**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. 22**

**CASE NUMBER : SUIT NO: CV/1677/2020**

**DATE : TUEDAY 13TH OCTOBER, 2020**

**BETWEEN**

**1. AMINU WAZIRI MOHAMMED** } **APPLICANTS**

**2. VOLCAN ENERGY SERVICES LTD** }

**AND**

**1. ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)** } **RESPONDENTS**

**2. ACCESS BANK PLC.** }

# JUDGMENT

This is a Fundamental Right action instituted by the Applicants against the Respondents jointly and severally claiming the following reliefs;

1. A Declaration of this Honourable Court that the action of the Respondents in freezing and restricting the Applicants' access to and use of the 2nd Applicant's Bank Account domiciled with the 2nd Respondent with **Account Number 0696365432** without a valid Court Order is a breach of the Applicants' proprietary rights as guaranteed by Chapter IV of the 1999 Constitution (as amended) and the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.

2. A Declaration of this Honourable Court that the actions of the Respondents in restricting the 1st Applicant's access to and due operation of the

2nd Applicant's funds domiciled with the 2nd Respondent with **Account number 0696365432** without a valid Court Order and making mockery of the 1st Applicant in the banking hall by retrieving and openly mutilating his funds transfer document 007926157 are manifestly unlawful, embarrassing, oppressive, arbitrary and a flagrant breach of the 1st Applicant's right to the dignity of the human person as enshrined in Section 34 of the 1999 Constitution (as amended).

3. An Order of this Honourable Court directing and mandating the 2nd Respondent to lift all forms of restrictions placed on the Applicant's **Account Number 0696365432** domiciled with the 2nd Respondent Forthwith and Unconditionally.

4. An Order of this Honourable Court perpetually barring the 1st and 2nd Respondents, whether by themselves or through their agents, officers or

privies, howsoever described, from further infringing on the Applicants' proprietary rights and the right to the dignity of the human person by way of freezing or otherwise restricting the Applicants' access to and operation of Account Number **0696365432** without a valid Court order.

5. An Order of this Honourable Court awarding the sum of **One Hundred Million Naira (N100,000,000.00)** Against the 1st Respondent in favour of the Applicants as general damages.

6. An Order of this Honourable Court awarding the sum **Five Hundred Million Naira (N500,000,000.00)** against the 2nd Respondent in favour of the Applicants as general and aggravated damages.

7. Any other order or Orders that this Honourable Court mat deem fit to make in the circumstances.

The grounds upon which the application is brought are as follows:-

a. The 2nd Respondent, acting at the direction and instance of the 1st Respondent, has imposed a "Post No Debit" order on the Applicants' account domiciled with the 2nd Respondent since November, 2019 and particularly on 27th November, 2019.

b. The 2nd Respondent has a debtor – creditor relationship with the Applicants and has a duty to the Applicants to ensure that the Banker – Customer relationship it has with the Applicants is not put at the disposal of any third party.

c. The 2nd Respondent has no right and/or powers to act upon the request of a third party to default in its obligation to pay the debt owed the Applicants, except on the basis of a valid court order.

d. The Banker's duty of confidentiality to its customer is to ensure that the Banker does not divulge any information regarding the financial affairs of the customer with respect to the account he maintains with the bank to any third party unless with the prior consent of the customer or as required by a Court of law.

e. That the Nigerian Courts have consistently held that the 1st Respondent is devoid of any power to direct either the 2nd Respondent or any other financial institution in Nigeria to freeze the accounts of customers as is the case with the Applicant herein without a prior judicial warrant by way of a valid court order.

f. That the 1st Respondent exceeded its powers by the direction it gave to the 2nd Respondent to freeze the Applicant's account without any valid Order of Court permitting such adverse line of action.

g. That the Applicants' proprietary rights are well guaranteed not only under the Nigerian Constitution but also under the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act particularly section 14 thereof.

h. The impugned actions of the Respondents have completely eroded the proprietary rights of the Applicant necessitating the instant application for the enforcement of same.

i. The treatment meted to the 1st Applicant by the 2nd Respondent, acting on the direction of the 1st Respondent, in refusing him access to and the operation of the 2nd Applicant's account domiciled with the 2nd Respondent has inflicted grave embarrassment and humiliation on the 1st Applicant and is thus in breach of the 1st Applicant's right to the dignity of the human person, not only in the banking hall but also in the manner the staff of the 2nd

Respondent retrieved and mutilated documents used by the Applicants for funds transfer thereby treating the 1st Applicant as a common criminal.

j. This Honourable Court is vastly empowered to give effect and protect Fundamental Rights of all Nigerians not of those guaranteed under the Constitution but also those others set out in all Fundamental Rights Laws, instruments and charters applicable in Nigeria.

