Key contacts

Emmanuel Gbahabo
Partner and Head, Investigations, White Collar, & Compliance and Dispute Resolution
Emmanuel.gbahabo@templars-law.com

Nosakhare Iyamu
Senior Associate, Dispute Resolution
Nosakhare.Iyamu@templars-law.com

TEMPLARS ThoughtLab

Nigeria's Supreme Court in Melrose Case Clarifies Burden of Proof in Asset Forfeiture

Introduction

In October 2024, we issued a publication that assessed the constitutionality of non-conviction based forfeiture of suspected proceeds of crime, otherwise known as civil forfeiture, the new mechanism of choice for the law enforcement agencies in Nigeria in combating corruption, money laundering, and other economic crimes.

In the publication, we highlighted decided cases such as ***Jonathan v. Federal Republic of Nigeria***[1] and ***La Wari Furniture and Baths Ltd. v. FRN***[2] where the Supreme Court upheld the constitutionality of the civil forfeiture procedure under Section 17 of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 (AFFA). We noted that the decisions emanating from Nigerian courts had so far been in favour of the non-conviction-based forfeiture mechanism, even at the risk of jettisoning long-established principles such as those of presumption of innocence and the fixed nature of the legal burden of proof in criminal cases.

In concluding the publication, we highlighted the possibility for abuse of the non-conviction-based asset forfeiture procedure by law enforcement agencies and therefore implored the courts to step up their game and ensure that the mechanism is used effectively and that the rights of individuals are balanced against the need to combat illicit enrichment.

[1] *Jonathan v. Federal Republic of Nigeria* (2019) LPELR-46944(SC).
[2] *La Wari Furniture and Baths Ltd. v. FRN* (2019) 9 NWLR (Pt. 1677) 262.

Following the above publication, the Supreme Court of Nigeria decided the case of **Melrose General Services Ltd. v. EFCC & 2 Ors.**[3] In this case the Supreme Court laid down the law on the factors that a Nigerian Court should consider in deciding whether or not to grant a non-conviction-based asset forfeiture order. Relatedly, the Court of Appeal, Lagos Division on 9 April 2025, also overturned a final forfeiture order issued by the Federal High Court, Lagos in respect of assets belonging to the former Governor of the Central Bank of Nigeria, Godwin Emefiele including two fully detached duplexes in Lekki Phase I, Lagos; an undeveloped land at Oyinkan Abayomi Drive, Ikoyi Lagos; and a four-bedroom duplex at in Ikoyi Lagos on the grounds that the former Governor had established that he purchased the properties legitimately.[4]

Specifically, the **Melrose** case presented the Supreme Court with the opportunity to revisit their early decisions. In that case, after due consideration of the entire circumstances of the case and notwithstanding the concurrent findings of the Federal High Court and the Court of Appeal, the Supreme Court by a majority of 3:2, allowed the appeal and dismissed an application by the Economic and Financial Crimes Commission ("EFCC") for an order of final forfeiture of the sum of ₦1,222,384,857.84 in the bank account of the appellant in the case, which was alleged to have been the proceeds of crime.

The significance of the **Melrose** decision and its potential impact on subsequent non-conviction-based asset forfeiture proceedings, together with the recent decision of the Court of Appeal have necessitated the need for this follow-up publication.

The Facts of the Melrose case

On 26 May 2016, the Nigeria Governors' Forum (NGF) entered into a consultancy contract with GSCL Consulting and Bizphus Consulting Services Limited (the Consortium) for the Consortium to verify, reconcile and recover over-deductions on the London and Paris Club debts on the accounts of the 36 States and Local Governments between 1995 and 2002, for a consultancy fee of 2% of the total money recovered - which was deductible at source. The Consortium carried out the verification, reconciliation and recovery of the over-deductions and came up with a total sum of US $6,483,282,424.61 as the amount wrongly deducted. On 2 September 2016, the Consortium submitted its report dated 31 August 2016 to the NGF.

On the strength of the report, the NGF engaged with the Debt Management Office (DMO) and the Presidency for payment of the over-deductions to the 36 States. On 21 November 2016, the President of Nigeria approved the payments to the 36 States. At the instance of the NGF, 5% of the sum due to each State was paid by the Minister of Finance into the account of the NGF to enable it to settle the consultancy fee and incidental expenses, and on 14 December 2016, the NGF paid the Consortium the sum of NGN389,207,099.05, being the 2% consultancy fee.

