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

THIS MONDAY, THE 6TH DAY OF FEBRUARY, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

SUIT NO. CV/14591/2017

BETWEEN:

G.T.E.S.C LIMITED .....PLAINTIFF/RESPONDENT

AND

1. **ACCESS BANK PLC**
2. **ECONOMIC AND FINANCIAL CRIME COMMISSION (EFCC)** } **..... DEFENDANTS**

JUDGMENT

The Plaintiff's claims against the Defendant as contained in the Amended writ of summons and statement of claim filed on 3rd December, 2019 are as follows:

a. **An order declaring as wrongful the 1st Defendant's failure to allow the Plaintiff access/exercise its right to withdraw from its account number 0012869322 domiciled at the 1st Defendant's branch office situate at Central Business District, Federal Capital Territory, Abuja and by extension the sum of Thirty-eight Million, Nine Hundred and Twenty-eight Thousand, Twelve Naira, Sixty-one kobo (N38,928,012.61k) standing to the credit of the claimant in the said account.**

b. **Further or in the alternative the claimant claims the sum of Thirty-eight Million, Nine Hundred and Twenty-eight Thousand, Twelve Naira, Sixty-one kobo (N38,928,012.61k) as moneys had and received by the 1st Defendant to the claimant's uses.**

c. **In further alternative, the plaintiff claims the sum of Thirty-eight Million, Nine Hundred and Twenty-eight Thousand, Twelve Naira, Sixty-one kobo (N38,928,012.61k) as its money converted by the 1st Defendant.**

d. **And damages in the sum of Twenty Million Naira (N20, 000, 000.00).**

e. **And an additional sum of Four Million, Ninety-two Thousand, Eight Hundred Naira (N4, 092, 800.00) being Legal Practitioners' fees and cost of prosecuting this action.**

The **1st Defendant** in response filed a 1st Defendant's Amended statement of defence on 13th February, 2020. Let me state at the outset that the suit was initially filed against only the 1st defendant. It was the 1st defendant that applied for the joinder of **2nd defendant** which the court granted on 15th February, 2018. They were then served all necessary process but they never filed a defence. On Record, the 2nd defendant was represented at different times by counsel in this proceedings but despite the plea to be given time to file their defence, which the court granted, they never filed any defence. Indeed, despite service of hearing notices on them at different times, counsel who appeared for them and sought for time to file their defence never appeared in court again.

Hearing then commenced. In proof of its case, the plaintiff called two (2) witnesses. **Onondje Bathseida**, the accountant of claimant testified as PW1. She deposed to a witness statement on oath dated 3rd December, 2019 which she adopted at the hearing and tendered in evidence a copy of Diamond Bank Cheque dated 8th February, 2016 in the sum of **N424, 469:57** which was not honoured was admitted as **Exhibit P1**. **PW1** was then cross-examined by counsel to the 1st defendant.

The 2nd witness for the claimant is **Markus Truninger**, the Managing Director of claimant who testified as **PW2.** He deposed to a witness statement on oath dated 3rd December, 2019 which he adopted at the trial. He tendered in evidence the following documents:

1. Document titled G.T.E.S.C Ltd loan agreement dated 1st November, 2016 with ten (10) attachments were admitted in evidence as **Exhibits P2 (1-10).**

2. Document titled Loan Agreement dated 24th June, 2014 with one (1) attachment was admitted as **Exhibits P3 a and b**.

3. Letter by the law firm of St. George's & Eugene dated 11th April, 2016 and titled "Report on your suspended account/line of action" was admitted as **Exhibit P4**.

4. Two (2) copies of statements of account with Account number 0012869322 of plaintiff with 1st defendant was admitted as **Exhibits P5 a and b**.

5. Copy of a subcontract Agreement between Tricta Nigeria Ltd and G.T.E.S.C Ltd was admitted as **Exhibit P6**.

PW2 was then cross-examined by counsel to the 1st defendant and with his evidence, the claimant closed its case.

The 1st defendant on its part called only one witness. **Ikechukwu Onyeachenam**, a Regional compliance officer with 1st defendant testified as **DW1**. He deposed to a witness deposition dated 13th February, 2020 which he adopted at the hearing. He tendered in evidence Seventy (70) copies of letters all from **Economic and Financial Crimes Commission (EFCC)** to the 1st defendant containing directives for a "Post No Debit" to be placed on account of claimant which were admitted in evidence and marked as **Exhibits D1-D70**. The first letter from EFCC is dated **12th December, 2016 (D1)** to 1st defendant and the last of such letters is dated **28th April, 2017 (D70)**.

DW1 was then cross-examined by counsel to the claimant and with his evidence, the 1st defendant closed his case.

As stated at the commencement of this judgment, after the joinder of 2nd defendant and despite service of the originating court processes and hearing notices, the 2nd defendant chose or elected not to file a defence. As I indicated, Counsel appeared for them and pleaded for time to file their defence, but despite the ample time given, nothing was filed and counsel did not appear in court again. The interesting point here is that the 2nd Defendant which was said to have given the instructions to put the "Post No Debit" Order on account of plaintiff essentially refused to defend its actions. Now I recognize that fair hearing is a fundamental element of any trial process and it has some key attributes; these include that the court shall hear both sides of the divide on all

material issues and also give equal treatment, opportunity and consideration to parties. See **Usani V Duke (2004) 7 N.W.L.R (pt.871) 16; Eshenake V Gbinijie (2006) 1 N.W.L.R (pt.961) 228.**

It must however be noted that notwithstanding the primacy of the right of fair hearing in any well conducted proceedings, it is however a right that must be circumscribed within proper limits and not allowed to run wild. No party has till eternity to present or defend any action. See **London Borough of Hounslow V Twickenham Garden Dev. Ltd (1970) 3 All ER 326 at 343.**

In the context of the facts and issues raised by this case, the 2nd defendant has been given every opportunity to respond but they have exercised their right not to respond. Nobody begrudges this election. It is only apposite to underscore the point that nobody or institution is under any obligation in law to respond to any court process upon been served. It will however be bound ultimately by the outcome or judgment of court. I leave it at that.

Parties were then ordered to file their final addresses at the close of the case. In the final address of **1st defendant** filed on 18th March, 2022, one issue was raised as arising for determination as follows:

"Whether the 1st Defendant, in restricting the account of the Claimant on the orders of the EFCC acted in an illegal, unlawful and wrongful manner, and can be held liable for complying with the provisions of the EFCC Act 2004?"