In support of the application is an affidavit of 21 paragraphs duly deposed to by the 1st Applicant.

The gist of the Applicants application as distilled from the affidavit in support of the application is that the 2nd Applicant maintains a business current account number **0696365432** with the 2nd Respondent for its businesses and that the 1st Applicant being a director of the 2nd Applicant is a signatory to the said account.

Applicants aver that on the 27th day of November, 2019 he visited the Maitama Branch of the 2nd Respondent to transfer some money into his lawyer account but could not successfully carry out this banking transaction despite the 2nd Applicant account being well funded.

It is the deposition of the Applicant that upon inquiry from the staff of the 2nd Respondent, he was informed that post no Debit (PND) order has been imposed on the account. Applicant transfer form is annexed as Exhibit "A".

Applicants aver that an attempt was made on the 27th May, 2020 to effect a transfer to Trono Technologies, but was not successfully. The transfer form is annexed as Exhibit "B".

That the staff of the 2nd Respondent informed him that the Post No Debit order unilaterally imposed by the 1st Respondent since November 2019 was still in place.

It is further the deposition of the Applicants that 1st Respondent has never at any time accused either himself or the 2nd Applicant of the commission of any offence in relation to the account domiciled with the 2nd Respondent and no criminal charge was filed against the Applicants.

That the 1st Respondent exceeded its power by the direction it gave to the 2nd Respondent to freeze the Applicant account and that the 2nd Respondent has breached it Banker customer fiduciary relationship.

Applicant avers that it suffered irreparable damage, irreversible commercial consequences, commercial stagnation and a host of others consequences.

In line with law and procedure, verifying affidavit, statement in support of the application and written address was filed.

In its written address, learned counsel formulated two issues for determination to wit;

i. Whether the proprietary right of the Applicants was breached by the Respondents, if so, whether the Applicants are entitled to the reliefs sought as per their originating Motion on Notice.

ii. Whether the action of the Respondents in restricting the 1st Applicant's access to and operation of the 2nd Applicant's account number **0696365432** is not oppressive, arbitrary, unlawful and in breach of the 1st Applicant's right to the dignity of the human person as guaranteed by section 34 (1) (a) of the 1999 Constitution (as amended).

Learned counsel argued both issues together and cited section 44(1) of the Constitution of Nigeria 1999 (as amended) that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and that the Respondent are in flagrant violation of the Applicants' proprietary rights and the right to dignity of the human person as guaranteed under

section 44 and 34 (1) (a) of the Constitution. ***FAWEHIMMI VS ABACHA (1996) 9 NWLR (Pt. 475) 710 at 760 – 761.***

Learned counsel argued that the courts have been appointed sentinels to watch over the Fundamental Rights secured to the people of Nigeria by the constitution and to guard against any infringement of those rights by the state. ***CHERANCI VS CHERANCI (1960) RNLR 24 at 28.***

It is the contention of the Applicant that 1st Respondent is not an authority unto itself and therefore cannot arbitrarily freeze bank accounts and that section 34 of the EFCC Act.

That relate to freezing/seizure of monies in bank account made it a duty for the 1st Respondent to apply to court before the freezing or the account and that this position received judicial pronouncement in the case of

***DANGABAR VS FRN (2012) LPELR 19732 (CA) Page 40.***

Learned counsel submit finally that before freezing customer's account or placing any form of restraint on any bank account, the bank must be satisfied that there is an order of Court. ***GUARANTEE TRUST BANK PLC. VS ADEDAMOLA (2019) 5 NWLR (Pt. 1664).***Court was urged to grant the reliefs sought by the Applicants.

The 1st respondent upon service, filed a counter affidavit of 6 paragraph deposed to by one EseBasseyIbiang an operative with the 1st Respondent.

It is the deposition of the 1st Respondent that sometime early November, 2019, the Ilorin zonal office of the 1st Respondent received an intelligence report that monies running to about **Five Billion Naira** (**N5,000,000,000.00**) was laundered from Kwara State internal Revenue service account under the guise of payment for consultancy service.

