

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THE 8TH DAY OF JULY 2021 SUIT NO. FCT/HC/CV/359/21

BEFORE HIS LORDSHIP:

HONOURABLE JUSTICE JUDE O. ONWUEGBUZIE - JUDGE

BETWEEN:

DOOKENGER ODEY TAKON

APPLICANT

AND

GUARANTY TRUST BANK

RESPONDENT

JUDGMENT

Before this Honourable Court is an application for Order Enforcing the Fundamental Rights dated 3rd day of February 2021 and filed on the 10th day of February 2021 through an originating motion. The application is brought pursuant to Order 2 Rules (1), (2),(3), (4) and (5) of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Section 44 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) and under the Inherent Jurisdiction of this Honourable Court.

The Applicant seeks the following Reliefs:

1. A Declaration that the act of freezing the Guaranty Trust Bank Account of the Applicant with Account Number- 0111649258 without due process of law is unconstitutional, illegal and a violation of the Applicant's right to own

properties as enshrined under the provisions of section 44(1) of the Constitution of the Federal Republic of Nigeria (as amended), Article 17 of the United Nations Declaration of Human Rights and Article 14 of the African Charter of Human and Peoples Rights.

2. An Order of this Honourable Court directing the Respondent and its servants, agents and privies to lift the restriction placed on the Applicants Guaranty Trust Bank Account Number – 0111649258 domiciled and operated with the Respondent.
3. An Order of Perpetual injunction restraining the Respondent whereby themselves, their agents, privies or servants from interfering with the account number 0111649258 belonging to the applicant and domiciled and operated with the respondent without due process of law.
4. An Order of this Honourable Court mandating the Respondent to pay to the Applicant the sum of #10,000,000(Ten Million Naira) as General Damages for the unlawful freezing of the account number- 0111649258 belonging to the Applicant domiciled and operated with the respondent.
5. An Order of this Honourable Court mandating the Respondent to pay to the Applicant the sum of #5,000,000 (Five Million Naira) as punitive, compensatory and exemplary damages for the psychological trauma and hardship suffered by the Applicant for the unlawful freezing of her account number – 0111649258 domiciled and operated with the Respondent.
6. And for such Order(s) or further Orders as this Honourable Court may deem fit to grant in this circumstance.

GROUND OF THE RELIEF SOUGHT

1. Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) specifically provides that:

- a. “No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner prescribed by law.”
2. The freezing of the applicant’s account number 0111649258 domiciled and operated with the respondent on or about February 2020 did not follow due process of law and was in breach of the applicant’s right to own property.
3. Despite the applicant’s solicitor’s letter on the restriction the respondent have continued to maintain the restriction.
4. The freezing of the applicant’s account domiciled and operated with the respondent has caused untold hardship and suffering on the applicant.
5. The action of the respondent is in breach and continuing breach of the Applicant’s constitutionally guaranteed fundamental rights.
6. The Applicant is entitled to specific, general, exemplary and punitive damages pursuant to the said violation.

In compliance with Order 1 Rule 3 of the Fundamental Rights Enforcement Procedure Rules, the applicant filed the statement in support of the application with a 16 paragraph Affidavit deposed to by Ms. Jessica Akiga the mother of the applicant, with one exhibit attached.

The Applicant also filed a further and better affidavit and reply on points of law. I have also noted the written address filed by the learned counsel to the applicant, who raised three issues for the determination of the court in the said written address which was adopted as oral submission in court.

In response, the Respondent filed a twenty one paragraph Counter-Affidavit accompanied with two exhibits and a written address, who raised a sole issue for

the Court's determination and adopted same as his oral submission in support of respondent's case.

The case of the applicant was that lien was placed on her account number 0111649258 domiciled and operated by the respondent – Guaranty Trust Bank sometimes in 2020. Upon discovery, the applicant contacted the respondent to enquire the reason for the freezing or restriction on her account and the respondent confirmed that it was based on a directive from the police.

Following the development and after unsuccessful efforts at getting the respondent to lift the restriction placed on the applicant's account, the Applicant instructed her solicitor who wrote Exhibit A dated 28th October, 2020.

