, and provisions of statutes: in that case, no empirical findings were undertaken to ascertain the practical effects of the alleged inadequate legal frameworks — only the doctrinal frameworks were thus analyzed.

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