That investigation has revealed that some officials of the Kwara State Internal Revenue collaborated with some consultancy firms/companies particularly Velox Enterprise & Co., Velox BBL Ltd, CSDC Enterprise solutions.

1st Respondent avers that it was discovered vide investigation that over **Five Billion Naira (N5,000,000,000.00)**belonging to Kwara State Government was siphoned to the companies under the guise that they rendered services to the state Government between 2016 and 2019.

That between August 2016 and February, 2019, the sum of N3,288,403,545.80 (Three Billion, Two Hundred and Eighty Eight Million, Four Hundred and Three Thousand, Five Hundred and Forty Five Naira Eight Kobo) was transferred to Velox Enterprise and Co. with account number 0710076606 vide Exhibit "EFCC 1".

That on 21 December, 2017, Velox Enterprise and Co. made transfer of N5,000,000.00 (Five Million Naira) to the 2nd Applicant's Access Bank account number **0696365432** vide EFCC Exhibit "2".

That the facts so revealed by investigation necessitated the letter to the 2nd Respondent to Post No Debit vide Exhibit "EFCC 3" and that court order was obtained vide Exhibit "EFCC 4".

1st Respondent avers further that the 1st Applicant was invited to zonal office of the 1st Respondent late last year and he claimed that the transaction was for the sale of car but that no document was annexed to substantiate his claim.

In line with law and procedure, a written address was filed wherein two issues were formulated for determination to wit;

1. Whether the 1st Respondent is in breach of the Applicant's fundamental rights.

2. Whether the Applicants are entitled to the reliefs sought.

On issue 1,whether the 1st Respondent is in breach of the Applicant's fundamental rights.

Learned counsel contended that section 6 (j)(d) of the money laundering Act 2011 empowered the Chairman of the 1st Respondent or his authorized representative to place a stop order not exceeding 72 hour, on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime and that the 1st Respondent after sending the request for a stop order to the 2nd Respondent, it proceeded to obtain Court Order to freeze the account.

Learned counsel contended further that by combined effect of sections 6,7,8, 5, 13 and 41 of the EFCC Act, the

1st Respondent is empowered to investigate all cases of Economic and Financial Crimes Commission reported to it for possible prosecution where a prima facie case is established.

Learned counsel submitted that, the 1st Respondent has the power to administratively trace and attach properties during investigation before a court order is obtained. ***EFCC VS ZAHAR SHOPPING MALL LTD (2016) CA.***

On issue two, whether the Applicants are entitled to the reliefs sought.

Learned counsel argued that it only carried out its statutory responsibilities of investigation and that cannot in any way amount to breach of the Applicant's fundamental right. ***EKWENUGU VS FRN (2001) 6 NWLR (Pt. 708) A 185.***

Court was finally urged to dismiss this suit.

On their part, the 2nd Respondent filed a counter affidavit of 5 paragraph duly deposed to by one ChisomAmadi, a counsel in the law firm of the 2nd Respondent.

It is the deposition of the 2nd Respondent that 1st Applicant could not carry out a transaction on the 2nd Applicant's account due to a letter received by the 2nd Respondent from the 1st Respondent dated 25th November, 2019 annexed as Exhibit "A".

That the 2nd Respondent was authorized to put a stop order not exceeding 72 hours on any customer's account being investigated for money laundering.

Applicants aver further that 2nd Respondent also received a court order from the 1st Respondent before placing a post No debit (PND) on the 2nd Applicant account vide Exhibit "B".

That the 2nd Respondent has exception to its Banker – customer relationship and confidentiality where the customer is being investigated for an alleged crime.

That the 2nd Respondent is obligated by law to divulge information on financial matters with respect to a customer where there is an allegation of crime to Anti-Corruption Agencies.

2nd Respondent avers further that Applicants did not in any way suffer any loss.

That the Applicant was duly informed by Sylvia Magbegor, Banking officer that a Post No Debit had been placed in his account since November, 2019.

That the Applicant asked her to stamp the transfer form and that she refused to stamp the form but she rather cancelled the form.

That it will be in the interest of justice to dismiss this action.

A written address is filed wherein a sole issue to wit; whether this Application has merit was formulated for determination.