The Respondent despite receipt of Exhibit A, according to the Applicant failed, neglected and refused to lift the restriction placed on the Applicants account. That pursuant to the restriction placed on the her account, she was unable to meet up with her financial obligation to third parties who in turn petitioned the Economic and Financial Crimes Commission in respect of a case of breach of trust consequent upon which the Applicant was arrested and arraigned before the High Court of Borno State in charge No. BOHC/MG/CR/60/2020 and currently remanded at Borno State correctional facility Maiduguri. She alleged that freezing of her account was illegal without following due process of law, and that she has a right to own property both as well as her personal liberty. The Applicant further alleged that there was no order of court permitting the respondent to place restriction on her account.

In response, the Respondent filed a 21 paragraph counter-affidavit of one ChukwuemelieOfoma, a litigation secretary in the Law Firm of Oli& Partners counsel to the respondent. The deponent in paragraphs 5,6,7,8,9,10 and 11 averred that it is true that the Respondent placed a "Post No Debit" restriction on the

applicant's account consequent upon a court order. That the respondent was first served with a letter emanating from the Deputy Inspector – General of Police dated 27/01/2020 informing the respondent that there was an ongoing investigation of a case of Issuance of Dud Cheque, Cheating and Threat to Life in respect of Account Number 0174347753 belonging to the Applicant. That the said letter was accompanied by a Court Order made on 27th January, 2020 by His Honor I.M Balarabe of the Area Court, FCT Abuja directing the Respondent *inter alio* place a Post No Debit on the Account Number of the Applicant domiciled with the Respondent. The Respondent averred that on receipt of the Letter and Order of court conducted a search on its record and found out that the Applicant maintained an account with the Bank and forthwith complied with the Order of the Court to place “ Post No Debit” on the Applicant's account. The Respondent further averred that the respondent was equally served with another letter emanating from the Deputy Inspector –General of Police office dated 21/02/2020 informing the Respondent that there was an ongoing investigation of a case of Issuance of Dud Cheque, Cheating and Threat to Life in respect of Account Numbers 0111649258, 0211085830 and 0174347753 belonging to the Applicant. That the said letter was accompanied by a Court Order made on 21st February, 2020 by His Honor I.M Balarabe of the Area Court, FCT, Abuja directing the Respondent *inter alio* place a Post No Debit on the Account number of the Applicant domiciled with the Respondent and further alert the nearest police station for her arrest. The Respondent further averred that on receipt of the 2nd letter and Order of Court as a law abiding corporate entity complied with the Order of Court to place restrictions on the Applicant's accounts as contained in the letter and Order served on the Respondent. The Respondent stated that it has no knowledge of the Arrest, Arraignment and subsequent remand of the Applicant at the High Court of Borno State in Charge No: BOHC/MG/CR/60/2020 and the remand at Borno State

correctional facility Maiduguri. That it followed due process of law in freezing the Applicant's Account consequent upon the Letters and Orders attached as Exhibits 1 & 2.

The Applicant filed a further and better affidavit in support of the motion on notice and a reply on points of law. In the further affidavit the Applicant stated in paragraph 15 that the respondent's counter-affidavit is misleading as the Area Court Order is nothing but a Banker's form which was filled in the same handwriting and the Area Court Judge received or acknowledged same. That the Area Court Order has a misleading Court heading which clearly points out that it is a form which was produced and filled by the Respondent or whosoever working with the Respondent. The Applicant further stated in a further affidavit that the said application has no author or deponent indicating that there was no formal application before the Area Court which the Respondent allegedly issued the purported Court Order. That taking exhibit A and B attached by the Respondent did not state the name of the investigating officer who presented the application. The Applicant averred that Court Orders issued by the Court are public document requiring certification of secondary evidence of same. That the purported Area Court Order attached as Exhibit A in the Counter – Affidavit has no date of issue other than the date which the alleged Deputy Inspector General of Police stamped and signed the document. That no law permits the Nigerian Police to freeze Accounts of Citizens.

I have considered the application before this Court in its entirety with all the accompanying processes and averments and I am of the view that the sole issue arising for determination distilled from all issues formulated by the learned counsel on both sides is:

Whether the applicant is entitled to the reliefs sought in the accompanying statement.

For grant or refusal of an application of this nature the Court is seized with the discretion to determine whether or not the Applicant has made out a *prima facie* case from the materials placed before it.