In the final address of claimant filed on 18th November, 2022, three (3) issues were raised as arising for determination as follows:

"a. Whether the 1st Defendant discharged her duty to the Claimant, to fully disclose the facts surrounding the placing on her account number 0012869322, a 'no debit' status.

b. Whether the 1st Defendant did not breach her contract with the Claimant in refusing to honour Exhibit P1 and subsequently refusing Claimant access to the funds in her account.

c. Whether the Claimant is not entitled to damages and cost as claimed, both, being losses arising from the 1st Defendant breach of the terms of their banker-customer relationship."

I have set out above the issues distilled by parties as arising for determination. In my considered opinion, in the context of the interplay of facts as streamlined in the pleadings in this case, all the issues raised by parties can be conveniently taken or accommodated under one single issue which the court has formulated hereunder:

"Whether the plaintiff has established his case against the defendants in the entire circumstances and therefore entitled to all or any of the Reliefs claimed?"

The above broad issue is not raised as an alternative to the issues raised by parties, but the issues canvassed by parties can as stated earlier be conveniently and cumulatively treated under the above sole issue. See **Sanusi V. Amoyegun (1992)4 N.W.L.R (pt.237)527.** The issue thus raised has brought out with sufficient clarity and focus, the pith of the contest which has been brought for adjudication and it is on the basis of this issue, that I will now proceed to consider the evidence and submissions of counsel.

In furtherance of the foregoing, I have carefully read the final written addresses filed by parties and I shall in the course of this Judgment and where necessary make references to the submissions made by counsel.

ISSUE 1

"Whether the plaintiff has established his case against the defendants in the entire circumstances and therefore entitled to all or any of the Reliefs claimed?"

I had at the beginning of this judgment stated the Reliefs claimed by claimant. I had also similarly situated that the 1st defendant filed its defence. The crux of the complaint or grievance submitted by the claimant and the response by 1st defendant presents no difficulty. The case of claimant in summary and without diluting its essence is simply that it is a customer of 1st defendant bank where it maintains a current account which at all material times was in credit. It presented a cheque vide **Exhibit P1** which was not honoured due to "statutory reasons" and or that it had a "suspension of transaction order" on it and that despite all inquiries, seeking further clarification on the restriction placed on its account, the 1st defendant ignored the request for clarification as to why it

refused to honour the cheque, **Exhibit P1** and why it refused claimant access to the funds in its account.

The claimant further contends that it suffered damages due to the action(s) of 1st defendant.

The 1st defendant on the other side of the aisle denied these complaints contending that it acted solely on the directives of EFCC which directed that it places a "**Post No Debit**" status on the account of claimant due to the ongoing investigation of financial crime on the plaintiffs account. It therefore absolved itself of any wrongdoing in the circumstances and contends that the claimant is not entitled to any Relief(s) in the circumstances.

It is therefore to the pleadings which has streamlined the facts and issues in dispute, the evidence led and the laws on the issue that we must now beam a critical judicial search light. Indeed in the resolution of this dispute, there is no better template to situate the respective position of parties than the pleadings and evidence on record. These are the two critical elements that will be pivotal in the resolution of the extant dispute. The respective cases of parties can only be properly considered in the light of the pleadings and ultimately the quality of the evidence led.

In this case, the claimed filed an **Eighteen (18) paragraphs Amended statement of claim**. The evidence of the two (2) witness were largely within the structure of the averments in the pleadings. The 1st defendant on its part filed an **Eleven (11) paragraphs Amended statement of defence**. The evidence of its sole witness was similarly within the confines or purview of the facts pleaded.

As alluded to already, it is in the light of these precisely defined facts/issues streamlined on the pleadings and evidence that the crux of this dispute and the contested assertions shall be shortly determined.

Before doing so, let me briefly highlight some principles that will guide our consideration of the pleadings and evidence led. It is settled principle of general application by virtue of **Section 131 (1) of the Evidence Act,** that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist. By **Section 132 of the Evidence Act** the burden of proof in a suit or proceeding

lies on that person who would fail if no evidence at all were given on either side. Also by **Section 133(1) of the Evidence Act,** in civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the Judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

It is equally important to state that in law, it is one thing to aver a material fact in issue in one's pleadings and quite a different thing to establish such a fact by evidence. Thus where a material fact is pleaded and is either denied or disputed by the other party, the onus of proof clearly rests on he who asserts such a fact to establish same by evidence. This is because it is now elementary principle of law that averments in pleadings do not constitute evidence and must therefore be proved or established by credible evidence unless the same is expressly admitted. See **Tsokwa Oil Marketing Co. Ltd. V. Bon Ltd. (2002) 11 NWLR (pt 77) 163 at 198 A; Ajuwon V. Akanni (1993) 9 NWLR (pt 316)182 at 200.**

Now flowing from the pleadings on both sides of the aisle, there are undoubtedly common grounds. Critical elements of the case are not disputed.

Firstly, in **paragraph 6(a)** of the defence, the 1st defendant admits to the fact that the claimant is a customer of the defendant with Account number: **0012869322** domiciled in one of the 1st defendants Abuja branch situate at Central Business District, Abuja.

As a consequence of this admitted fact, it follows that there exists a banker/customer relationship between parties, i.e, the claimant and 1st defendant. Such a relation, in law is essentially contractual. Where a Bank as 1st defendant accepts money either in savings, current or deposit account from its customer, it situates a debtor and creditor relationship and as alluded to already, it is essentially contractual. See **Balogun V NBN Ltd (1978) 11 NSCC 133; 3 SC 155; Afric Bank (Nig.) Plc V A.I. Investment (2002) 7 NWLR (pt.765) 40.**

On the authorities, because of the nature of the relationship, the customer has neither "custody" or "control" of monies standing in its credit in an account with the Bank. What the customer has is a contractual right to demand payment of such monies. See **Purification Tech (Nig.) Ltd V A.G. Lagos State & 31**

ors (2004) 9 NWLR (pt.819) 665; Wema Bank V Osilaru (2008) 10 NWLR (pt.1094) 150 at 170; Yesufu V ACB (1981) 1 SC 74.

