

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE .Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 24

**CASE NUMBER : SUITS NO: CV/2308/16
CV/2309/16**

DATE: : THURSDAY 5TH MARCH, 2020

BETWEEN

MR. BASIL UDOTAICLAIMANT

AND

ZENITH BANK PLCDEFENDANT

JUDGMENT

The Claimant by an amended statement of claim filed on the 5th day of January, 2018 sought against the Defendant the following reliefs.

- a. A declaration that the failure of the Defendant to honour the Plaintiff's cheque is wrongful and constitutes a breach of contract.
- b. The sum of N100,000,000.00 (One Hundred Million Naira only) as general damages for breach of contract, financial embarrassment, professional ridicule and unwarranted hardship foisted on the Plaintiff by the acts of the Defendant.
- c. An Order directing the Defendant to henceforth honour all cheques issued by the Plaintiff insofar as the Plaintiff's bank account has sufficient funds.
- d. An Order directing the Defendant to refund all the money deducted from the Plaintiff's account from the

date the Defendant refused to honour the Plaintiff's cheques to the date of judgment herein.

- e. An Order of perpetual injunction restraining the Defendant from dishonouring any/all cheques issued by the Plaintiff insofar as the Plaintiff's account is in credit.

In Suit No: FCT/HC/CV/2309, the Claimant in his Amended Statement of Claim filed on 5th January, 2019 claimed against Zenith Bank Plc., as follows:

- i. A declaration that the failure of the Defendant to honour the Plaintiff's cheques is wrongful and constitutes a breach of contract.
- ii. The sum of N500,000,000.00 (Five Hundred Million Naira only) as general damages for breach of contract, financial embarrassment and professional ridicule and unwarranted hardship foisted on the Plaintiff by the acts of the Defendant.

- iii. An Order directing the Defendant to henceforth honour all cheques issued by the Plaintiff insofar as the Plaintiff's bank account has sufficient funds.
- iv. An Order directing the Defendant to refund all the monies deducted from the Plaintiff's account from the date the Defendant refused to honour the Plaintiff's cheques to the date of judgment herein.
- v. An Order of perpetual injunction restraining the Defendant from dishonouring any/all cheques issued by the Plaintiff insofar as the Plaintiff's accounts are in credit.

Both suits were consolidated for the sake of convenience.

The case of the Plaintiff as distilled from the statement of claim and the evidence adduced is that sometime on 9th June, 2016, Plaintiff issued three cheques in various sums from his accounts with the Defendant.

At the point of issuing the cheques, the Plaintiff's account was in credit and in excess of the value of the cheques.

That when the cheques were presented to the Defendant through Access Bank Plc. for payment, the Defendant, in breach of contract and its duty of care, failed to honour the cheques.

Upon the failure or refusal of the Defendant to honour the cheques, Plaintiff wrote to the Defendant demanding to know why his cheques were not honoured, but that Defendant failed to respond. Plaintiff avers that Defendant failed to reply because it had no reasonable explanation for its refusal to honour the cheques. Plaintiff further avers that the Defendant's action was actuated by malice and or incompetence, neither of which it wished to acknowledge in writing.

Plaintiff personally enquired from the Defendant's aforesaid branch office on several occasions but was never told the reason his cheques were dishonoured, and

that Defendant's officers offered him no answer or apology; rather, the Plaintiff was told he was not allowed to make any withdrawals from his account until further notice.

Defendant as the custodian of the funds in the Plaintiff's account, was well aware of the constant inflow and outflow of funds therein from the Plaintiff's business transaction with his clients. Despite this, the Defendant refused to give any reason why the Plaintiff was prevented from operating his bank account.

Despite the lack of activities/transaction on the account, the Defendant was still deducting monies from the Plaintiff's account under the guise of bank charges.

By reason of the restriction on his bank account, the Plaintiff's credit has been injured and he has suffered loss.

