

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN**  
**THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON 1<sup>ST</sup> DAY OF JULY, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS**  
**SUIT NO: FCT/HC/CV/522/21**

**BETWEEN:**

**MR. ADETOLA OLULENU ESQ**  
**(Trading under the name and**  
**style of Gracious Chambers) ..... PLAINTIFF/APPLICANT**

**AND**

**GUARANTY TRUST BANK PLC .....RESPONDENT**

**JUDGMENT**

This suit was commenced under chapter 4 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and under the EPR by the applicant who filed an Originating summon before this court dated 22/2/21 thereof seeking for the enforcement of his fundamental human rights. Applicant's prayers are as follows:

- (1) *A declaration that the unwarranted and unjustifiable restrictions placed on the applicant business account Gracious Chambers with account and 0112668128 domiciled in the Respondent bank and being operated by applicant since 22/9/2020 is unlawful, illegal and a gross violation of the fundamental human Rights of the*

- applicant as enshrined under section 34,35, 36 & 44 of the 1999 constitution of the FRN 1999 (as amended).*
- (2) An Order directing the Respondent to lift any restriction or embargo whatsoever placed on the applicant account No 0112668125 domiciled in the respondent's bank without a valid court order, with immediate effect and without further delay.*
  - (3) An Order of perpetual injunction restraining the respondent from further placing any restriction or Embargo on operation of the applicants account without following due process of law.*
  - (4) An Order for the payment of the sum of N500,000.000 by the Respondent as compensation for the continuous violation of the applicants Fundamental Human Right since September, 2020 as well as the tendering of an unreserved apology to the Applicant for infringement of the aforesaid right.*
  - (5) And for such further Order(s) as this court may deem fit to make in the circumstance.*

Attached to this application is a statement of particulars in supports affidavit in support of originating summons. 5 documents marked as exhibit A1-A5 respectively and applicant written address.

The facts of the case as avered in the affidavit deposed to by the applicant himself states inter alia that:

- (i) Applicant is the sole signatory to an account in the Respondent bank with account No 0112668128 which he has been operating within the parameters of his business without

any hindrance until 22<sup>nd</sup> September, 2020. When the Respondent without any lawful justification placed a restriction on the said account.

- (ii) Applicant made other attempts to withdraw from the said account to no avail as it was still blocked restricted.
- (iii) That he sent personal mail and calls to the branch office of the Respondent to find out why he was unable to operate his business account but the Respondent refused, neglected and failed to respond positively to any communication.
- (iv) That applicant then wrote a petition to the Respondent through his firm Gracious Chambers and delivered same through fedex but the Respondent failed, neglected to respond.
- (v) Applicant avers that there will be irreparable loss and damages to him if this application is not granted.

In his written address, applicant formulated 2 issues for determination viz:

- (1) Whether the unlawful and unwarranted restriction placed on the applicants law firm account making it impossible for him to operate since 22/9/2020 is not a gross violation and/or infringement of applicants right under section 34,35,36 & 44 of the 1999 constitution of the FRN as amended.
- (2) Whether the Respondent is not liable to offer a public apology and pay adequate compensation to the applicant for the gross

violation of their fundamental human rights for the unwarranted restriction placed on their Bank account with the Respondent.

Applicant submits that the unlawful and unwarranted restriction placed on the applicants account making it impossible for him to operate the said account since September, 2020 amount to gross violation of his right guaranteed under section 35, 36 & 44 of the 1999 constitution. Applicant citing section 34 (1) (a) of the said constitution reiterated the clear meaning of a person being subjected to inhuman treatment as pronounced in **EKPU VS. A.G. FEDERATION (1998) 1 HRLRA 391 @ PAGE 421.**

That the Respondent has a duty to safe guard the funds the applicant or his law firm kept in its custody as the circumscribed by the provision of the constitution which enjoins the Respondent to treat the applicant with all human dignity is so for as they have the freedom to have access to such funds whenever required.