It is perhaps also relevant to state at this early stage that on settled applicable principles, a banker is thus bound to honour all cheques issued by its customer unless there is no sufficient fund to honour such cheque. If a banker fails to pay a cheque issued by its customer when there are funds in the account, the bank is liable in damages for any loss that flows naturally from such unlawful dishonour. See **Linton Ind. Trading Co. Ltd V CBN (2015) 4 NWLR (pt.1449) 94**.

Secondly, by paragraphs 5, 6 and 7 of the claim and the evidence led, the claimant's accountant, PW1, took the claimants cheque vide **Exhibit P1** dated 8th February, 2016 drawn in favour of Federal Capital Territory Inland Revenue Service in the sum of **N424, 469.57** (Four Hundred and Twenty Four Thousand, Four Hundred and Sixty Nine Naira) only to the 1st defendant branch where the claimant's account is domiciled which was not honoured. The 1st defendant in paragraph 1 admitted to the fact that this cheque was indeed submitted and then avered facts as to why the cheque was not honoured.

This then now leads us to the crux of this dispute. If the cheque was not honoured as the 1st defendant was bound to, why was it not honoured? In addressing this issue, the legal validity of the reasons advanced by 1st defendant for the dishonour will also be carefully considered and situating whether they are availing.

It is important to state that in the entire gamut of the defence of 1st defendant, no where did they make out a case that the **failure to honour the cheque was due to insufficiency of funds in the credit of claimant's account**. It logically follows and I hold that the claimant's account was in credit at the critical period of this transaction. If it were otherwise, the 1st defendant Bank would have said so. I shall later on in the judgment deal in some detail with the question or issue of what the claimant had in its account.

Let us however for now situate from the pleadings or defence of 1st defendant the basis for the failure to honour the cheque of claimant. Here I will quote the averments at some length to define the defence made out to provide clarity in determining whether the defence is availing. In paragraphs 6(a) - (i) and 8 of the Amended Defence, the 1st defendant pleaded as follows:

"6. The Defendant in answer to paragraphs 9, 11 and 17 of the Claimant's Statement of claim states as follows:

a. That the Claimant is a customer of the Defendant with Account number; 0012869322 domiciled in one of the Defendants' Abuja branch office at Central Business District, Abuja.

b. That the Defendant received a letter dated 12th February, 2016 with reference number CR: 3000/EFCC/ABJ/STF/VOL.2/234, from the office of the chairman of the Economic and Financial Crime Commission (EFCC) informing the 1st Defendant of an ongoing investigation of Financial crime in which the claimant's account features. A copy of the said letter is hereby pleaded and shall be relied on by the Defendant during trial.

c. That by the content of the said letter above, the EFCC requested the 1st Defendant to among other things; to place the Plaintiff's Account on "Post No Debit" (PND) status.

d. That after examining the said letters above, the dictates of the Nigeria Financial and Economic Laws, and considering the banker/customer relationship existing between the claimant and the defendant, the defendant placed the Defendant's accounts on "Post No Debit" (PND) status for a period of 72 hours.

e. That at expiration of the 72 hours in respect of the EFCC letter of 12th February, 2016, the 1st Defendant subsequently received several letters from the Economic and Financial Crime Commission from the Month of February, 2016 to the material point of filing this suit by the claimant and in the said letters the EFCC informed the 1st defendant to place the claimant's account on a "Post No Debit" status. Copies of the said several letters are hereby pleaded and shall be relied on during trial.

f. That even after the filing of this suit by the claimant, the 1st defendant has continuously received letters from EFCC for the account of the claimant to be placed on a "Post No Debit" status as a

result of an ongoing investigation of financial crime on the claimant's account.

g. **That placing the claimant's account on a "Post No Debit" status was a measure to ensure that the 2nd defendant is automatically alerted in the event of an intended transaction on the claimant's accounts which are subject of an on-going investigation.**

h. **That the placing of a "Post No Debit" status on the Claimant's account was not unilateral but was done in pursuance to the instruction of the EFCC who is conducting investigation on the claimant's account.**

i. **That the 1st defendant has a duty to put a "Post No Debit" status on an account upon a request to do so by the Economic and Financial Crimes Commission (EFCC).**

8. **The 1st Defendant in specific answer to paragraph 11 of the Claimant's Statement of claim states that the claimant was duly informed by the defendant that the placing of a "Post No Debit" status on its account is a result of the instruction the 1st Defendant got from EFCC to place the said account on "Post No Debit" status and pursuant to EFCC powers."**

The evidence of their sole witness as stated earlier largely followed the above averments.

The case thus made out is clear and it is to the effect that the failure to honour the cheque was due to the directive of EFCC for a "post no debit" to be placed on the account vide **Exhibit D1** dated 12th February, 2016. This directive was repeated severally vide **Exhibit D2** dated 17th February, 2016 to the last directive dated 28th April, 2017 vide **Exhibit D70**. I shall again refer to this directives later on in this judgment.

The question now really is whether the actions of 1st defendant on the alleged instructions of EFCC has legal validity? This as stated earlier is the key and critical question.

Happily, the question of the propriety of EFCC unilaterally giving orders to financial institutions to freeze accounts or place any form of restriction on any

bank account raised by the extant case has been given full vent and expression by our Superior Courts. My duty especially where the facts are the same or similar is to refer to those decisions and apply same. I note the extensive submissions made by 1st defendant in its final address which essentially seeks to shift any responsibility or blame in the circumstances to the 2nd defendant relying on the extant provisions of the EFCC Act. The 1st defendant also further contends that, if there was any duty to obtain court order before an account is frozen or a "post no debit order" is placed, that it is a duty placed on EFCC not 1st defendant and that as such the 1st defendant cannot be held liable for the failure of the 2nd defendant to obtain the order. In sum, that they cannot be held liable for following the directives of EFCC.

Now what is interesting here is this: if the **2nd defendant was responsible** for obtaining the order as alleged, the question here is did they get the order and was this shown to the 1st defendant before they placed the post no debit order on the account of claimant? The 1st defendant was strangely silent on whether it was shown any order in its pleadings and evidence but under cross-examination, their sole witness, **DW1** stated that he does not know whether EFCC showed the bank any Court Order allowing for the Post No Debit to be placed on claimant's account. If the argument is that it is the 2nd defendant that must obtain the order, it follows logically that for 1st defendant to act, they must demand for and see an order of a Competent Court before they can place a Post No Debit on an account. As stated earlier, the 1st defendant never pleaded that they saw any such court order and none was tendered. The argument clearly does not fly.