Meanwhile, prior to the submission of the report by the Consortium, Melrose General Services Company Ltd (the appellant or Melrose) had on 3 August 2016, written a letter to the NGF requesting for consultancy services over the same over-deductions on the London and Paris Club debts on the account of the 36 States and Local Governments between 1995 - 2002. On 8 August 2016, the NGF

[3] *Melrose General Services Ltd. v. EFCC & 2 Ors* (2025) 1 NWLR (Pt. 1972) 1.
[4] Deborah Musa, 'Appeal Court nullifies Emefiele's asset forfeiture' *Punch Newspapers* (16 June 2025) https://punchng.com/appeal-court-nullifies-emefieles-asset-forfeiture/ accessed 17 July 2025.

approved its request and engaged the appellant to "verify and reconcile the data already generated in respect of the over-deductions on State and Local Government accounts on the London and Paris Club debts for the period of 1995 - 2002." The NGF and the Consortium signed an agreement to that effect and the NGF subsequently provided the appellant with all the necessary documents relating to the assignment, including the report of the Consortium.

Upon the conclusion of its own verification and reconciliation exercise, Melrose prepared a report and forwarded the same to the NGF on 29 November 2016. The NGF, acting on the report, paid Melrose the sum of NGN3,500,000,000.00 (Three billion, five hundred million Naira) being 0.77% of the sum recovered by the 36 States and Local Governments, as the fee for the execution of the contract. From the above sum, Melrose paid NGN200,000,000.00 (Two hundred million Naira) to the 2nd respondent, Wasp Networks Ltd (Wasp) as investment in its business and the sum of NGN20,000,000.00 (Twenty Million Naira) to the 3rd respondent, and Thebe Wellness Services (Thebe) as a loan.

Sometime between 2016 and 2017, a report was made to the Economic and Financial Crimes Commission ("EFCC") against the appellant and others on suspected cases of stealing, conspiracy, obtaining money by false pretences and money laundering. The EFCC carried out investigations into the report. Sequel to the investigation, the EFCC applied to the Federal High Court for an interim forfeiture order of the sum of N1,222,384,857.84 (One billion, two hundred and twenty two million, three hundred and eighty four thousand eight hundred and fifty seven Naira, eighty four Kobo) found in the appellant's account domiciled in Access Bank Plc, as reasonably suspected to be proceeds of unlawful activity. The EFCC also applied for an interim forfeiture of the sum of NGN220,000,000.00 (Two hundred and twenty million Naira) found in the accounts of the 2nd and 3rd respondents also on the basis that the sums were reasonably suspected to be proceeds of unlawful activity.

On 13 October 2017, the trial Court granted the interim forfeiture order alongside the necessary consequential orders. The appellant promptly applied to the trial Court to set aside the interim forfeiture order. This was objected to by the EFCC. On its part, the EFCC applied to the trial Court for a final forfeiture order of those sums of money. The trial Court heard the two applications, and in its ruling, the Court dismissed the appellant's application to set aside the interim forfeiture order and granted EFCC's application for final forfeiture.

The appellant was dissatisfied with the decision and appealed to the Court of Appeal which affirmed the decision of the trial Court. Ultimately, the appellant appealed to the Supreme Court.

The Decision of the Supreme Court

By a majority of 3:2 [with Ogbuinya and Abiru, JJSC dissenting], the Supreme Court allowed the appeal and set aside the final forfeiture order granted by the Federal High Court.

Analysis of the Supreme Court's decision and the way forward

The Supreme Court held that although Section 17 of the AFFA provides that an order of forfeiture shall not be based on prior conviction, the burden of proof still lies on the EFCC to demonstrate the grounds for the reasonable suspicion that the property in question is the proceeds of crime.

*GG*The majority therefore took the view that the EFCC had not fulfilled that burden. Further, the Supreme Court per Agim, JSC [page 104] noted that being a statutory provision with expropriatory features, which provides for the taking away of proprietary rights, Section 17 of the AFFA must be interpreted and applied strictly. The Court also held that it would amount to an abdication of judicial responsibility to routinely grant applications for interim forfeiture without first ensuring that the applicant has shown that

the property in issue is the proceed of an activity that is in breach of any of the statutes listed in section 17 of the AFFA.

In his dissent, Ogbuinya JSC [pages 119 - 120] referenced a passage in the judgment of a Seychelles Court in the case of ***Hackle v. Financial Intelligence Unit & Anor (2012) SLR 225***, as persuasive authority for the view that there is a galaxy of methodologies adopted by different countries across the globe as enshrined in their respective statutes to actualise civil forfeiture. Illustrative examples were also given which were drawn from the United States, the United Kingdom, Australia, Republic of Ireland, South Africa and the Commonwealth.