The following documents were tendered and admitted in evidence;

1. Subpoena Duces Tecum and Ad Testifandum was tendered through PW1 (Philip Anyanwu) as Exhibit “A”.
2. Statement of account as Exhibit “B” PW2 (Basil Udotai) tendered the following document in evidence.
3. The Claimant’s 3 (Three) dishonoured cheques as Exhibit “C”.
4. A letter titled request for justification for returning our cheques unpaid as Exhibit “D”.
5. Letters written to the Claimant as Exhibit “E”.
6. Letter titled illegal and unauthorised freezing of Bud design Ltd account as Exhibit “F”.

Learned counsel for the Defendant cross – examined both PW1 and PW2, whereupon Plaintiff closed its case to pave way for the Defendant to open its Defence.

The case of the Defendant as testified by DW1 is that Defendant received two letter (with Ref. No.CR/3000/EFCC/ABJ/STF/VOL./1150 and CR/3000/EFCC/ABJ/STF1/VOL.2/162 dated 14th day of January, 2016 and 9th February, 2016 respectively from the Economic and Financial Crimes Commission (EFCC) instructing the Defendant, among other things to place a “Post No Debit” instruction on the accounts of the Plaintiff and to furnish the Economic and Financial Crimes Commission (EFCC) with the Statement of the respective accounts which includes Account Number 1002955088.

Defendant gave further evidence that the said letters of instruction were made pursuant to section 34(1), (2) and (3) of the EFCC Establishment Act 2004, which was given the desired compliance, consequent upon which a

“Post No Debit” status was placed on the Plaintiff’s accounts.

It is also the evidence of the Defendant that the periods the Plaintiff’s account(s) remained restricted by the directives of the Economic and Financial Crimes Commission (EFCC) were covered with letters authorizing the Defendant to place the account on a “Post No Debit” Status for each of the periods, and that till date it has not received any directive, instruction or letter from the Economic and Financial Crimes Commission (EFCC) to remove the “Post No Debit” restriction on the Plaintiff’s accounts.

The Defendant further gave evidence that the Plaintiff was informed about the letters emanating from the Economic and Financial Crimes Commission (EFCC) instructing the Defendant to restrict the said accounts.

It is the evidence of Defendant that Plaintiff and some other persons are being charged with conspiracy to

commit illegal acts of money laundering, and fraud in various sums including but not restricted to the sum of N2,899,723,500.00 (Two Billion, Eight Hundred and Ninety Nine Million, Seven Hundred and Twenty Three Thousand, Five Hundred Naira); N390,000,000.00 (Three Hundred and Ninety Million Naira), N20,000,000.00 (Twenty Million Naira), N248,000,000.00 (Two Hundred and Forty Eight Million Naira), N150,000,000.00 (One Hundred and Fifty Million Naira), N400,000,000.00 (Four Hundred Million Naira), N90,000,000.00 (Ninety Million Naira) as contained in the amended charged dated 14th October 2016 and filed 21st of October, 2016 and shown in the account statements of the Plaintiff and his Company.

DW1 tendered the following documents in evidence:-

- i. Letter addressed to the Managing Director Zenith Bank as Exhibit “D1”
- ii. Copy of amended charge as Exhibit “D2”

DW1 was cross – examined and discharged. Defendant also closed its case to give way for filing and adoption of written addresses.

Learned counsel for the Defendant in his written address formulated a sole issue for determination to wit;

Whether the Claimant has proved its case to entitle him to the relief sought.

It is the contention of the learned counsel for the Defendant that the Claimant's claims against the Defendant is that a breach of contract arising from the failure of the Defendant to honour the Claimant's cheque and that the contractual obligation of the claimant was frustrated by the statutory provisions and or intervention of the law enforcement body (EFCC).

AG CROSS RIVER VS AG FEDERATION (2012) 16 NWLR (Pt. 1327) 425 at 479.

Learned counsel cited 6 of the EFCC Acts in urging the court to dismiss the suit.