Another interesting dimension to the impressive submissions of learned counsel to the 1st defendant is that it was done without reference to the clear authorities which I will soon refer to situating and defining the correct legal position and or parameters on the propriety of Banks such as 1st defendant acting on the unilateral directives of the EFCC to freeze accounts without a Court Order. Learned counsel to the **claimant in their address referred to some of these decisions of our Superior Courts and I expected a Reply or response by 1st defendant in terms of a Reply on points of law which our Rules of Court allow, since the cases strike at the very root of the submissions of 1st defendant on the issue, but the 1st defendant chose or elected not to file a Reply**. Let me make it clear that there was no abiding obligation on them in law to file a Reply, but the trajectory of the arguments on the issue required they

file one. I sence here a deliberate reluctance to address these decisions of the Superior Courts. I say no more.

The **1st defendant's counsel** may have liberty to ignore these decisions and indeed he enjoys the luxury in making such contrary submissions in the face of settled superior judicial decisions on the point but a court of law qua justice enjoys no such liberties, for very obvious reasons. Decisions of our **Superior courts** are binding on all lower courts under the doctrine of judicial precedent. This doctrine properly understood postulates that where the facts in a subsequent case are similar or close to the facts in an earlier case that has been decided upon, judicial pronouncement in the earlier case are subsequently utilized to govern and determine the decision in the subsequent case. See **Nwangwu V. Ukachukwu (2000)6 N.W.L.R (pt.662)674.**

It is important to underscore the point that what is however binding in the decision of a higher court is the principle or principles decided and not the rules and where the facts and circumstances in both cases are similar or the same, as in this case, the inferior court is bound by the decision of the Superior court and vice versa. See **Clement V. Iwuanyanwu (1989)3 N.W.L.R (pt.107)39; Emeka V. Okadigbo (2012)18 N.W.L.R (pt.1331)35.** In **Ugwuanyi V. NICON Ins. Plc (2013)11 N.W.L.R (pt.1366)546,** the Supreme Court made the point thus:

"…cases remain authorities only for what they decided. Thus an earlier decision of this court will only bind the court and subordinate courts in a subsequent case if the facts and the law which inform the earlier decision are the same or similar to those in the subsequent case. Where, therefore, the facts and/or legislation, which are to inform the decision on the subsequent case differ from those which informed the courts earlier decision, the earlier decision cannot serve as a precedent to the subsequent one."

As stated earlier, learned counsel to the 1st defendant did not make any attempt to distinguish the cases or situate why they are inapplicable to the extant situation. As stated earlier, I will simply refer to some of this decisions. In **G.T.B Plc V Adedamola (2019) 5 N.W.L.R (pt.1664) 30 at 43 E-H**, the Court of Appeal, per Tijani Abubakar, J.C.A (as he then was) construed the provision of **Section 34(1) of the EFCC Act, 2004** relied on by 1st defendant in this case

and held in unambiguous terms the procedure for the freezing of an account pursuant to that Section as follows:

> **"Before freezing customer's account or placing any form of restrain on any bank account, the bank must be satisfied that there is an order of court. By the provisions of Section 34 (1) of the Economic and Financial Crimes Commission Act 2004, the Economic and Financial Crimes Commission has no power to give direct instructions to banks to freeze the account of a customer without an order of court, so doing constitutes a flagrant disregard and violation of the rights of a customer."**

The learned jurist in his judgment called on financial institutions not be complacent but insist on adherence to clear provisions of the Act thus:

"Our financial institutions must not be complacent, reticent and toothless in the face of the brazen and reckless violence to the rights of customers. Where there is a specific provision regulating the procedure for doing a particular act, that procedure must be followed."

In **Olusegun V EFCC (2018) LPELR-48461 (CA)**, the Court of Appeal equally reechoed the sentiments that the EFCC not being a court of law cannot be unilaterally giving orders to financial institutions to freeze accounts or place any form of restrictions on any bank account without an order of court and I will quote at some length their pronouncement thus:

> **"…From the totality of the evidence before the lower Court, it is not in dispute that the Respondent did not obtain a Court Order before giving instruction to Heritage Bank to freeze the Appellant's accounts maintained with her. The question now is whether the Respondent acted within its powers under the law when it gave the instruction to Heritage Bank to freeze the Appellant's accounts, which instructions were carried out. The Respondent's case is that it received a petition from AMCON wherein criminal offences were alleged against the Appellant and investigation revealed that the Appellant's accounts with Heritage Bank contained monies which are proceeds of crime. Section 38 (1) of the EFCC Act gives powers to the Respondent to receive information without hindrance. Section 34 of the same Act which empowers the Respondent to give**

instruction to freeze Accounts provides thus: "Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that money in the account of a person is made through the commission of an offence under this Act or any enactments specified under Section 7 (2) (a) to (f) of this Act apply to the Court ex-parte for power to issue or instruct a bank manager or such other appropriate regulatory authority 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 where the account is or believed by him to be or the head office of the bank other financial institution or designated non-financial institution to freeze the account." The law is settled that when it comes to the interpretation of the provision of a statute, such statute must be construed literally and the words therein given their ordinary meaning. See Abacha & ors vs. Fawehinmi (2000) 6 NWLR (pt.660) 228, CSS Bookshops Rivers State & ors (2006) 11 NWLR (pt.992) 530; Ude Vs. Nwara & Anor (1993) 2 NWLR (pt.278) 638; Okotie-Eboh Vs. Manager & ors (2004) 18 NWLR (pt.905) 242. In the case of Provost Lagos State College of Education & ors Vs. Edum & ors (2004) 6 NWLR (pt.870) 476 @ 509 paras D-F, Tobi JSC held thus: "What is the effect of non-compliance with the law? It is settled law that expropriates statutes which encroach on a person's propriety rights must be construed fortissimo contra preferates, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose propriety rights are being deprived. Consequently, as against the acquiring authority, there must be a strict adherence to the formalities prescribed for the acquisition. See Obikoya V Governor of Lagos State (1987) 1 NWLR (pt.50) 385; LSDPC V Foreign Finance Corporation (1987) 1 NWLR (pt.50) 413. Attorney General, Bendel State V P.L.A. Aideyan (1984) 4 NWLR (pt.118) 646." The provision of Section 34 (1) of the Economic and Financial Crimes Commission Act, encroaches on a person's propriety right to monies in his or her bank account. It must therefore be construed strictly using the literal approach. It is trite law that when a legislation prescribes a procedure or method for doing an act, it is only such procedure or method that is permissible and no other. See

