

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 10TH DAY OF JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/335/19

BETWEEN:

ABDULLAHI BELLO ----- APPLICANT

AND

1. ACCESS BANK PLC ----- RESPONDENT

JUDGMENT

On the 15th day of November, 2019 Abdullahi Bello instituted this action which is predicated on Fundamental Rights Enforcement Procedure Rules, claiming same Reliefs against Access Bank Plc.

The Reliefs sought are as follows:-

(1). A Declaration that the action of the Respondent prohibiting, forbidding, stopping transactions and refusing to lift restrictions on the Applicant's bank account No.: 0025733609; in Account Name: Abdullahi Bello, since the 3rd day of October, 2019 till date despite been served with a valid Court Judgment ordering the immediately lifting of any directives, order and or orders whatsoever prohibiting, forbidding, stopping transactions, and placing restrictions on the said Applicant's bank account No:

0025733609; is Unlawful, barbaric, unconscionable and a violation and a breach of the Applicant's rights to self-dignity, personal liberty and right to own moveable property, as protected and guaranteed by the provisions of the African Charter on Human and people's Rights (Ratification and Enforcement) Act Cap.10 of the Laws of the Federation of Nigeria 1990, Section 34,35,36,37 and 44 of Chapter IV of the Constitution of the Federal Republic of Nigeria 1990 (as amended).

(2). A Declaration that the action of the Respondent prohibiting, forbidding, stopping transactions and refusing to lift restrictions on the Applicant's bank account No.: 0025733609; since the 3rd day of October, 2019 till date despite been served with a valid Court Judgment ordering the immediately lifting of any directives, order and or orders whatsoever prohibiting, forbidding, stopping transactions, and placing restrictions on the said Applicant's bank account No: 0025733609; has caused and continue to cause the Applicant, his family and business damages, pains, untold hardship, injuries, agonies, trauma, loss and embarrassment.

(3). A Declaration that the Applicant is entitled to claim damages and compensation from the Respondent for prohibiting, forbidding, stopping transactions and refusing to lift restrictions on the Applicant's bank account No.: 0025733609; since the 3rd day of October, 2019 till date despite been served with a valid Court Judgment ordering the immediately lifting of any directives, order and or orders whatsoever prohibiting, forbidding, stopping transactions, and placing restrictions on the said Applicant's bank account.

(4). AN ORDER of this Court ordering the Respondent to immediately lift any restrictions on the Applicant's bank account No: 0025733609; and immediate payment of N500, 000,000.00 (Five Hundred Million Naira only) to the Applicant by the Respondent as general, aggravated and exemplary damages for

prohibiting, forbidding, stopping transactions and refusing to lift restrictions on the Applicant's bank account No.: 0025733609; since the 3rd day of October, 2019 till date despite been served with a valid Court Judgment ordering the immediately lifting of any directives, order and or orders whatsoever prohibiting, forbidding, stopping transactions, and placing restrictions on the said Applicant's bank account.

(5). Cost of this suit assessed at N5,000,000.00 (Five Million Naira) only.

(6). AND for such further orders as this Honorable Court may deem fit to make in the peculiar circumstances of this case.

The Application is based on the following grounds:-

That the Applicant's bank account No: 0025733609 with Diamond Bank Plc has been unlawfully and illegally placed on restriction by the Respondent.

That the Fundamental Rights of the Applicant as enshrined in the 1999 Constitution as amended were by the direct acts of the Respondent abused and infringed on by the Respondent without any regard for Constituted authorities and Court of Law.

Also that without any statutory powers or Court Orders the Respondent placed the said restrictions on his account and thereby prohibiting, forbidding and stopping, transaction on the said account of the Applicant.

(4) That he has filed this action to address the issue of the said restriction on his account No: 0025733609 domiciled with the 2nd Respondent since 3rd October, 2019 till date by the Respondent.

He supported the application with an Affidavit of 15 paragraphs which he deposed to in person. He attached 3 documents in support. The documents are Letter from EFCC to Diamond Bank

dated 8/2/2019 marked as Exhibit K K I. Copy of the Judgment of the FCT High Court by Hon. Justice Bello Kawu delivered on the 3/10/2019. Copy of which was served on the Respondent and receipt acknowledged marked as Exhibit K.K.2. and Letter from the chambers of Messr Jimoh Abdulrazak & co dated 5/11/2019 addressed to M.D.Access Bank/Respondent in this matter which was received at 9:35 am on the 6/11/2019 by the bank; It is marked as Exhibit K.K.3. He filed statement of facts as required by the Fundamental Rights Enforcement Rules 2009.

The Respondent was served with the Originating Process on the 26/11/2019 at 2:14 pm. They were equally served with hearing notice showing that the matter will be heard on the 10/12/2019. They did not file any response to the application of the Claimant till date.