On his part, learned counsel for the Plaintiff distilled a sole issue for determination to wit; whether the failure of the Defendant to honour the claimant's cheques and the Refusal to inform the Claimant of the restrictions placed on his account amounts to a breach of contract and thereby, entitling the claimant to the reliefs sought.

Learned counsel submit that the relationship between Banker and Customer is contractual and that the Bank is under an obligation to honour and pay cheques drawn on it by the customer. ***UNION BANK OF NIGERIA LTD VS NWOYE (1996) 3 NWLR (Pt. 435) 135.***

Learned counsel submit further that the liability of a banker to its customer arises in contract when the banker refuses to pay a customer's cheque when the customer holds in his account an amount equivalent to that endorsed on the cheque.

Court was urged to grant the reliefs sought in the interest of justice.

COURT.. I have considered the evidence (oral and documentary) adduced by both Plaintiff and the Defendant, and the legal arguments contained in their respective final written addresses.

The issue whether the failure of the Defendant to honour the claimant's cheques and the restrictions placed on his accounts amounts to a breach of contract, has been formulated for determination by this court.

It is not in doubt that the Plaintiff operates the following accounts with the Defendant.

1. Basil Udotai Zenith Bank 1002955088.
2. Technology Advisors operations account.
1011923722.
3. Technology Advisors account 1011920587 from the above, it is very clear per-adventure that the

relationship between the parties is that of customer and banker.

LOED ATKIN IN JOACHIMSON VS SWISS BANK CORPORATION (1921) 3 KB 110 Court of Appeal held at thus;

“The Bank undertakes to receive money and to collect bills for its customer’s account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the

customer except upon reasonable notice. The customer on his part undertakes to exercise reasonable care in the executing his written orders so as not to mislead the bank or to facilitate forgery. I think it is necessary a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept.”

Clearly in the ordinary case of banker and customer, their relationship depends either entirely or mainly upon an implied contract but governed by an obligations. Banker accepts money from and collect cheque for their customers and place them to their credit, they also honour cheques or orders drawn on them by their customers when presented for payment and debit. ***OLAM NIG. LTD VS INTERCONTENANTAL BANK (2009) LPELE 8275 (CA).***

It is instructive to state at this juncture that the relationship between bankers and its customer is founded on simple contract.

Needless to say, therefore, that for there to exist a valid and enforceable contract, there shall be the element of offer, acceptance, invitation to create a legal relationship and capacity to contract. ***OMEGA BANK VS O.B.C. LTD (2005) 8 NWLR (Pt. 928) 547.***

It is not in doubt that by virtue of Exhibit “C” in evidence, the Plaintiff drawn cheques No. 05147663, 18274101 and 70625917 in favour UDO SINACHI UDOTAI and the said cheques were not honour by the Defendant.

Whereas it is the defence of the Defendant that failure to honour the Plaintiff’s cheque was frustrated by the Act of statute (EFCC) Act.

I shall pause here to ask; what is frustration in contract?

Indeed, frustration occurs whenever the court recognises that without default of either party or contractual obligation has become incapable of being performed. The courts have recognised certain situations or events as listed below that constitute frustration;

- a. Subsequent legal changes.
- b. Outbreak legal changes
- c. Destination of the subject matter of the contract.
- d. Government regulation of the subject matter of the contract.
- e. Cancellation of an expected event.

A.G CROSS RIVER VS A.G FEDERATION (2012) 16 NWLR (Pt. 1327) 425 at 479.

The doctrine of frustration is applicable to all categories of contracts. It is defined as the premature determination of an agreement between parties, lawfully entered into

and which is in the course of operation and the terms of its premature determination, owing to the occurrence of an intervening event or change of circumstances so fundamental as to be regarded by law both is striking at the root of the agreement and entirely beyond what was contemplated by the parties when they entered into the agreement.

The Defendant in its defence tendered Exhibit “D1” to show that the contract was frustrated by an act of the Economic and Financial Crimes Commission (EFCC).