Oyama V Agibe (2016) ALL FWLR (pt.840) 1274 at 1292 paras E-F. It is also the law that where a statute provides unambiguously for an act to be done in a particular manner, failure to perform that act in the prescribed manner amounts to non-compliance and its effect cannot be waived. See Niger-Care Dev. Co. Ltd V ASWB (2008) All FWLR (pt.422) 1052 and Ikpe V Elijah 2011 LPELR 4 526 CA. My firm view is that the only interpretation that can be extended to the provision of Section 34 (1) of the EFCC Act is that when the Respondent is investigating a Crime, its Chairman may decide whether there is the need to freeze the account involved. This is clearly the discretion of the Chairman. When he however decides that there is the need to freeze such account, he must obtain a Court order before doing so. A Court Order is therefore a condition precedent for the exercise of the Respondent's power to freeze an account pursuant to the provisions of Section 34 (1) of the EFCC Act. The Respondent must obtain a Court Order before taking such a step. Anything to the contrary is flagrant violation of the law and right of the owner of the frozen bank account. The Courts have consistently frowned at such violations. In the very recent case of GTB V Adedamola (2019) 5 NWLR (pt.1664) pg. 30 at 43, my learned brother of this Court Abubakar JCA held as follows: "Before freezing customer's account or placing any form of restrain on any bank account or placing any form of restrain on any bank account, the bank must be satisfied that there is an order of Court. By the provisions of Section 34 (1) of the Economic and Financial Cries Commission Act 2004, the Economic and Financial Crimes Commission has no power to give direct instructions to banks to freeze the account of a customer without an order of the Court. So doing constitutes a flagrant disregard and violation of the rights of a customer. I must add that the judiciary has the onerous duty of preserving and protecting the rule of law. The principles of rule of law; no one is above the law. Whenever there is brazen violation of the rights of a citizen the Courts in the discharge of their responsibility to the society, must rise the occasion, speak, frown upon and condemn arrogant display of powers by an arm of government."

In a recent decision of the Superior Court of Appeal on the same issue in **Guaranty Trust Bank Plc V Odeyemi Oluyinka Joshua (2021) LPELR-53173 (CA)**, the law lords at the court again reiterated the principles in the earlier decisions cited and stated per Abiriyi JCA as follows:

"It is clear from reading of the entire Section 34 of the EFCC Act that the commission if satisfied that money in the account of any person is made through the commission of an offence may apply to the court ex-parte for the power to freeze the account. The EFCC may by an order issued by the court direct the freezing of the account, the bank shall then take necessary steps to comply with the requirements of the order. "Order" rings a loud bell in both subsections (2) and (3) of the said Section 34 of the EFCC Act. This is not surprising because the freezing of the account of a person will be done if the money is reasonably suspected by the court to have been made through the commission of an offence. It is then that the court makes the order sought by the EFCC and without that order, the bank or any financial institution cannot freeze the account of any person. The Order of the Court is the basis for any other action under the section as an allegation that money is made through the commission of an offence is a serious allegation. It is for this reason that the bank must ensure that there is an order of court before it proceeds to freeze the account of any person. That is what Section 34 (3) means by the Bank taking necessary steps to comply with the order. In my view, a bank fails to enquire whether or not EFCC had obtained an order of court at its peril… The procedure set out in Section 34 of the EFCC Act must be followed by the EFCC and the bank and other financial institution."

On the rather interesting contention which was repeated by counsel to the 1st defendant in this case that the EFCC Act did not give an option to the financial institution to disobey the directive of EFCC and that they are being punished for following the directive of EFCC, the Court of Appeal in the above decision stated instructively as follows:

> **"I do not agree with learned counsel for the Appellant that the Appellant was being punished for the sin of the EFCC and that the Act did not give the Appellant, the option of disobeying EFCC. With respect to learned counsel for the Appellant, the Appellant had no business obeying an unlawful directive of EFCC. The Appellant is**

only expected to comply with a lawful directive of EFCC otherwise the rights of customers to their money in the bank would be arbitrarily interfered with. This would be contrary to the safeguards provided for under Section 34 of the EFCC Act. Section 34 of the EFCC Act is intended to prevent the EFCC from interfering arbitrarily with the rights of customers of the banks or other financial institutions to their funds. That purpose will not be achieved if the banks and the EFCC as in this case are allowed to illegally get their customers accounts frozen through the back door…"

I have deliberately and in some detail quoted at length the pronouncements of our Superior Courts on the issue to **project** the **clear position to all Banks** and **financial institutions** that Account(s) cannot simply be frozen or restrictions placed without an order of a Competent Court within the purview of the EFCC Act.

It is **obvious** from the above that the facts and the law which informed the **above decisions** are the same with the extant case under consideration. There are clearly no distinguishing feature(s) or elements. They therefore undoubtedly serve as a precedent in this case and binding on this court.

On the basis of **these binding precedents**, there is no room any longer for the freezing of any account on the purported dubious directive of EFCC without a Court Order. The courts provide a critical judicial oversight in the circumstances. The 1st defendant therefore has a duty to ensure that there is a Court Order before freezing or placing any form of restraint on any Bank account. If the 1st defendant or Banks of Financial Institutions were hitherto unsure or have any hesitation or concerns or even fear when they receive such directives, and don't want to ask or demand for the Court Order allowing for the placing of the restrain on the account, the decisions of our **Superior Courts** have now made it abundantly clear and provided legitimate grounds to now insist and demand for such Court Order(s). They should now be emboldened to insist on compliance with the law. If any institution fails to do the needful, it will have only itself to blame. The EFCC is a creation of law and subject to the dictates of the Rule of Law. The EFCC is not above the law and must thus always keep strict fidelity to the requirements of the law. If for whatever reason(s), the EFCC fails to comply with the requirements of the law, the Bank

must on their part unhesitantly demand and insist on compliance with the law. I leave it at that.

Having dealt with this very fundamental issue that EFCC within the purview of its Act can no longer order financial institutions to unilaterally freeze account(s) or place any form of restrictions on any bank account without an order of court, let me now deal with other issues raised which ultimately impacts the other reliefs sought one way or the other.