Arguing on the above, learned counsel submit that the acts of placement of post no debit on the Applicant's account is not the issue. What is important is that there was a lawful reason to so do. And that where a legislation lays down a procedure for doing a things there should be no other method of doing it other than the one stated in the legislation. ***OKEREKE VS YAR'ADHA (2008) 12 NWLR (Pt. 1100) 127.***

Learned counsel contended further that the 1st Respondent has power by virtue of section 38 (1) of the EFCC Act to 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 the Act. And that the 1st Respondent acted within the law

establishing it. ***CHIGBU VS TONIMAS NIG.LTD (2006) 9 NWLR (Pt. 984) at 265 paragraph G.***

Learned counsel for the 2nd Respondent submit further that the 1st Respondent wrote a letter to them and knowing full the implication of the said letter which is also enshrined in section 6 of the Money Laundering Prohibition (Act) 2011 and that consequences or not adhering in section 12 of the same Act placed a Post No Debit on the Applicant account on the 25th November, 2019.

Counsel contended that Applicants have not been able to lead credible evidence to establish their entitlement to the reliefs they are seeking. And that assuming they are entitled to the reliefs sought, the Applicants had in their account about **N9,000,000.00 (Nine Million Naira)**at the dates of the November to 25th of May and their claim against the 2nd Respondent is **N500,000,000.00 (Five**

**Hundred Million Naira).** Court was urged to dismiss the application.

Upon service, the Applicants filed a further affidavit in Response to the 1st Respondent's counter affidavit duly deposed to by the 1st Applicant himself.

It is the deposition of the Applicants that they are not connected with any transaction with the Kwara State Internal Revenue Service and that he is not an officer of Velox Enterprises Ltd.

That the Order of Court was obtained on the 13th December, 2019 whereas the letter was dated 25th November, 2019.

Applicants avers further that the amount paid into his account was for sale of his car in December, 2017.

That the Respondents do not have right to place No debit in his account.

A written address was filed wherein learned counsel argued that the chairman of EFCC does not have power to freeze bank account for a period of 72 hours, and that section 31 (1) of the EFCC Act, the Economic and Financial Crimes Commission (Establishment Act No.1 2004 is amended by deleting section 1(2) (c) and 6(1) of the Act. And that the chairman of the 1st Respondent has

been stripped of any power whatsoever under section 6(5)(b) of the money laundering (prohibition) Act to place a Post No Debit (PND) Order on a bank account for period not exceeding 72 hours.

***AKINTOKU VS LPDC (2014) LPELR 22941 (SC) at page 62 – 63.***

In Response to 2nd respondent counter affidavit, Applicants filed a 14 paragraphs affidavit.

It is deposition of the Applicants that 2nd Respondent placedPost No Debit (PND) on its account on the 25th

November, 2019 without court order and all attempt to transact on the account was unsuccessful.

A written address was filed wherein learned counsel argued that from Exhibit "A" the 1st Respondent's letter of 25thNovember, 2019 was entirely predicated on section 38(1) of the EFCC Act and section 21 of the money laundering Act which empower the 1st Respondent merely to request and obtain information from any person or authority and that cannot be a ground of placing No debit. ***KANMODE & ANOR VS DINO & ORS (2008) LPELR 8405 (CA).***

1st Respondent equally filed a further counter affidavit of 4 paragraph deposed by EseBasseyIbiang an operative of the 1st Respondent.

It is the deposition of the 1st Respondent that it does not matter the law that was relied in EFCC Exhibit "3", it only matters that the action that was requested of the Bank is backed by law and it was not illegal.

That the drafter of the letter is not lawyer and the bank staff knew of the existence of section 6(5)(b) of the money laundering (Prohibition Act) 2011.

1st Respondent avers that it did not take the 1st Respondent 17 days to obtain the order and that application for court order are filed and assigned the same way all cases are filed and assigned.

A written address was filed wherein learned counsel submit that it does not matter the law that was relied upon in EFCC Exhibit "3" (the letter EFCC sent to 2nd Respondent.)

Counsel contended that all the arguments and submission of the learned counsel are on mere technical justice. ***DAPIANLONG VS DARIYE (2007) 30 SCQR 1036 (2007) 1 NWLR (Pt. 1036) 322.***

On their part, 2nd Respondent filed a further affidavit of 5 paragraphs.

It is deposition of the 2nd Respondent that the Applicants account was not in any way under any form of restriction after the stop order expired.