Applicant submits that even in the face of any criminal allegation which enjoins the Respondent to presume the applicant innocent until he is proven guilty. That without any legal bases or justification, the Respondent restricted the applicant from accessing his account and crippling his operation against clients and creditors expectations.

That the Respondent ought to have notified the applicant or given him the opportunity of being heard before such decision is taking. If at all it is unavoidable in law.

That the Respondent would have obtained an order of court to place embargo on the applicant account as provided by law if need be and not to usurp the powers of the court by placing unwarranted restrictions thereon without any reference to the applicant.

Applicant submits further that the action leading to the restrictions or embargo purportedly placed on the applicant's law firm account without any legal justification constitution public embarrassment, ridicule and dehumanizing treatment of the applicant and thus amounts to a gross violation of his fundamental human right under section 34 of the constitution.

Applicant argues that he was not arrested or detained physical a restriction placed on his means of survival such as a private bank account is akin to his arrest and detention. Applicant submits that his liberty was denied when his means of livelihood is tempered with to the extent that he can no longer carry on his legitimate business as usual.

That the restriction placed on the applicants account without any valid court order is tantamount to evicting it forcefully from its legitimate place of business and thus constitute a gross violation of the applicants right under section 35 of the 1999 constitution which the applicant is

entitled to compensation and an apology from the respondent whether or not the Respondent intends to remove or lift the said restriction after a while.

That the actions of the Respondent has caused untold hardship on the applicant who has been unable to conclude or meet some of his clients needs/Instruction and is now crippled financially failure on the part of the Respondent to notify the applicant before putting a restriction on his account amount to not giving the applicant an opportunity to be heard thereby infringing on his right guaranteed under section 36 of the constitution and is liable to pay compensation to the applicant a business man for the hardship caused him.

Applicants submits that the unwarranted restriction on his account domiciled in the Respondent bank without following the prescribed manner amount to breach of applicants Fundamental Right to own a movable property see section 44 of the 1999 constitution and **G.T.B VS. MR. AKINSIKWU ADEMOLA & 2 OTHERS IN APPEAL NO CA/L/1285/15** and urged the court to grand this application Respondents filed a five paragraphs Counter Affidavit dated and filed on the 30/3/21 deposed to by One IDAYE X.O. IMBU ESQ, legal practitioner in the law firm of counsel to Respondent. Wherein she avered to the following facts.

That the applicant is a customer of the Respondent maintaining a current account with account no 0112668128. In the name of his business gracious Chambers.

That Respondent did not at any time Freeze the applicant No 0112668128 and that the Respondent has no record of the applicant Exhibit A3 nor any knowledge of applicants Exhibit A4 & A5 nor has respondent received any complain from the applicant concerning the alleged restriction of his account.

Deponent avers that the applicant has not attached any evidence to show that his account No 0112668128 was frozen by the Respondent or that he was restricted from accessing his account with the Respondent.

That the applicant has failed to prove his claim against the Respondent.

The Respondents written address wherein he adopted applicants issues for determination Respondent submits that the applicant has failed to prove that the Respondent unlawfully restricted his account and infringed on his right to dignity liberty, fair hearing and property. Relying on **CHIEF OTU GREGORY APPH & 5ORS VS. MR. MARTHIAS OTURIE (2019) 6 NWLR (PT 1667) 111 OJUEKONG RAPHAEL BASSYN & ANOR VS. DOMINIC JESSY AKPAN & 5ORS (2018) LPELR - 44341.**

Respondent submits that the applicant did not prove the existence of any of the elements provided in section 34,35,36 & 37 of the constitution and

that he who alleges must prove see section **131(1) EVIDENCE ACT SEE VEEPEE FNA LTD VS. COCOA LORD LTD (2008) ALL FWLR (PT 425) 1667 @ 1684-1685 PARAGRAPH H-B** and that the question of infringement of Federal Republic is legally a question of fact. See **OBLA VS. EFCC (2019) ALL FWLR (PT 991) PG. 41 @ P. 56.**

That for the applicant to succeed in his claim for damages against the Respondent, he must establish before this court loss or injury suffered as a result of Respondent's unlawful actions as there is no evidence before the court to establish that respondent unlawful actions or inaction made the applicant to suffer any form of injury or loss see **OKON ANSA ABASI VS. EFFANGA ANWANA ESIN (2018) LPELR 45881 YAKUBU DAUDA ESQ VS. ACCESS BANK PLC (2016) ALL FMLR (PT 831) 1489 @ 15.**

Respondent urged the court to hold that the applicant is not entitled to any remedy and resolve the issue in favour of the Respondent.