The learned counsel to the Applicant in his written address and reply on points of law submitted that the law is settled that for a financial institution or a bank such as the respondent to lawfully place a restriction on a customer's account, it must first satisfy itself that there is in existence of a valid order of court authorizing such exercise. He referred the court to the case of **GTB V. ADEDAMOLA (2009) 5 NWLR Part 1664 pg at 30 at 45.**

The Applicant's counsel continued that flowing from the above cited case, it conforms to the provisions of **section 44 of the 1999 Constitution as amended and Article act 17 of the African Charter on Human and Peoples Right.** That the Respondent owes the Applicant a duty to act with care while dealing and handling funds in her account which are the moveable properties of the Applicant and therefore before the Respondent can restrict the said account, they must verify, ascertain and employ necessary caution to confirm the existence of a court order authorizing such restriction and not just on the directives of the Police or security / Anti-graft agency as in the instant case. The Counsel to the Applicant further submitted that it is an established principle that "fundamental rights" which the law has so donated and which are vested in human beings like the Applicant here; in an inalienable, immutable and inherent and as such cannot be taken away or its enjoyment impeded without the authorization or justification of the law. He referred the court to the Supreme Court decision in **Chief (MRS.)**

OlufumulayoKansome-Kuti& Attorney General of the Federation (1985) 2 NWLR (Prt.6) pg 211 at 229 paras H-B.

He went ahead to submit that it is therefore unlawful and illegal for the Respondent to inhibit or restrict the enjoyment of such inalienable rights of the Applicant over her movable property without express authorization or justification of the law. He cited the case of **Mrs. Lilian AdaejoOkoro V. ObizuoOluchukwulfediaho** suit no. HAM/86/2018. That infringement on the Applicant's access or right of access to her property (his money) is an infringement on her fundamental human right as provided for under **section 44(1) of the 1999 constitution as amended and Article 44 of the African Charter on Human and Peoples Rights (Ratification and Enforcement)Act.** He also cited **Bose Olagunju V. EFCC (2019) LCN /13730 (CA).** He finally submitted that the Respondent has failed to give any lawful justification for the freezing of the Applicant's account thereby infringing on the Applicant's Fundamental Rights to own moveable property without lawful justification and he urged the Court to resolve the issue in favour of the Applicant. He equally urged the court to grant the Applicant punitive compensation and exemplary damages for grave hardship resulting in her present criminal trial and remand at the Maiduguri correctional facility as a result of her inability to meet up with her financial obligations to the third party necessitated by the restriction placed on the Applicant's account by the Respondent.

The Learned Counsel to the Respondent submitted his address; that Orders of Court are meant to be obeyed and not otherwise. He referred the court to the case of **THE AG ANAMBRA STATE V. THE AG FEDERATION & ORS (2005) LPELR- 13 (SC).** That there is no denying the fact that it is as a result of the Letter of investigation accompanied with an Order of Court served on the Respondent and to which the Respondent complied with that led to the Restriction placed on

the Account of the Applicant. That where there is a Lawful Valid Order of the Court such must be obeyed as failure to comply will be visited with sanctions. He cited the case of **UWAZURUIKE & ORS V. A.G FEDERATION (2013) LPELR. 20392 (SC)**. That it is a settled law that Bank must be satisfied that there is an order of the court before freezing or placing any restriction on any bank account. He also cited **G.T.B PLC V. ADEDAMOLA (2019) 5 NWLR (PT.1664) 30 @ 43 E-F**. The Counsel to the Respondent submitted further that it was the lawful Order of the Court that the Respondent complied with to place the “Post No Debit” restriction on the Applicant’s account. That the Respondent is also aware that Order of Court given without jurisdiction can be set aside and until such order is set aside, it remains valid and being on the parties thereto. He referred the court to the authority of **BURUJI KASHAMU V. UBN PLC (2020) 15 NWLR (Pt. 1746) 96**. He finally urged the Court to dismiss the Applicant’s application.