That the 1st Respondent letters to the 2nd Respondent direct the 2nd Respondent to obtain information and place a stop order in the account. Court was urged to dismiss the suit of Applicants.

**COURT:**I have read carefully the originating motion of the Applicant which is supported by affidavit and written address on the one hand, the counter affidavit filed by the Respondents (EFCC) Economic and Financial Crimes Commission in oppostion to the application for the enforcement of Fundamental Rights, counter affidavit of 2nd Respondent and the further and better affidavit filed by the Applicants in line with the Fundamental Human Rights Enforcement Rules 2009, on the otherhand.

Fundamental Rights have been said to be premodial.. some say it is natural or God given Rights.. Text books

writers like the renowned Professor Ben Nwabueze (S.A.N) have opined that these rights are already possessed and enjoyed by individuals and that the "Bills of Rights" as we know them today "created no right de novo but declared and preserved already existing rights, which they extended against the legislature".

It is instructive to note that magna carta 1215 otherwise called "Great charter" came to being as a result of the conflict between the king and the barons, and petition of rights 1628 which is said to embody sir Edward Coke's concept of "due process of law" was also a product of similar conflicts and dissensions between the king and parliament.. nor was the Bill of Rights 1689 handed down on a "platter of Gold".. that bill drawn by a young barrister John Somers in the form of declaration of right, and assented to by king Williams secured interalia for the English People, freedom of religion, and for judges, their independence.

England has no written consitution with or without entrenched human Rights provisions however, the three bills of rights alluded to earlier, formed the bed rock of the freedom and democratic values with which that country has to this day been associated.

On the part of French People, the French revolutionaries had to attack the Bastille, the Prison house in paris, to proclaim the declaration of rights of man and citizen in 1789.. the object of the revolution was to secure equality of rights to the citizen.. two years after, American peolpe took the glorian path of effecting certain amendments.. they incorporated into their constitution, a Bill of rights which is said to be fashioned after the English Bill of Rights..

It is noteworthy that ever before the amendment of its constitution, the Americans had to fight a war of independence in 1776 and had proclaimed thus:-

> "***We hold these truths as self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights that among these are life, liberty and pursuit of happiness."***

It can therefore be gleaned from history that the pursuit of freedom, equality, justice and happiness is not perculiar to any race or group.. it is indeed a universal phenomenon, hence man has striven hard to attain this goal.

The universal declaration of human rights which was adopted by the United Nation General Assembly on the 10th December, 1948, three years after the end of the 2nd world war, was mainly geared towards ensuring a free world for all, regardless of status.

Nigeria did not have to fight war to gain independence from the British.. it was proclaimed that our independecne was given to us on a "platter of gold."

What the minority groups demanded was the right to self – determination which they believed could offer them an escape route from the "tyrnny" of the majority ethnic groups in the regions.

The commission that was mandated to investigate their fears went out of its way to recommend the entrenchment of Fundamenatl Human Right in the Constitution as a palliative, as a safeguard and as a check against alleged "oppressive conduct" by majority ethnic groups.

We have had our Fundament Human Rights carefully captured and entenched under chapter IV of the 1999 constitution of the Federal Republic of Nigeria as amended.. as sacrosanct as those rights contained in chapter IV of the Constitution of Federal Republic of Nigeria are, once there is any good reason for any of the rights to curtailed, they shall so be and remain in abeyance in accordance with the law and constitution.

Fundamental Human Right Enforcement Rules is not an outlet for the dubious and criminal elements who always run to court to seek protection on the slightest believe that they are being invited by law enforcement agencies..

The essence of this legal window is to ensure that every action by government or her Agency is done according to law.

I need to re-state the law as it relates to Fundamental Human Rights Enforcement, under the Rules. As a condition precedent to the exercise of court's jurisdiction, the enforcement of Fundamental Human Right or the securing of the enforcement thereof should be the main claim and not accessory claim. I rely on ***W.A.E.C VS ADEYANJU (2008)4 S.C 27.***

I have juxtaposed the relevant paragraphs of affidavit in support of the application in view and also the further affidavit on the one hand, the counter affidavit of the Respondents in vehement oppoisiton to the application for

the enforcement of Fundamental Human Rights of the Applicant on the other hand.In resolving the issues raised in the respective written addresses and affidavit evidenceof the parties,I shall consider the relevant provisions of the Economic and Financial Crimes Commission (EFCC)as contained in the establishment Act under part 1 of the EFCC Act 2004, with its functions clearly stated therein.