It is imperative to point out that any response to any action predicated on Fundamental Rights must be done within 5 days of receipt of the Originating Process. In this case the Respondent was served on the 26/11/2019 and Hearing was scheduled for 10/12/2019. They did not file any Counter Affidavit to challenge the said action. They did not file any Counter-Claim also. On the 10/12/2019 this Court heard the matter as scheduled. The Respondents were absent. They have no representation in Court Counsel-wise. The matter was heard and reserved for Judgment.

In the 7 page written address the Counsel for the Applicant raised 2 issues for determination which are:-

(1). "Whether by the circumstance of this case the applicant has not shown serious breach of his right to dignity of his human person, personal liberty, right to private life and infringement on right to own moveable property."

(2). "Whether considering the circumstance of this Suit the applicant is not entitled to the Reliefs sought accordingly."

Answering the 2 questions together the Claimants Counsel Abdulrazak Jimoh submitted quoting verbatim the provision of Article 4 & 5 of African charter on Human and people's Rights as well as Section 34(1) and Section 35(1) of the 1999 Constitution as amended.

He submitted that in the Affidavit in support the Applicant had narrated the "degrading and inhuman treatment meted out to him by the Respondent by executing unexistent Order, an act that has no place in our society again."

That the Applicant has been put into days, weeks and months of untold hardship, insecurity, loss of self esteem, and demoralizing and degrading treatment no reason" (SIC). That he has weeks of uncertainty and being at the mercy of other people, with without hope. That he has been subjected to this treatment by in his father land.

He further submitted that the Applicant's fundamental rights to dignity of human person, right against inhuman and slavery treatment and right to own property have been considerably breached by the activities of the Respondent. He cited the case of:

Ezechukwu Vs. Maduka (1997) 8 NWLR (PT518) 635

He further submitted that by the provision of Section 34 1999 Constitution as amended every individual is entitled to the dignity of his human person. That the situation in this case is so unfortunate that the Applicant was treated worse than a condemned criminal "even when our laws guide convicted person against degrading and inhuman treatment under the law. He urged the Court to resolve the issue in his favour and grant his reliefs thereto:

Citing Section 35(1) 1999 Constitution as amended, the Counsel submitted that the graphic narration of all that has befallen the applicant just out of indiscretion and belief on impunity of the Respondent which has become a recurring decimal in Nigeria has been sufficiently captured in the supporting Affidavit.

That Applicant has been denied and still being denied access to the said Bank Account No:0025733609 with Access Bank which is the Respondent in this case that the action of the Respondent deprived the Applicant the ability to provide food for himself and his family. That the action of the Respondent is based on the fact that it is above the law and too big to respect the laws of this country. That the said action of the Defendant clearly shows its disposition towards violence and disregard to law and Order. That this must be address to the Court as to every wrong there is a remedy in law.

On award of damages in proven cases of violation of person's right, the Counsel submitted that the applicant by his depositions in the Affidavit provided sufficient facts as enjoined by law to establish that his fundamental right was infringed by the Respondent."

Note

It is imperative to point out that the several use of the word "Respondents" as against "Respondent" makes one think that the written address in this case was a case of "copy and paste" of a written address meant or used in another case. This Court feels so because there is only one Respondent in this Suit which is Access Bank Plc.

The Learned Counsel went on to submit that a person whose fundamental rights have been infringed can validly sue for damages in monetary forms. That it is settled that what gives right

to a cause of action is not the damages claimed but the injury complained of He placed credence in the case of:

Ministry of Internal Affairs Vs. Shugaba Abdulrahman Darman
(1982) 3 NCLR

On duty of Court he submitted that this Court has the duty to redress the breach when it has been established. That it is also incumbent on the Court to enforce the breach or this violation of Human Rights by virtue of the provision of the Constitution of our land and the Africa Charter of Human and People's Rights.

He further submitted that it is not necessary for the Applicant to prove that there is physical injury as substantial damages may be awarded for injury to the dignity and inhuman treatment. That the applicant need not give evidence of damages to establish his cause of Actions to claim specific sum as damages though some have been proved to a reasonable extent.

He urged the Court to resolve all the issue in favor of the Applicant having proved substantial violation of his fundamental rights as violated by the Respondent. He urged Court to grant all the reliefs sought in the interest of Justice and in the spirit of the Constitution.

It is important to point out again that the Respondent, Access Bank Plc was served with the Originating Processes in this suit since the 26/11/2019. It was also served Hearing Notices. But it did not enter appearance in paper or flesh and blood. It did not engage any Counsel to represent it, it did not also sent any person from its office.