Lastly the Counsel to the Applicant in his Reply on Points of Law also stated that the combined effect of the provision of Section 251 (1) (d) and 3 of the Constitution is that such civil and criminal aspect of all banking transactions are vested in the Federal High Court and or State High Courts. That the jurisdiction conferred on Magistrate Courts does not extend to powers to grant freezing orders. He cited **A.G OF BENDEL STATE & 2 ORS V. ADENIYAN (1989) 9 SC 127**. The Counsel contended that the court order is a public document and the only form of secondary evidence that is admissible is a certified true copy. He referred to **section 104 of the Evidence Act 2011 as amended**. That the court order was not certified as it was not issued nor signed by the registrar of the court. The name or stamp of the registrar is not on the court order. He argued that Exhibit 1 & 2 the court orders do not satisfy the requirements of **section 104 (1) of the Evidence Act**. That the reason for requesting for an Order of an Area Court to freeze the

Applicant's Guaranty Trust Bank Account as stated in Exhibits 1 & 2 attached by the Respondent to its Counter Affidavit is an alleged act of Obtaining by False Pretence. Obtaining by False Pretence is an offence that is contained in the Advance fee fraud Act and Other Related Offences Act provides that: **"The Federal High Court and State High Court of the States have jurisdiction to try offences and impose penalties under the Act"**. That the express mention of the Federal High Court and High Court of States with jurisdiction completely excludes Area Court from exercising jurisdiction in such matter not to talk of Granting orders to freeze bank account. That the rule *"Nemodat quo non habet"*(a person cannot give what he does not possess) he cited **F.C UDO V. Orthopaedic Hospital Management (1993) NWLR (Pt. 304) 139.**

I have carefully and meticulously analyzed the facts averred or deposed by the Applicant and the Respondent and the arguments in both counsel respective arguments in law contained in the written address. I quite agree with the Applicant's counsel in his arguments conversed herein. In my view on the interpretation is that the service of an invalid order in the case referred to by the Respondent in **A.G ANAMBRA STATE V. THE AG FEDERATION & ORS (2005) LPELR- 13 (SC)**. Where the court held:

it is the unqualified obligation of every person against or in respect of whom an order is made by a court to obey it unless and until that order is discharged, and this is more so, where the person affected by the order believes it to be irregular or void, in so far as the order exist, it must be obeyed to the later.

ismore personal to the person who is served unlike in a situation where the person in whom the order is served is in a contractual or fiduciary relationship to 3rd party

who is to be affected by the order. This endangers a duty of care on the part of the person who is served with the order.

Furthermore, I disagree with the position of the learned counsel to the respondent that it would amount to disobedience of the order of the court if the Defendant/Respondent failed to act on such an invalid order. In my view it is better to err on the side of caution. Both the banking organization and the Nigerian Police Force have lawyers in their employments to advise them on the consequence of their actions.

I have given a calm consideration to the facts that led to the institution of this action, the counter – affidavit and the arguments canvassed by the learned counsel to the Respondent in his written address. I wish to start by saying that it is trite that there is a contractual relationship between a bank and its customer. See **UNITED BANK FOR AFRICA PLC V. YARO BAKEYAWA YAHUZA (2014) LPELR 23976 CA; similarly in OSAWAYE V. NATIONAL BANK OF NIGERIA LTD (1974) NCCR 474**, the court held: **“the relationship between a bank and customer is one of debtor and creditor with additional feature that banker is only liable to repay the customers on payments being demanded.”**

There is no obligation on the part of the banker or debtor to seek out his creditor, the customer and pay him, obligation is only to pay the customer or some persons nominated by the customer when the customer makes a demand or gives direction for payment. There is therefore an implied duty that a banker in dealing with the accounts of its customer must exercise utmost diligence, skill otherwise the customer can take the bank up in breach of duty of care. See **WEMA BANK PLC V. ALHAJI IDOWU F. SALARIN OSILARU (2008) 10 NWLR pg. 170**. Where the court asked, what is the duty of care owed by a bank to its customer? and stated thus: **“A bank has a duty to exercise reasonable care and skill**

including interpreting ascertaining and acting in accordance with the instruction of the customer.” See also AGBANALO V. UNION BANK OF NIGERIA (2000) 4 SC PT. 1 @ 243.

In the case of **STB LTD V. ANUMNU (2008) 14 NWLR PG. 154**, the court per Adekeye JCA held: **“A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to the operation with its contract and its customers. This duty extended to the whole range of banking business within the contract”**

“This duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer.” See the case of TOM TOTAL NIGERIA LTD V. SKYE BANK (2017) LPELR – CA/L/456/2007.”