Now on the **issue** of whether the 1st defendant owes the defendant a duty to fully disclose facts surrounding the placing of a restriction on its account, it is important to reiterate again that the relationship between parties is essentially contractual in nature.

In this case, I had alluded to the fact that on the pleadings the 1st defendant agrees that the claimant is its customer and operates a current account. I had also earlier alluded to the nature and features of the relationship. It may be necessary to reiterate that by the nature of the relationship, the Bank owes its customers duties and these include:

(a) Receive money, cheques and other instruments.

(b) To pay cheques and other withdrawal authorities properly drawn by the customer during banking hours at the branch where the account is kept or elsewhere as agreed.

(c) To maintain secrecy concerning the customer's account and other affairs.

(d) To give reasonable notice to a customer before closing his account.

(e) To pay agreed interest on deposits; and

(f) To render statement of account to the customer periodically or upon request.

See **Nwosu V Zenith Bank Plc (2015) 9 NWLR (pt.1464) 314; Balogun V N.B.N Ltd (1978) 3 SC 155 and FBN Plc V Associated Motors Co. Ltd (1998) 10 NWLR (pt.666) 534.**

While it is given that the role of Banks and their predominant business is the receipt of monies on current or deposit accounts and payments of cheques and

instruments paid in by customers, a bank also has the duty and responsibility under its contract with its customers to exercise reasonable care and skill in carrying out its part with regards to the operations within its contract with its customers. The duty to exercise reasonable care and skills extends over the range of business within the contract with the customer. See **UBA plc V G.S Ind. (Nig.) Ltd (2011) 8 NWLR (pt.1250) 590; S.T.B Ltd V Annumnu (2008) 14 NWLR (pt.106) 125.**

Now in this case, on the principles as highlighted in some detail, the 1st defendant clearly owed the claimant a duty of full disclosure with respect to what was happening on its account.

By **paragraphs 7-9** of the claim and the evidence of PW1 and PW2, the claimant averred that it was not informed the full reasons as to why the cheque, **Exhibit D1** was not honoured and even when it was compelled to get a lawyer to write to 1st defendant demanding further clarifications, the 1st defendant ignored the letter.

Now in response to those allegations, the 1st defendant pleaded in **paragraphs 2, 3, 7** and **8** of its Defence as follows:

"2. Except to admit that the Claimant informed (sic) that its account has a "Post No Debit Order" from the Economic and Financial Crime Commission, the Defendant denies every other statement of facts contained in paragraph 6 and 7 of the Claimant's Statement of claim.

3. Except to admit that the defendant received a complaint via an electronic mail from the claimant's solicitors on the 28th of March, 2016 and swiftly replied accordingly on 29th of March, 2016, the defendant denies every other statement of facts contained in paragraph 10 of the claimant's statement of claim.

7. The 1st defendant in specific answer to paragraphs 9 and 10 of the claimant's statement of claim states that the 1st defendant never received any purported letter dated 14th march, 2016 from the claimant's solicitors but only received a complaint via mail from the claimant's solicitors which the 1st defendant swiftly replied accordingly.

8. **The 1st Defendant in specific answer to paragraph 11 of the Claimant's Statement of claim states that the claimant was duly informed by the defendant that the placing of a "Post No Debit" status on its account is a result of the instruction the 1st Defendant got from EFCC to place the said account on "Post No Debit" status and pursuant to EFCC powers."**

The above averments particularly **paragraphs 2, 7** and **8** above are framed more in general terms. A denial of whether the 1st defendant furnished or disclosed fully the reasons as to why the cheque was not honoured and transaction(s) on the account frozen appear to me one that should not be general or evasive, but specific. Even the averment in paragraph 8 above is ambiguous and does not project clarity with respect to what is actually happening to claimant's account.

Now, even if I am wrong with respect to the conception of the above paragraphs and they are accepted as proper in law, the 1st defendant did not however tender **evidence** situating that they informed the claimant as to why transactions were not allowed on the account and specifically why the cheque **Exhibit D1** was not honoured.

In **paragraph 3** above, they agreed that they received the claimant's solicitors letter of complaint vide electronic mail on 28th March, 2016 and replied on 29th March, 2016 but they did not indicate through what means they responded. Was it through e-mail or a letter? No evidence of either was however tendered in proof. Again in **paragraph 8** above, they pleaded that they informed claimant of the placing of "Post No Debit" on its account and this the sole witness DW1 repeated in paragraphs 13 and 14 of his deposition but again, there is no clarity as to how this was done and no evidence was offered to support that they duly informed claimant as the **relationship** demanded of them.

The bottom line is that 1st defendant concedes that they received the complaint but nothing was put forward in evidence to situate that they gave the necessary clarifications as demanded by claimant. It is trite law that pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through pleadings, people know exactly the points in dispute with the other; evidence must be led to prove the facts relied on by the party or to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (pt.1186) 1 at 27 F-G**.

In the circumstances, in the absence of evidence to substantiate the facts averred to in the pleadings relating to the disclosure as to why the account of claimant was frozen and by whom, the averments will be deemed as abandoned and unproven. See **Aregbesola V Dyinlola (2011) 9 NWLR (pt.1253) 458 at 594 A-B.**

It follows that the 1st defendant was bound to fully disclose to claimant whatever happened to its account. There is no discretion to exercise in the matter. To the specifics of this case, a cheque was issued to 1st defendant Bank which was duty bound to pay the cheque provided there was in the account sufficient funds as in this case. If there was insufficient funds and in the absence of any special arrangement, there is as a general rule, no obligation on the banker to pay any part of the cheque or an amount exceeding the available balance. This and any other circumstance must be disclosed. If there was perhaps also any other reason as to why, transaction on an account, are not allowed, then it behoves the bank to inform the client forthwith. This finding may be peripheral in the context of the material issue(s) in dispute, but I hold that the 1st defendant, on the evidence, did not fully disclose facts to claimant relating to the freezing of its account as directed by the EFCC.

This then leads to the question of **sums** or the **available balance in the account**. Let us here again, reiterate certain key elements of this case: there is no dispute with respect to the relationship between parties and the fact that claimant maintains an account number: 0012869322 with 1st defendant. It is not in dispute also that the claimant issued a cheque vide **Exhibit P1** which was not honored. As repeatedly stated, the case of defendant was not that the dishonor was due to insufficiency of funds but because EFCC, 2nd defendant requested that a "**Post No Debit**" (PND) status be placed on the account.