Section 1 (2) c of the Act refers the Economic Financial Crime Commission (EFCC) to as the designated financial intelligence unit (FIU) in Nigeria, charged with the responsibility of co- ordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with Economic and Financial Crimes in Nigeria.

The functions of the Economic and Financial Crime Commission (EFCC) is provided for specifically under section 6 (a-g) of the EFCC Act.

The following are some of the functions;

1. Investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfer, futures market fraud, fraudulent endorsement of negotiable instruments, computer credit card fraud, contract scan etc.

2. The adoption of measures to identify, trace, freeze, confisticate proceeds derived from terrorists activities, Economic and Financial Crimes related offences or the properties the value of which corresponds to such proceeds;

3. The adoption of measures to eradicate the commission of economic and financial crimes, amongst other functions numerously itemised under the aforementioned section of the Act.

Enforcement of Fundamental Human Right matters is usually begun vide motion on notice with affidavit and written address.

Needless to mention that it is fought and won on the paragraphs of affidavit and written address.

For all intents and purposes, 1st Respondent is a reputable commission with mandate to ensure Nigeria becomes corruption free and the mandate to bring to book those adjudged corrupt and also repatriate in liason with other sister agencies abroad, monies stashed offshore believed to have been gotten corruptly.

It is indeed our collective responsibility to ensure all hands are on deck for all agencies of government to work well and achieve the desired results.

In carrying out such functions however, the inalienable rights of citizen as provided for under Chapter IV of the 1999 Constitution i.e Fundamental Human Rights shall be

jealously protected, unless there is such good reason to put such rights in abeyance.

The Nigerian constitution is founded on the Rule of law the primary meaning of which is that everything must be done according to law.

It means also that governance should be conducted within the framework of recognized rules and principles which restrict discretionary power which Edward Cokecolourfully spoke of as ‘golden and straight metwant of law as opposed to the uncertain and crooked cord of discretion.

The law should be even handed between the government and citizens..***OBASEKI (JSC)*** as he then was (blessed memory) re-echoed the essence of the Rule of law in the case of ***GOVERNMENT OF LAGOS STATE VS OJOKWU (1986) ALL NLR 233, in the following words;***

***"Indeed, the Rule of law knows no fear, it is never cowed down; it can only be silenced. But once it is not silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence. SeeGARBA VS FEDERAL CIVIL SERVICE COMMISSION & ANOR (1988) NWLR (Pt. 71) 449."***

As part of our collective responsibility to protect those inalienable right enshrined in the constitution, the judiciary shall remain very resolute.

***MOHAMMED BELLO (then CJN) of blessed memory, at the 6th International Appellate Judges Conference in Abuja in 1992, has this to say:***

> ***"Judges should excel by doing the essence of justice which is to give a person what is lawfully due to him, to compel him to do what the law obliges him to do and restrain him from doing what the enjoins him not to do".***

The issue is whether the failure of the 2nd Respondent to honour the Applicant's transfer form and the restrictions placed on his accounts on the strength of the letter written by 1st Respondent, amounts to a breach of contract.

It is given that Applicants maintain and operate a current account with the 2nd Respondent once it is shown that an individual or cooperate body has a bank account with a named Bank, the relationship then without much ado becomes contractual and the parties are clearly bound by the terms of their contract. In view of the nature of the nature of the relationship, the customer of the bank neither has the authority nor the control of monies standing in his credit in an account with the Bank..what the customer has is a contractual right to demand repayment of such monies. The case of ***WEMA BANK PLC. VS OSILARU (2007) LPELR 8960 (CA)*** is instructive here.

***LORD 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 cause 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 collectcheque for their customers and place them to their credit, they also honourcheques or orders drawn on them by their customers when presented for payment and debit. ***OLAM NIG. LTD VS INTERCONTENANTAL BANK (2009) LPELR 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 the transfer Form filled by Applicants was not honoured by the Bank on account of the Post No Debit (PND)

Whereas it is the defence of the 2nd Respondent that failure to honour the Applicants transfer form was frustrated by the Act of statute (EFCC) Act.

I am then minded 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 2nd Respondent in itsdefenceannexed Exhibit "A" to show that the contract was frustrated by an act of the Economic and Financial Crimes Commission (EFCC).

