

Sani Abacha / United Kingdom (Prohibition Order related to US Claim)

Case ID:

ARW-218

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Nigeria

Position of Public Official(s) (yrs in office):

President (1993-1998)

Jurisdiction of Asset Recovery:

United Kingdom

Jurisdiction of Asset Recovery ? Description:

Asset Location/Alleged Asset Location

Asset Recovery Start:

2014

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.16

Art.17

Art.19

Art.20

Art.23

Legal Basis for Asset Recovery:

Actions Initiated by a Foreign Jurisdiction

Intl.Cooperation: MLAT/Letter of Request?:

MLAT

Basis for Intl Cooperation:

Instrument between the United States and the United Kingdom, signed December 2004, implementing the Agreement on Mutual Legal Assistance between the United States and the European Union

Contributing Factors in Asset Recovery:

Ongoing case; the High Court stated: "Corruption, like other types of fraud, is a global problem and it and its consequences are only going to be dealt with effectively if there is co-operation and assistance not only between the governments of states but also between the courts of different national jurisdictions. Orders enforcing US arrest warrants issued in the US Claim against property in Jersey and France have been made in those jurisdictions and I have no doubt that this court should follow suit and continue the Freezing Injunction ordered by Teare J on 25 February 2014." (Source: para 48, United States of America (USA) v Abacha & Ors [2014] EWHC 993 (Comm) (08 April 2014)

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

Investigation/Asset Tracing/Asset Restraint

Agreement for Returned Assets - Description:

Ongoing Case

Case Summary:

In October 2014, the UK Court of Appeals overturned an earlier High Court decision and lifted the freezing injunction on Abacha related assets that are subject of a civil asset forfeiture proceedings in the U.S. (Source: Blue Holding (1) Pte Ltd & Ors v United States of America [2014] EWCA Civ 1291 (09 October 2014)). Thereafter a Prohibition Order took into effect against the properties. (Source: National Crime Agency v. Abacha, 2015 EWHC 357 Admin, paras 4-10).

In April 2014, the UK High Court issued a judgment in a case involving an application to continue a Freezing Injunction granted under s.25 of the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act") ex parte by Teare J on 25 February 2014 and continued by Walker J on 25 March 2014. The claimant was the United States of America, which had filed a civil asset forfeiture complaint against assets alleged to be proceeds of corruption of former Nigerian President Sani Abacha and family and associates. The defendants were: (1) Mohammed Sani Abacha; (2) Abubakar Atiku Bagudu; (3) Mecosta Securities, Inc; (4) Ridley Group Limited; (5) Blue Holding (1) Pte Limited; (6) Blue Holding (2) Pte Limited; (7) Standard Bank plc; (8) HSBC Bank plc; (9) HSBC Life (Europe) Limited; (10) Waverton Investment Management Ltd; and (11) James Hambro & Partners LLP. According to the decision, Mr. Abacha and Mr. Bagudu (D1 and D2) are alleged to control the assets which are the subject of a civil asset forfeiture claim in the US; respondents 3-6 are companies owned and/or controlled by Mr. Abacha and Mr. Bagudu (D1 and D2) and used by them to hold the assets. The court noted that D3 and D4 are "BVI companies that have been struck off the BVI Companies Register for non-payment of statutory fees." (para 8) D5 and D6 "(together 'Blue Holdings') are Singaporean companies owned by a trust for the benefit of D2's family." (para 11). D7-D11 are "banks and other financial institutions which are believed (as at dates in the last few years) to hold assets which are subject to the [US] forfeiture claim. No allegation of wrongdoing is made against these defendants." (para 12) According to the judgment, the following accounts and amounts are implicated: "(1) Standard Bank, which holds assets totalling US\$21.7 million in two accounts in London in the name of D3; (2) the 8th and 9th Defendants ("HSBC") which hold assets totalling US\$1.6 million and [GBP] 940,000 in accounts in the name of the D1; and the 10th and 11th Defendants which it is alleged to hold assets totalling [EUR] 95 million in four accounts in the names of companies owned by a trust for the benefit of D2 and certain members of his family." (para 14). The Court also notes the 2003 Settlement agreement between the Federal Republic of Nigeria and D2 on behalf of himself and his "affiliates" which in exchange for transfer of sums by D2 to the Nigerian government in exchange for "renouncement by FRN of any interest whatsoever in certain scheduled assets that would be held by D2 free from any claims by FRN. Included in those scheduled assets are assets the forfeiture of which the Claimant seeks in the US claim." (para 26). The Court continues, "It is pertinent to note that (1) although the Nigerian Request for Mutual Assistance addressed to the US Department of Justice under the UN Convention against Corruption [] made no mention of the fact that under the settlement with D2 he and his affiliates were permitted to retain free from any claim by the FRN the scheduled assets, and (2) the Claimant was unaware that the FRN had agreed that D2 and his affiliates could retain the scheduled assets until after these proceedings for relief under s. 25 of the 1982 Act were begun." (para 27) The Court upheld the freeze, stating: "The application under s. 25 is not an application to enforce a foreign judgment but to continue an order designed to hold the ring until a judgment in the US claim can be lawfully enforced under the 2005 Order." (para 48) (Sources: United States of America (USA) v Abacha & Ors [2014] EWHC 993 (Comm) (08