The logical implication is that the account was in sufficient credit to cover the value on the cheque. The only issue is the amount outstanding.

Now in **paragraph 13** of the Amended statement of claim, the claimant averred that it has to its credit the sum of **Thirty-Eight Million, Nine Hundred and Twenty Eight Thousand, Twelve Naira, Sixty-one kobo (N38, 928, 012, 61 k)** at the time of the incident complained of.

Now what is strange is that the 1st defendant which has "**custody**" of the funds never addressed this fundamental question in the entirety of its eleven (11)

paragraphs Amended Statement of Defence. There was really no clear traverse of such an essential and material allegation with respect to the sum in the account of claimant with the 1st defendant.

In response to paragraph 13 of the claimant's averments with respect to the outstanding sums in the account, the 1st defendant in **paragraph 4** pleaded as follows:

"4. The Defendant in answer to paragraphs 4, 8, 12, 13, 14, 15 and 16 of the Claimant's Statement of claim states that the facts contained in paragraphs 4, 8, 12, 13, 14, 15 and 16 of the claimant's statement of claim are facts within the claimant's personal and peculiar knowledge and the claimant is put to the strictest proof of same"

The 1st defendant did not address this point of the outstanding, again, any where in the defence.

The traverse here by 1st defendant in paragraph 4 above is only a mere denial and contrary to the rule that every defence, reply or answer to an averment in a statement of claim must be pleaded specifically. In other words, in respect of essential and material allegations such as that made by claimant on the outstanding sum in its account, there should be no general traverse but rather, they should be specifically **traversed**, especially here by a party who has custody of the sums. See **Salisu V Odumade (2010) 6 NWLR (pt.1190) 228 at 238-239 G-A; Eke V Okwaranyia (2001) 12 NWLR (pt.726) 181 at 203, 205 D-E; Adesanya V Otuewu (1993) 1 NWLR (pt.270) 414 at 455 G-H**.

In law in order to raise any issue of fact, there must be a proper traverse and a traverse must be made either by a denial or non-admission, either expressly or by necessary implication. So that, if a defendant refuses to admit a particular allegation in the statement of claim, he must state so specifically; and he does not do this satisfactorily by pleadings thus; "defendant is not in a position to admit or deny… and will at the trial put the plaintiff to proof". A plea that defendant "puts plaintiff to proof" amounts to insufficient denial; equally a plea that "the defendant does not admit the correctness" (of a particular allegation in the statement of claim) is also an insufficient denial. See **Ekwealor V Obasi (1990) 2 NWLR (pt.131) 231 at 251 para B; C-D**.

Since there was a **specific averment** with respect to the outstanding sum in the account of claimant, it is expected that the 1st defendant will make a specific denial to such a specific averment or state a different or contrary sum. They did not do either. Such clear and specific allegation of fact by claimant which was not denied specifically by 1st defendant or by necessary implication is taken as established. See **Oshodi V Eyifunmi (2000) 13 NWLR (pt.684) 298 at 337 B**.

It is also relevant to note that in evidence both **PW1** and **PW2** alluded to the sum of **N38, 928, 012.61k** as the outstanding in its account with 1st defendant as at 2016.

PW2 in evidence tendered the statements of account of claimant vide **Exhibits P5 a** and **b** which situates that as at 1st June, 2019 – 30th June, 2019 the outstanding amount in claimant's account is the sum of N39, 461, 428.61k (Thirty-Eight Million, Nine Hundred and Twenty Eight Thousand, Twelve Naira, Sixty-one kobo).

It is important to state that no where did the 1st defendant challenge the evidence of PW1 or PW2 and the statement of accounts he tendered on this material issue of the outstanding sum of claimant under cross-examination.

In law where a witness(es) evidence is unchallenged under cross-examination, the court is not only entitled to act on or accept such evidence, but it is in fact bound to do so provided that such evidence by its very nature as in the extant situation is not incredible. Thus, where the adversary fails to cross-examine a witness upon a particular matter, here the outstanding sum in the account in the sum of N38, 928, 012.61, the implication is that he accepts the truth of the matter as led in evidence. See **Oforlete V State (2000) 12 NWLR (pt.681) 415 at 436 B-C.**

On the whole, the failure of the 1st defendant to cross-examine PW1 and PW2 on the issue of the outstanding is a tacit acceptance of the evidence of the truth of the evidence given by them on that particular fact. In law, it is even not proper for a defendant not to cross-examine a claimant's witness on a material point and to call evidence on the matter after the claimant had closed his case. See **Gaji V Paye (2003) 8 NWLR (pt.786) 157 at 187 C-D.**

It is clear that the 1st defendant for reasons that are not clear have chosen, and deliberately too, refused to state the outstanding sum in the account of claimant

with them. Indeed under cross-examination, the **sole witness for 1st defendant** stated that he could not say the outstanding sum in the account of claimant. It is really strange and beggars belief that 1st defendant who have custody of the account number 0012869322 of claimant and the funds in it do not know what it contains.

The evidence of DW1 clearly in the circumstances lack credibility and one contrived to deliberately misrepresent facts and also to mislead. As branch manager, I incline to the view that, the matter of knowledge of the outstanding sums in the account was one he could have supplied if the 1st defendant really wanted and to further the cause of truth and justice. The evidence of DW1 on the issue is therefore not worthy of belief or credit. For a Bank such as 1st defendant to brazenly claim that it does not know the outstanding sum in an account it superintends over is wholly unreasonably and scandalous and this is been charitable. In law the evidence of a witness such as DW2 appears as an affront to reason and intelligence and no credibility ought to be accorded to it. See **Fatunbi V Olanloye (2004) 12 NWLR (pt.887) 229 at 247 C.**

Indeed a witness who sets out deliberately to mislead the court by lying on oath, either by denying facts known to him or misrepresenting facts upon which he is questioned, cannot be relied upon because he has from his performance destroyed any rational basis for accepting his evidence in part or in total based on credibility. See **Oguntayo V Adebutu (1997) 12 NWLR (pt.531) 81 at 94 A-B**.