For avoidance of doubt Exhibit “D1” is hereby reproduced;

“You are requested to kindly place the account on post – No Debit and inform/release the account officer for an interview with the undersigned on Monday, the 18th day of January, 2016 at Block A, 3rd Floor, No. 5 formella street, off AdemolaAdetokunbo Crescent, Wuse II, at

10am, along with the certified true copies of the following:-

- i. Account opening package including mandate card.
 - ii. Statement of account from January, 2011 to date.
 - iii. BVN Number.
 - iv. All instrument of N1,000,000.00 (One Million Naira) and above used in debiting and crediting the account.
 - v. Soft copy of account statement in excel format from inception to date (send to Nbubari@EFCCNig.org).
 - vi. Certificate covering the statement of account in line with the provision of section 84(4) of the Evidence Act.
 - vii. Any other information that may assist our investigation.
3. This request is made pursuant to section 38(1) of the EFCC establishment Act, 2004.”

The said letter was signed by one Abubakar A. Madaki for Executive Chairman.

Similarly in Exhibit “D1” series is a letter from EFCC titled “Investigation activities

Re: AC/Name: technology Advisor

Account No. 1011923722.”

The letter read “In furtherance to our correspondence on the above subject matter, you are requested to continue to place the above account on post No Debit status.

2. This request is made pursuant to section 38/(1) of the EFCC Establishment Act, 2004.”

It is the contention of the Defendant that the circumstances of the instruction by the EFCC viz – a – viz the contractual obligation owed the claimant, the Defendant had no choice than to adhere to the said instruction.

Indeed, the Economic and Financial Crimes Commission (EFCC) was established by an Act of the National Assembly.

The Economic and Financial Crimes Commission (EFCC) by virtue of section 6 of the EFCC (Establishment Act) 2004 particularly at subsection (b), (c), (d), (h), (i), (m) and (n) of the subsection which provides that:

6. Functions of the Commission

The commission shall be responsible for:

- b. The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instrument, computer credit card fraud, contract scam, etc.
- c. The co-ordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority.

- d. The addition of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crime related offences or the properties the value of which corresponds to such proceeds;
- h. The examination and investigation of all reported cases of economic and financial crimes with a view to identifying the Individuals, Corporate Bodies or Groups involved;
- (l) The collection of all reports relating to suspicious financial transactions, analyse and disseminate to all relevant government agencies.
- (m) Taking charge of, supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to financial crime

(n) The coordination of all existing, economic and financial crimes investigation unit in Nigeria.

The Economic and Financial Crimes Commission by virtue of the powers vested on it to carry out its functions as referred to above; served on the Defendant the first of the series of Exhibit 'D1' dated the 14th day of January, 2016 and the 9th day of February, 2016 made Pursuant to Section 38(1) of the EFCC Act in respect of the accounts of the Claimant and the Claimant's Company.

For avoidance of doubt, Section 38(1) of the EFCC Act provides as follows:

“38 Power to receive information without hindrance, etc.

(i)The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

Section 38(2) of the EFCC Act equally provides that

2. A person who

(a) Wilfully obstructs the Commission or authorized officers of the Commission in the exercise of any of the powers conferred on the Commission by this Act; or

(b) Fails to comply with any lawful enquiry or requirements made by an authorized officer in accordance with the provisions of this Act.

Commits an offence under this Act and is liable to conviction to imprisonment for a term not exceeding five (5) years or to a fine not below the sum of N500,000.00 (Five Hundred Thousand Naira) or both such imprisonment and fine.”

The Defendant equally tendered Exhibit ‘D2’ (which is a Charge No. **CR/141/16** between **Federal Republic of**

Nigeria and 1. EmekaMba, 2. Patrick Areh, 3. Basil Udotai, 4. BabatunjiAmure.