April 2014); See also Between National Crime Agency and Mohammed Sani Abacha and others, Claim No. C0/2986/14 (High Court, Queen's Bench Division, Administrative Court), Prohibition Order of July 2, 2014, filed in US v. All Assets Held in Account Number 80020796, in name of Doraville Properties Corporation, at Deutsche Bank International, et al, Case No. I:13-cv-01832-JDB (D.D.C.), Warrants of Arrest in Rem filed Jul 11, 2014.)

Disposition of Criminal Case(s):

According to a 2008 article by Attorney Enrico Monfrini, an appeal was pending before the Nigerian Supreme Court in the criminal cases arising from charges filed in 2000 and 2001 against Mr. Abacha's sons and associate. (Source: Enrico Monfrini, "The Abacha Case," in Mark Pieth, ed., Recovering Stolen Assets (Peter Lang, 2008), accessed at http://www.mcswisslaw.com/pages_e/2008%20Monfrini%20-%20The%20Abacha%20C...




Jurisdiction of Asset Recovery: Investigative Agency:

National Crime Agency

Jurisdiction of Asset Recovery: Courts Involved:

England and Wales Court of Appeals (Civil Division) and High Court (Commercial Court and Queen's Bench Division)

Documents:

Attachment	Size
 United States of America (USA) v Abacha & Ors [2014] EWHC 993 (Comm) (08 April 2014).pdf	326.04 KB
 Abacha_US_DOJ_Asset_Forfeiture_PR_Mar_5_2014.pdf	374.51 KB
 Abacha_US_Forfeit_480_mil_DOJ_PR_Aug_7_2014.pdf	358.45 KB
 Abacha_UK_Prohibition_Order_Jul_2014.pdf	117.93 KB
 Abacha_UK_Prohibition_Order_Lift_EWCA_Civ_Oct_2014.pdf	557.57 KB
 Abacha_UK_NCA_v_Abacha_2015 EWHC 357 Admin_21Jan2015.docx	34.73 KB

Other Sources:

National Crime Agency v. Abacha, 2015 EWHC 357 Admin; Blue Holding (1) Pte Ltd & Ors v United States of America [2014] EWCA Civ 1291 (09 October 2014), at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2014/129...>

United States of America (USA) v Abacha & Ors [2014] EWHC 993 (Comm) (08 April 2014), URL: <http://www.bailii.org/ew/cases/EWHC/Comm/2014/993.html>; Between National Crime Agency and Mohammed Sani Abacha and others, Claim No. C0/2986/14 (High Court, Queen's Bench Division, Administrative Court), Prohibition Order of July 2, 2014, filed in US v. All Assets Held in Account Number 80020796, in name of Doraville Properties Corporation, at Deutsche Bank International, et al, Case No. I:13-cv-01832-JDB (D.D.C.), Warrants of Arrest in Rem filed Jul 11, 2014.

See also related entry Sani Abacha / US Civil Assset Forfeiture case