Applicant in response to Respondent's Counter Affidavit filed a further and better affidavit in support, Exhibit marked as Exhibit A6A, A6B, Exhibit A7, affidavit of Certification of e-mail and text message and reply on points of law. Wherein applicant submits contrary to Respondent claim that his account has been frozen by the Respondent since 22/9/2020 without notice and that his correspondence as show in his exhibits attached) with the respondent or courts staff have not yielded any positive result.



That contrary to paragraphs 4F, 4G, 4H, 11 & 5 of Respondent's Counter affidavit, Respondent's unlawful action was targeted at crippling him financially but was equally aimed at exposing him to ridicule before his clients and that he has suffered untold hardship from the Respondents illegal and un-justifiable action and ought to be compensated.

In applicant reply on point of law, applicant submits that the Respondent argument is totally misconceived and lacking in merit. That the crux of the Respondent's reaction is simply that the applicant has not shown any proof that his firms account was restricted by the Respondent. Applicant submits that respondent never contravened the fact that Exhibit A4 & A5 showing the similar tracking number proves that Exhibit A3 was received by Respondent. See section 133 (2) Evidence Act. See also **ADEBAYO VS. UMAR (2012) 9 NWLR (PT 1305) PG 279** submits that averments not denied are taking to be admitted.

That applicant has deduced sufficient evidence that show that his account was restricted without any valid court order see **SAIDU GARBA VS. FCSC (1988) 1 NWLR PT 71 @ PG 449-478 GOVERNOR OF LAGOS STATE VS. OJUKWU & ANOR (1986) 1 NWLR (PT 18) PG 621** applicant submits that the decision of the Respondent to restrict the applicants account contrary to the provision of Bank and Other Financial Institutions Act. Which imposed a duty on the Respondent to at all material time act within the precincts of law and apply to the court to obtain an order before placing any restriction on the account ought to be considered as an interference on the liberty or property of the applicant

herein which is also unlawful. See **ALADAJOBI VS. NBA (2013) VOL. 55 NAQR @ PG 179 183 RATIO 4.**

Applicant submit further that there was no letter notifying the applicant that his referee should be updated and no communication to the applicant as to why they said account was frozen until the applicant counsel Exhibit A3 was written to the Respondent.

That the court has decided in **TYLOR VS. OGHENEORO (2012) 13 NWLR PART 1316 PG 46** the principles guiding the award of damages for personal injury and urged the court to grant his claims.

Respondent's filed a Further and Better Counter Affidavit to applicant originating summons dated and filed on the 21<sup>st</sup> June, 2021 deposed to by legal practitioner SUSAN ONOJA in the law firm of counsel to Respondent wherein she avers that the Respondent did not freeze the applicants account but restrict withdrawal from the said account in order for the applicant to provide suitable referee for his account.

That in September, 2020 the Respondent carried out an audit of the applicants referees provided when he opened the account No 0112668128 where not confirmed by their bank which made the Respondent restrict withdrawals only to allow inflow in to the account until applicants provides suitable referees.

That the Respondent in its mail to the applicant on 2<sup>nd</sup> October, 2020 inform the applicant of the reason.

For the restriction on his account and sent his referee form and a bank referee form to the applicant in order for the applicant to get his referees bank to confirm their suitability referees but the applicant refused or neglected the Respondents instruction as the provision of suitable referee is a mandatory requirement for opening and operating the applicants account.