For avoidance of doubt Exhibit "A" is hereby reproduced;

> ***"The Commission is investigating an alleged case of conspiracy, diversion of funds and money laundering in which the above mentioned account name and number featured.***
>
> ***2. In view of the above, you are kindly requested to forward the Certified True Copies of the following information:***
>
> ***i. Account opening package/Mandate cards,***
>
> ***ii. Statement of account from 2015 to date (including soft and hard copies) the soft***

*copies in excel format to sisyaku@efccnigeria.org.*

*iii. Certificate of identification according to section84 (4) of the Evidence Act, 2011.*

*iv. Any other useful information.*

*3. You are further requested to place no debit (PND) deactivate the ATM, arrest anybody that comes to operate the account and call the following numbers 08035991420, 080235477233 for necessary action.*

*4. This request is made pursuant to Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and Section 21 of the Money laundering (Prohibition) Act, 2011.*

*5. Thank you for your usual cooperation, please."*

It is the contention of the 2nd Respondent that the circumstances of the instruction by the EFCC viz – a – viz the contractual obligation owed the claimant, the 2nd Respondent had no choice than to adhere to the said instruction.

To the extend that the request is in compliance with the law, I agree.

If I may ask, and I hereby ask, does Exhibit "A" empowered 2nd Respondent to freeze Applicants' account without a Court Order validly obtained?

I am, to say the least not on the same page with the hallucinating and convulsive defence of the 2nd Respondent.

Qst…did Exhibit "A" reproduced above empower the 2nd Respondent to freeze the Applicants' account without a valid Court Order!

The law is that where a document is clear, the operative words in it are to be given their simple and ordinary meaning. One is not to read into the document what is not there. ***KANMODE & ANOR VS DINO & ORS (2008) LPELR 8405 (CA).***

Indeed, the 2nd Respondent been a responsible organization ought to know that they cannot and ought not to have acted on above Exhibit 'A' without a valid Court Order, as the said letter does not represent a Court Order.

Having done so, clearly they are in breach of the Fiduciary Relationship they have with the Applicants.

Indeed, the argument of the 2nd Respondent that 1st Respondent's letter activated the 72 hour window allowed by section 6(5)(b) of the Money Laundering Act does not arise from the content of Exhibit "A" reproduced in the preceeding part of this judgment.

It is instructive to state here that, assuming that Exhibit "A" above successfully activated the provisions of section 6(5)(b) of the Money Laundering Act, the restriction on the Applicants' account was required to by law last for only 72 hours.

However from the affidavit before the court, the Applicants' attempted to carryout transactions on the said account at various times after 27th November, 2019, including 4th December, 2019, 10th December, 2019 all without any success. This can be seen from paragraphs 8 and 9 of Applicants' further affidavit in response to the 2nd Respondent's counter affidavit.

Indeed, from the affidavit evidence before the court, the 2nd Respondent froze the said account on the 25th November, 2019 without a court Order until 13th December, 2019 vide Exhibit "B" annexed by the 2nd Respondent.

I am fortified by the deposition in the affidavit in support of the application and further affidavit to say that the act of freezing the account of the Applicants by the 2nd Respondent for the period under consideration amounts to a breach of the Applicants' proprietary right as guaranteed under the Constitution and African Charter on Human and Peoples' Right (Ratification and Enforcement) Act. The letter written by EFCC (1st Respondent) to the Bank (2nd Respondent) i.e Exhibit "A" is not a magic Tussle meant to unilaterally put Applicants' Right in abeyance inperpetuity. If at all it had any efficacy, it was meant to last for 72 hours and not at infinitum.

It is the argument of the Applicants that Economic and Financial Crimes Commission (EFCC) has no power to Post No Debit in a customer's 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 reproduce;

> "***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."***

The argument of learned counsel for the Applicants' is laudable in this respect…lawsare meant to be respected. The "motto" of EFCC is, "nobody is above the law."

Is the 1st Respondent making a mockery of its motto by not obeying the law aforecited and reproduced?

I make bold to say that above provision is very sacrosanct from the averments in the respective affidavits before me. It is very clear that at the time Applicants account was PND (Post No Debit), there was no Court order given to the 2nd Respondent.

A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its pact with regards to the operations within its contract with its customers. The duty to exercise reasonable skill certainly extends over its dealings with its customer.