So this Judgment is based on the processes as filed by the Applicant. This it is also important to reiterate that matter predicated on Fundamental Rights Enforcement Procedure Rules

2009 are of special sphere in that the Rule of Evidence is not strictly applied like in other civil matters.

It is trite that where a matter is based on Affidavit, response thereto is ordinarily expected to be by Affidavit too – Counter Affidavit as the case may be. Also where facts are not challenged, such facts are deemed admitted as far as they remained unchallenged and undisputed.

It is important to note that though unchallenged as such facts are the Court does not swallow them hook-line-and-sinker. It must ensure that they pass through the furnace of judicial scrutiny and must be such that it cogent enough and in accordance with the laws and extant Rules to support the allegation made before the Court can hold that it is.

Fundamental Right Enforcement Rules are special and Court handles same with utmost care and thoroughness. In this case the Applicant has alleged that the continuous withholding or freezing his Account No: 0025733609 in the Respondent Bank Access Bank Plc since 3rd October, 2019 when Justice Bello Kawu delivered Judgment where he Order that the Respondents in that case –EFCC and Diamond Bank Plc should defreeze or stop withhold or laying embargo on the said Account. That the continued disobedience to the Order of the Court by the present Respondent who where served with the Court Order and Judgment is an abuse violation of his right to own moveable property , personal liberty and dignity of his human person as provided for in both the 1999 Constitution as well as African Charter of Human and Peoples Right (Ratification and Enforcement, Act 2004). Hence this action and the Claims thereto.

He had attached a copy of the Judgment of the Court. Though he did not attach a copy of the Judgment Order the said copy was

served on the Respondent on the 23/10/19 at 3:33 pm and was received by a legal officer of the Respondent- Unoma Ndulue. As had stated severally, the Defendant did not respond to this application. In the copy of the Judgment as Exhibited and marked as Exhibit K.K.2, it is stated:

Exhibit K.K.2 page 7 para 2

“I have gone through the applicants application as well as the Counter Affidavit and also the Preliminary Objection filed by the 1st Respondent-(EFCC). After thoroughly going through the application and Counter Affidavits I have discovered that the Applicants account was without any Court Order.” (sic)

My learned brother continued at the same page 7 para 3 thus:

Exhibit K.K.2 Page 7 para 3 thus:

“And to do that the law is trite the Bank went Ultra vires. In view of that therefore the Applicant’s application is hereby granted ... in the following terms:-

Page 8 para 5 states:

“...An Order of this Court Ordering the immediate lifting of any directives, Order and or Orders whatsoever prohibiting, forbidding, stopping transaction and placing restrictions on the Applicants Bank Account No: 0025733609; Account Name Abdullahi Bello, since the 8th of February, 2019 till date, domiciled with 2nd Respondent (Diamond Bank Plc)” Emphasis mine.

There is no evidence to show that this Order had been set aside or vacated by the Court of first instance or any appellate Court. Therefore the Order is still subsisting. Going by the content of Exhibit K.K.I it is clear that the “Post No Debit” instruction on the said Account was based on the instruction of the EFCC based on

the provision of Section 38(1) & (2) EFCC Act 2004 as well as Section 21 money laundry Act 2011.

Of interest is also the letter written by the Counsel to the Applicant – Jimol Abdulrazak & Co, dated 5/11/19 served on the Respondent which it acknowledged. That letter is marked as Exhibit K.K.3. It was written 2 days after the Judgment was delivered and address to managing Director of the Respondent. In it the Applicant had instructed his Counsel to write and duely inform the Respondent about the Judgment of the Court and Order thereto as they pertain to defreezing the Account of Applicant and removing the “Post No Debit” placed on the said Account.

In page 7 para 3 of the letter Exhibit K.K.3, the Counsel had stated.

“.....Judgment was deliveredon 3rd of October, 2019 wherein an Order for immediate lifting of any restriction on the said Account was ordered by the Court and C.T.C of the Judgment was served on the Respondent/Bank on the 23rd October, 2019. But to our client’s greatest dismay, till date the Bank has deliberately refused to obey the Court’s Judgment.”

The letter went on stating thus:

“it is our client’s further instruction that the restriction be lifted from the Account within 24 hours from the date of receipt of this letter.”

The said letter Exhibit K.K.3 was received on 23/10/19. So going by the letter Exhibit K.K.3 the “ban” or restriction on the said Account was supposed to be by 25th October, or after 3:33pm on 24/10/2019. But the Respondent had not lifted the Restriction till the day this matter was filed and even till it was heard and Judgment reserved.