One take away from these examples is that each jurisdiction has the autonomy to determine what amounts to civil forfeiture under its legal system. For example, in South Africa, the parliament adopted a wide definition by defining proceeds of unlawful activities as any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly… in connection with or as a result of any unlawful activity carried on by any person. In the case of Nigeria, the answer is found in the AFFA. As highlighted in the leading judgment of Agim, JSC, the Nigerian AFFA adopted a narrow definition of civil forfeiture by providing that to qualify for forfeiture, the property in question must be reasonably suspected to be proceeds of unlawful activity, not generally, but only under the AFFA itself, or the Money Laundering Act, the EFCC Act, or any other law enforceable under the EFCC Act.

Another significant area of divergence between the majority and dissenting judgments of the Supreme Court was on the critical question of burden of proof in civil forfeiture proceedings. The two sets of judgments were *ad idem* that the legal burden of proof rests on the State to demonstrate that the object of the forfeiture was reasonably suspected to have been proceeds of crime, and that once that initial burden has been satisfied, the burden then shifts to the owner of the property to show cause why the property should not be forfeited to the State.

However, while the dissenting judgments [see page 123 paras F-H per Ogbuinya, JSC] took the view that the burden was discharged by the EFCC i.e., that the EFCC demonstrated that the object of the forfeiture was reasonably suspected to have been proceeds of crime, the majority decisions took a different view.

This is instructive because a reading of previous decisions on this point including ***Jonathan*** and ***La Wari*** was suggestive of the conclusion that the burden of proof in the first instance i.e. the initial legal burden lay on the owner of a property to show cause why the property should not be forfeited.

As Ogbuinya, JSC noted at page 123 para E, *"The essentiality of proper assignment of burden of proof cannot be over-emphasised in the sphere of adjectival law. In law, a wrong apportionment of burden of proof will snowball into a miscarriage of justice."* Further, Ogbuinya, JSC placed reliance on the proviso to section 36(5) of the Constitution to justify the imposition of the evidential burden of proof on the owner of a property to show cause why the property should not be forfeited.

Yet another approach adopted by Ogbuinya JSC which explains his Lordship's conclusion that the burden of proof lay on the appellant in this appeal, was to take the view that the nucleus of the appellant's case could be found in the affidavit in support of the appellant's motion to set aside the interim order of forfeiture. In our view, this approach appeared to have glossed over the fact that the initial application before the FHC was the EFCC's motion for forfeiture and so the nucleus of the case ought to have been found in the affidavit in support of EFCC's motion. This latter approach would have resulted in the conclusion reached by the majority that the legal burden of proof rested on the EFCC.

One other aspect of the reasoning of the majority that the dissenting opinions did not dislodge relates to the settled fact that the appellant and the NGF indeed entered into a contract. The position under Nigerian Law has always been that parties have the autonomy to determine the terms of their agreement, and it is not the duty of the court to rewrite the parties' agreement. Granted, the NGF and the appellant may have contracted for the latter to do substantially the same job that the NGF had previously engaged the Consortium to do. However, that, without more, was not enough to conclude that the contract between the appellant and the NGF was necessarily fraudulent or unlawful.

Lastly, being an appeal against the concurrent finding of Federal High Court and the Court of Appeal, the Supreme Court found that various findings of fact in the judgments of the two courts were perverse. For instance, the Court of Appeal found that the appellant's report was copied *verbatim et literatim* from that of the Consortium, a view that was favoured by the minority decision of the Supreme Court (at page 131 para A). Meanwhile, the majority held that it was the EFCC that made that allegation, and that the trial court merely noted this while summarising the case of the parties but did not find as a fact that the appellant copied the Consortium's report. These are just some of the various areas of divergence that resulted in the sharply divided judgment.

Conclusion

The consequences of corruption and the menace it poses to the socio-development of Nigeria are well documented and need no rehashing. We therefore restate our view that the introduction of the non-conviction-based asset forfeiture procedure as a reform measure to strengthen the State's capacity to recover illicit assets is laudable.

The above notwithstanding, Nigerian courts up to the Supreme Court have a duty to ensure that their decisions maintain fidelity to the Constitution and respect for the rights of Nigerians; that the mechanism is correctly applied and used effectively; and that the rights of individuals are balanced against the need to combat illicit enrichment. The recent ***Melrose*** decision appears to have done exactly this.

From a reading of the more recent cases, two things are certain: (i) we have not heard the last of the controversy surrounding the non-conviction-based asset forfeiture procedure and (ii) we will be watching to see how things unfold in the months ahead.

If you require any further clarification, do not hesitate to contact us.