For avoidance of doubt, Count One of Exhibit ‘D2’ is hereby reproduced;

That you EmekaMba (while being the Director General of the National Broadcasting Commission), Patrick Areh (While being the Director Finance and Account of the National Broadcasting Commission), Basil Udotai, (Trading in the name and style of Technology Advisors) and BabatunjiAmure (Trading in the name and style of Divine Partners) on or about the 15th day of August, 2015 in Abuja within the jurisdiction of this Honourable Court conspired amongst yourselves to commit an illegal Act to wit; laundering the sum of N2,899,723,500.00 (Two Billion, Eight Hundred and Ninety Nine Million, Seven Hundred and Twenty Three Thousand, Five Hundred Naira) and thereby committed an offence contrary to Section 1 of the money laundering

(prohibition) Act, 2011 (amended) and punishable under section 15(3) of the same Act.

From the Exhibit above, it is obvious that the Plaintiff is standing trial in respect of the same account that was frozen by the Economic and Financial Crimes Commission (EFCC).

It instructive to state here that, where whole or part performance of an agreement becomes impossible by reason of some act which occurs after the formation of the agreement, as in the instant case, the supervening impossibility will in most cases automatically bring the contract to an end as regards both parties and discharge parties of all obligation thereunder. In otherwords, where a contract has been frustrated, the question of breach will not arise, as none of the parties can be held responsible for what has happened. ***PULSELINE SERVICES LTD. VS EQUITORIAL TRUST BANK LTD. (2010) LPEELR 4886 (CA).***

It is the law that where there is frustration of contract, the question of breach will not arise, as none of the parties can be held responsible for what happened. The Plaintiff such as in this case will not be entitled to any damages.

The placement of the “Post No Debit” restriction on the accounts was done pursuant to statutory provisions, in accordance with its civil responsibilities during an ongoing investigation which eventually led to the charge as contained in Exhibit ‘D2’.

It is the argument of the Plaintiff that Economic and Financial Crimes Commission (EFCC) has no power to post no debit in a customer account without a valid Order of Court.

Learned Counsel cited and relied on Section 34(1) of the EFCC Act.

For avoidance of doubt the said Section 34(1) of the EFCC Act is hereby reproduced;

“Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any Officer authorized by him may, if satisfied that the money in the account of a person is made through the commission of an offence under this Act and or any enactments specified under Section 7(2) (a), (f) of this Act, apply to court exparte for the power to issue an Order as specified in Form B of the schedule to this Act, addressed to the Manager of the bank or any person in control of the Financial Institution or designated non-financial institution where the accounts is or believe by him to be or head office of the bank, other financial institution or designated non financial institution to freeze the account.”

Whereas I am in agreement with the Plaintiff’s Counsel that there was no Court Order at the time the instruction to “Post No Debit” was given to the Defendant, I am

however not unmindful of the Provision of the Money Laundering Act which empowers the Economic and Financial Crimes Commission (EFCC) to send a Notice deferring transaction on an account... I place reliance on Section 10(3) & (4) of the Money Laundering Act and Section 7 of EFCC Act.

For avoidance of doubt the Section is hereby reproduce;

Section 10(3) *“the agency shall acknowledge receipt of disclosure, report or information received under this Section and may demand such additional information as it may deem as necessary.”*

Section 10(4) *the acknowledgement of receipt shall be sent to the financial institution within the time allowed for the transaction to be undertaken and it may be accompanied by a Notice deferring transaction for a period of not exceeding 72 hours.*

From Exhibit ‘D1’ series as quoted in the preceeding part of this Judgment, the EFCC wrote subsequent letters renewing the instruction every 72 hours thereafter.

Indeed, where there is frustration to contract and it is established or proved, the question of breach of contract does not arise as none of the parties can be held responsible for the occurrence of the frustrating event or circumstances.

From above therefore, it is obvious that Plaintiff has failed to establish its case against the Defendant to be entitled to Judgment. I so hold.

Consequently Suit No. **CV/2309/16** and **CV/2308/16** lacken in merit are hereby and accordingly dismissed.

Justice Y. Halilu

Hon. Judge
5th March, 2020

APPEARANCES

ChubuikeChima with Ituen O. - for the Claimant.

Olayinka A. – for the Defendant.