Attached to this counter affidavit is Exhibit G.T.B. 1 and a written address wherein Respondent submits that they did not freeze the applicants account as this means stopping inflow and outflow of money to or from the account.

That the account was only restricted as only outflows is restricted see **SKY BANK PLC VS. RABI HARUNA & 6 ORS (2014) LPELR- 41078** counter affidavit,

That even if without conceding that the Respondent unlawfully restricted the applicants account, the applicants cause of action is breach of contract. See **AMINA ISHOLA INVESTMENT VS. AFRIBANK NIG PLC (2013) LPELR 20624 (SC)**. That the applicant merely avered that he suffered injury without proof of such injury as such his claim for damages must fail. Respondent urged the court to dismiss the applicant's claim. Having reproduce the position of both sides aforesaid.

It is pertinent to note that FRE P is sui generis and any claim touching on violation of Rights to person liberty guaranteed by the constitution are usually made pursuant to it. The rules are generally enacted to govern or regulate actions for enforcement or the protection of fundamental rights guaranteed by the constitution see **FBN PLC VS. A.G FEDERATION (2018) 7 NWLR (PT 1619) 121.**

The claimant in this case claim that the Respondent since September, 2020 blocked his account without prior knowledge of same to him, a valid court order and this has caused him untold hardship Respondent at 1<sup>st</sup> denied blocking applicants account or having any knowledge of some.

Respondent also denied having had any correspondence with the applicant. The term dignity as in section 34 1999 constitution is define by the black's law dictionary 8<sup>th</sup> edition as. The state of being noble the state of being dignified an elevated title or position, a person holding an elevated title, a right to hold title a title of nobility, which may be hereditary or for life while the term liberty as it appears in section 35 of 1999 constitution denote not merely freedom from boldly restrain but also the right of the individual to constraint, to engage in any of the common occupation of life to acquire useful knowledge to marry, establish a home or bring up children worship God according to the dictate of his conscience and generally to enjoy those principles long recognized at common law as essential to the orderly pursuant of happiness by free man. See **USMAN VS. EFCC (2017) LPELR 43196 (CA).** From the available evidence of the applicant's affidavit in support

of his application. It appears to me the main ground for bring this application is guided by section 97(1) of the Banks and other financial institution Act 2020.

The above section in my view does not apply this is because what actually happened was restriction of account not freezing of account as alleged by the applicant. From the entire content of the affidavit in support of the application. The Respondent failed to exercise due care in the cause of its duty to the customer. I therefore, deem it necessary to state that this does not fall within the preview of chapter 4 the applicant commenced this suit by way of fundamental Rights (Enforcement Procedure) rules 2009. First and for most let me point out that in an application brought before the court for resolution, the court is bound by the prayers as contained in the application the court is not allowed to derail/depart from the issues submitted in the application. I shall be bound by the prayers of the applicant. It is in this light that I will resist I shall discountenance all the arguments canvassed by counsel for both parties in respect of this case. The will settled principles of law regarding ascertainment of competence of an action commenced by way of FREPR is that court must ensure that the enforcement of fundamental Right under chapter IV of the constitution is the main claim not ancillary or corollary claim. Where the main claim is not enforcement of Fundamental Right the jurisdiction of the court cannot be said to be properly invoked and the action will be liable to be struck out for being incompetent.

This principle was given a formative seal by the apex court in a plethora cases. Such as **TUKUR VS. GOVERNMENT OF GONGOLA (1997) 6 NWLR (PT 510) 49, OGUNDARE JSC. OF (BLESSED MEMORY) SEE ALSO GRACE JACK VS. FEDERAL UNIVERSITY OF AGRICULTURE MAKURDI (2004) LPELR 1587 (SC)**. From the combine efforts of the above judicial authorities it goes without saying that this court in its entirety does not fall within vehement of fundamental enforcement procedure rules the action of the Respondent was a clear demonstration of lack of due care in the exercise of its duty to it customer which action can only be commenced by writ of summon. For such reason the case is hereby struck out in it entity.

Signed  
Hon. Judge  
30/6/21