It is not uncommon these days that banks place lien on their customers’ account, while acting on the instruction of prosecuting agencies based on order of the court to investigate such account. This is not out of place, however such orders from court must be valid and from a court of competent jurisdiction. The bank must verify such orders before taking any step on the customers’ account.

After all the duty of bank is to its customer first, negligence may arise where the bank breaches the implied duty to observe the standard expected of a reasonable banker in respect of dealings with the customer’s account, and the onus of proof that it is not negligent lies on the bank.

A careful evaluation of the facts deposed by the Respondent in its counter-affidavit, the Respondent admitted to have placed a lien on the Applicant’s account when acting on Exhibit 1 & 2, a court order purportedly made by I.M Balarabe of the Area Court of the FCT Abuja with a letter emanating from the office of the Deputy Inspector General of Police. The court order is void coming from a court

that has no jurisdiction to issue the said order. Furthermore, the said order being a public document is also void for non-certification in accordance with the provision of section 104 of the Evidence Act 2011. I agree entirely with the submissions of the learned counsel to the Applicant that the action of the Respondent based on an invalid court order is illegal.

I therefore found that it is a violation of the Applicant's right against compulsory acquisition of her right over or interest over movable and immovable property in any part of Nigeria without due process of law under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Suffice to say that the Applicant has therefore sufficiently established before this court that the Respondent breached her constitutionally guaranteed right and based on the careful analysis of the Exhibit 1& 2 attached by the Respondent in its Counter-Affidavit and the facts deposed therein, as well the arguments canvassed by both counsel and my findings:

1. I hereby declare that the act of freezing the Guaranty Trust Account of the Applicant with Account Number 0111649258 without due process of law is unconstitutional, illegal and a violation of the Applicant's right to own properties as enshrined under the provisions of section 44 (1) of the Constitution of the Federal Republic of Nigeria (as amended), Article 17 of the United Nations Declaration of Human Rights and Article 14 of the African Charter of Human and Peoples Rights.
2. Consequently, it is hereby ordered that the Respondent, its servant, agents or privies to lift the restriction placed on the Applicant's Guaranty Trust Bank Account Number – 0111649258 domiciled and operated with the Respondent, and I so hold.

3. The Honorable Court hereby grants an Order of Perpetual injunction restraining the Respondent whereby themselves, their agents, privies or servants from interfering with the account number 0111649258 belonging to the Applicant and domiciled and operated with the Respondent without due process of law.

On the award of damages, in fundamental rights action, damages automatically accrues once the respondent is adjudged to have violated the fundamental rights of the Applicant. See **SKYE BANK V. NJOKU & ORS (2016) LPELR 40447(CA)** the court will however take into consideration the following factors on the quantum of damages to be awarded:

1. The frequency of the type of violation in recent times;
2. The continually depreciating value of the Naira;
3. The motivation of the violator;
4. Status of the Applicant;
5. The incarceration and detention of the Applicant as a result of the Respondent conduct;
6. The undeserved embarrassment meted out to the Applicant including pecuniary losses and;
7. The conduct of the parties generally particularly the Respondent.

See INSPECTOR GENERAL OF POLICE & ORS V. IKP& ANOR. (2015) LPELR 40630 (CA)

The essence of award for damages for breaching fundamental rights is to reasonably compensate the applicant and not an avenue for gold mine. The respondent in this instant case appeared to have acted recklessly on an invalid court order in freezing the account of its customer; the applicant. The Respondent ought to have been more meticulous, prudent and circumspect in the dealing with the

customer's account. They cannot be absolved of paying compensation to the applicant. I have taken into consideration all the factors stated in the authorities above; no doubt the applicant must have suffered some pecuniary losses such as filing of the instant action, payment of fees to his counsel and some psychological stress when she discovered that the account was frozen. It is more depressing to consider that the Applicant is charged to court and remanded in custody of the Maiduguri correctional service due to her inability to fulfil financial obligations to third party consequent upon the illegal freezing of her account by the respondent.

4. General, Punitive and Exemplary Damages of #500,000:00 (Five Hundred Thousand Naira) is awarded in favour of the Applicant against the respondent jointly and severally for infraction of the constitutionally guaranteed fundamental rights of the Applicant.

Hon. Justice Jude O. Onwuegbuzie

APPEARANCES :

1. ChidiEzenwafor Esq., for the Applicant.
2. Babatunde Moses Tijani Esq., for the Respondent.