It is important to point out that Orders of Court must be obeyed by everyone, the citizenry –the Government and the governed. Whether such Order is palatable favorable or not. The disobedience to the Order of Court is no excuse as it is an insult and disobedience to the laws of our fatherland. Disobedience to the Order of Court is not disobedience to the Court or the Judge per se who had made the Order. No country thrives in lawlessness and disobedience to its laws and orders of its Courts.

Section 38(1) & (2) EFCC Act 2004 provides that the EFCC has a right to receive information concerning offence it is empowered to investigate under the enabling law. Section 44 (1) 1999 Constitution allows all Nigerian the right to own moveable property like money. The citizen also enjoy freedom of personal liberty except that it can only be tempered with by a procedure permitted by law. Again no person is to be subjected to torture or inhuman or degrading treatment going by the provision of Section 34 1999 Constitution as amended.

In this case the Applicant is challenging the infringement of his to own property which are movable in nature. He also had alleged infringement of his personal liberty and dignity of his human person based on the continuous disobedience of the Order of Court to “de-restrict” or defreeze or stop the Post-No-Debit instruction based on the Exhibit K.K.1

It is important to point out that once the allegation of infringement of any fundamental right is made, the Court only wants to know whether or not there was an infringement, breach or violation of such alleged infringed right. That the Court does so by taking a closer look at the facts in support of in any such allegation and a critical analysis of the evidence in form of Exhibits of any, in order to be convinced that there is actually an infringement.

It is incumbent on the applicant to establish such violation and discharge the onus on him. Once he has done so and the Defendant fails to discharge the onus shifted on it by the Applicant the Court will not hesitate to state that there is an infringement. Where otherwise the Court hold that there is no infringement.

The applicant had support this application by facts that the continuous freezing of his Account :- 0025733609 by the Respondent even after the subsisting order of the Court and had placed an untold hardship on him and members of his family. That he had not been able to provide the necessities for his family particularly, he had not been able to pay their school fees of his children because of the continuous freezing of the said Account. He had stated particularly in paragraph 8-12 of the Affidavit, that he had suffered trauma; had sleepless nights, hardship, injuries and embarrassment because of the continuous denial of access to the money in the said Bank Account. That his business had also suffered and continuous to suffer. So also the contract which he had with other people which he had not been able to execute. All these resulting in psychological, economic sociological pain and trauma.

All the above puts no one in doubt that the Applicant had actually suffered because of the continued infringement of his right to have access to the money in the said account which is a moveable property as a result of the continues restrictions on the said account No: 0025733609 belonging to him and domiciled in the Respondent Bank.

The Respondents did not challenge these facts. This Court believes that the said Respondent have nothing to defend or ground upon which they can challenge the facts. Otherwise they would have done so by filing a Counter Affidavit or challenging this application on points of law. The Respondent did not do so.

So this Court believes the Applicant because he has a right under the Constitution to own money and enjoy same. More so as the Judgment of the Court still stands.

It is imperative to note that the refusal of the Bank to allow the Plaintiff access to the said account is an infringement on the right of the Plaintiff/Applicant as provided in Section 44(1) 1999 Constitution as amended. The action of the Bank is also a disobedience to subsisting order of Court. More so where the order had not been vacated, set aside or appealed against.

The said disobedience no doubt also violated the Applicant's right to personal liberty since he cannot access the said account. Again the Applicant's inability to pay his children's school fees had also affected him negatively and violated the right to the dignity of his human person in the eyes of his family, his business colleagues and the society at large.

Bottom line is that the Respondent continued refusal to obey the subsisting Order of Court of competent Jurisdiction as per the Judgment of the Court delivered on 3/10/2019 by Kawu J, by not lifting the Restriction on the said Account belonging to the Applicant is a gross infringement of the right of the Applicant as alleged. So this Court holds.

Since the law provides that anyone whose fundamental right has been infringed is entitled to damages, once such person had established such infringement it is not in doubt that the Applicant –Abdullahi Bello, has been able to establish that the Respondent-Access Bank, has breach his fundamental right as already been spelt out in this Judgment. He is doubt entitled to compensation.

It is the law also that the Court has the discretionary power to fix the exact amount that is to be paid in form of damages. That being the case this Court in exercise of the powers conferred on it

under the Constitution and other extant laws (Fundamental Rights Enforcement Procedure) hereby Order that the Respondent pay the sum of N1 Million Naira to the Applicant for violating his right as alleged and ably established.

In addition the Court also grants Reliefs 1-3 as prayed.

The Respondent is also to pay to the Applicant's the sum of N150, 000.00 as cost of this Suit.

This is the Judgment of this Court.

Delivered today the ____ day of _____ 2020

K.N.OGBONNAYA

HON. JUDGE

APPEARANCES:

Abdulrazak Jimoh for the Applicant/Claimant. Claimant absent.

Defendant absent. Not represented.