From what has played out, 1st Respondent who mandated 2nd Respondent to Post No Debit in Applicants' account

with 2nd Respondent vide letter eventually got an Order of Court to ensure the Post No Debit (PND) in Applicants' account subsisted for only God knows when.

Eventhough there was eventually compliance with the provision of the law by the Respondents, the action of the 2nd Respondent which acted on the letter written by 1st Respondent to Post No Debit (PND) Applicants' Account without a court Order, an exercise which lasted for weeks, is clearly in frontal violation of the settled provision of thelawi.e section 34 (1) of the EFCCAct which has been interpreted in the case of ***GTBANK PLC. VS ADEDAMOLA (2019) 5 NWLR (Pt. 1664) CA*** and by implication violation of the right of the Applicants' as provided for under section 34 of the 1999 Constitution of the Federal Republic of Nigeria, as amended. Banks statutorily have company secretaries, the provision of which is mandatory in view of its statutory nature... such company secretaries are lawyers of over 10 years post

call. It is therefore expected that before a Post No Debit is placed on a customer's account, such unit of bank approached, shall consult with the Legal Department to avert any form of catastrophe befalling the bank in view of the fiduciary nature of the relationship between the Bank and Customer.

Having carelessly placed a Post No Debit (PND) in Applicants' account without seeking any legal direction from its Legal Department, the bank, and the bank only shall be held responsible for its careless conduct and not the Economic and Financial Crimes Commission (EFCC).. there is no averment in the affidavit of the 2nd Respondent that 1st Respondent (EFCC) put a gun to its head to compulsorily carry-out the alleged instruction vide its letter.

The conduct of Banks who are always ready to jump at and act on any correspondence sent to it to Post No Debit

in Customers' account without any valid Court Ordermust be condemned and has been condemned by Courts.

To paraphrase the legendary Lord Denning, if we never do anything which has not been done before; nothing will change; the entire world will move on whilst the law remains the same and that will be bad for both the world and the law. See ***PACKER VS PACKER (1953)2 ALL ER. 127.***

Having established by affidavit evidence that Applicants were deprived access to their account without any Court Order, there is then no gain saying that Applicants have suffered legal injury which as Court I am enjoined to provide a remedy..**Ubi jus ibiremedium**. See ***IGBAMI & ANOR VS BAYELSA STATE INEC & ORS (2013) LPELR – 21239 (CA), EZE & ORS VS GOVERNOR OF ABIA STATE & ORS (2014) LPELR 23276 (SC).***

Applicants sought for N500Million general and aggravated damages against the Bank (Access) i.e 2nd

Respondent for agreeing to Post No Debit (PND) in Applicants account without an Order of Court.

General damages in law ispresumed to flow from the wrong complained of by the victim… such damages need not be specifically pleaded and proved. It is sufficient if the facts are averred.

See ***EFCC VS INUWA & ANOR (2014) LPELR 23597 (CA).***

Aggravated damages on the otherhandmay be awarded where the damages are at large and the conduct of the Defendant was such as to injure the person's proper feeling of dignity and pride.Above was stated in the case of ***ODIBA VS MUEMUE (1999) 10 NWLR (Pt. 622) 174 OR (1999) 6 S.C (Pt. 1) 157.***

The act of refusing to allow Applicants withdraw money from their account which was funded, without much ado, no doubt has injured the feeling, pride and dignity of the

Applicants… this is a convenient situation to award both General and Aggravated damages.

I hereby award N20 Million damages (General and Aggravated) against the 2nd Respondent for acting unreasonably irresponsible.

I refuse to make any such Order against the 1st Respondent EFCC on aggravated damages of N100 Million for the reasons given in the preceding part of this Judgment.

Relief of perpetual injunction against the 1st and 2nd Respondent is also refused and dismissed.

An Order is hereby made, directing 2nd Respondent to immediately lift all form of restriction placed on Applicants Account once investigation is completed.

By this ruling, it is my believe that Banks would not allow themselves to be rubber – stamp or willing tool in the hands of the Economic and Financial Crimes Commission

(EFCC) without compliance with the law. I commend the industry of both counsel.

***Justice Y. Halilu***
***Hon. Judge***
***13th October, 2020***

**APPEARANCE**

**SEGUN FIKI –** for the Applicants.

**JOY ETIABA (MRS) with THELMA ISANI –**for the 2nd Respondent.

1st Respondent – represented by HussainaGambo.