On the whole, I find as established that the outstanding sum at the time the post no debit directive was given by 2nd defendant in 2016 vide Exhibit D1 is the sum of **N38, 928, 012.61k** and there is no logical basis for the 1st defendant to keep hold to it or deny claimant access to its earnings.

Having determined above the key material and essential questions in this case, these findings provide both factual and legal template to answer the questions relating to whether the Reliefs sought by claimant are availing.

Relief (a) seeks for an order declaring as wrongful the 1st Defendant's failure to allow the Plaintiff access/exercise its right to withdraw from its account number 0012869322 domiciled at the 1st Defendant's branch office situate at Central Business District, Federal Capital Territory, Abuja and by extension the sum of Thirty-eight Million, Nine Hundred and Twenty-

eight Thousand, Twelve Naira, Sixty-one kobo (N38,928,012.61k) standing to the credit of the claimant in the said account.

Having found as demonstrated at length above, that the placing of a "post no debit" (PND) on plaintiff's account by 1st defendant which effectively resulted in denying claimant access to withdraw from their account, despite the fact that it was in sufficient credit was wholly wrongful, it logically follows that **Relief (a)** is availing and is granted.

Relief (b) states thus: Further or in the alternative the claimant claims the sum of Thirty-eight Million, Nine Hundred and Twenty-eight Thousand, Twelve Naira, Sixty-one kobo (N38,928,012.61k) as moneys had and received by the 1st Defendant to the claimant's uses.

Let me start by stating that the above **Relief (b)** was not framed strictly as an alternative claim. If it was framed as an alternative claim, there will really be no basis to consider it. On the authorities, once a court has granted the main claim of an action, it cannot then proceed to grant an alternative claim. See **Olorunfemi V Saka (1994) 2 NWLR (pt.324) 23 at 39 C-D.**

Indeed in law, where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal claim that it would consider the alternative claim. See **Newbreed Organisation Ltd V Erhomosele (2006) 5 NWLR (pt.974) 499 at 544.**

In this case as can be seen above, the commencement of the Relief has the word "**or**" which in law is a disjunctive participle denoting taking a pick. Or put another way, it is used to express an alternative, or to give a choice among two or more things. See **Abia State University V Anyaibe (1996) 3 NWLR (pt.439) 646 at 661**.

In the circumstances by the use of the word "**or**", the Relief is therefore not strictly an alternative claim but could also be taken independently. Now on the evidence as found and as demonstrated already, the defendant did not challenge or deny that the plaintiff has the sum of **N38, 928, 012.61k** standing to its credit in account number **0012869322**. I need not repeat the analysis and findings made with respect to the position adopted by 1st defendant. It may be relevant to perhaps add that in evidence, PW2 tendered copies of its statement of account

vide **Exhibits P5 a** and **b** which shows that the account as at 30th June, 2019 was in credit to the tune of **N39, 461, 428.61**. Again, the 1st defendant did not in any manner challenge or controvert this piece of evidence and on the principles addressed extensively earlier on, the evidence with respect to the amount in the account is also deemed as unchallenged. The only point to add is that the claimant never Amended their processes to reflect this **amount** on the Statement of Account and the court cannot in law grant more than what was claimed.

I only referred to this aspect of the evidence to underscore the fact that the 1st defendant in essence did not at any time join issues with claimant with respect to the fact that the account was at all material times in credit. Indeed they also refused to tender the statement of account of claimant in their position to reflect the correct situation of the account. This allows for the invocation of the principle under **Section 167 of the Evidence Act**, that the tendering of the statement of account with them as the banker would have been unfavourable to the case of 1st defendant. There is therefore absolutely no justification for any **further restriction** or **denial of access** to the said account. Indeed even on the evidence, the last request for a "Post No Debit" by the 2nd defendant was on **28th April, 2017** vide **Exhibit D70**.

Admittedly the claimant may have filed a case by then, but even at that point, the 1st defendant could and should have done the needful by removing the restriction instead of allowing for this rather protracted litigation. **Relief (b)** has merit and is availing.

Having granted **Reliefs (a)** and **(b)**. **Relief (c)** which essentially, but in different terms, claims for the same Relief as in Relief (b), will have to be struck out.

Relief (d) is for damages in the sum of **N20, 000, 000** (Twenty Million Naira).

It is settled principle of general application that the law presumes that general damages flow from the wrong complained of and is usually awarded to assuage loss suffered by the plaintiff from the alleged act of defendant complained of. Put in another way, general damages are the kinds implied by law in every breach of legal rights. Its quantification however been a matter for the court. See **Cooperative Dev. Bank Plc V. Joe Golday Co Ltd (2000)14 NWLR (pt.688)506; UBA V. BTL Industries Ltd (2001)AII FWLR (pt.352)1615; Musa Yau V. Maclean D.M Dikwa (2001)8 NWLR (pt.714)127.**

The Supreme Court in **Lar V. Stirling Astaldi (Nig) Ltd (1977)11-12 SC 53 at 63** defined general damages as such damages as may be given when the judge cannot point to any measure by which they may be assessed, except the opinion and judgment of a reasonable man. See also **Elf Petroleum Nig V. Umah (2006) AII FWLR (pt.343)1761.**

In this case, I have already held or found that the 1st defendant was wrong in placing a restriction on plaintiff's account. The plaintiff has since 2016 precisely 12th February, 2016 when EFCC wrote **Exhibit D1** till date been deprived of the use of its legitimate funds kept with the Bank. It is really unacceptable and intolerable that for a period of nearly 8 years, the claimant has been denied access to the funds in its account. It is even worrisome that even after the directive from EFCC ended on **28th April, 2017** vide **Exhibit D70** which was the last time, they wrote in respect of plaintiff's account, the defendant chose or elected not to end the restriction, for reasons that are not clear.

The claimant also led evidence with respect to the dislocation and deleterious consequences to its business activities in the years the account faced this avoidable restriction. PW1, the accountant of claimant led credible evidence of the impact the restriction caused plaintiff which was not seriously impugned under cross-examination. She stated that the inability to access their moneys in the account hampered its ability to provide services to is client causing the company enormous financial losses and also that the restriction hampered their ability to pay the company staff their full salaries and that they had to even get loans from the M.D. (PW2) to stay afloat to take care of basic needs of claimant such as salaries, site expenses etc. A copy of such loan agreements between the company and the M.D. were tendered as **Exhibit P2 (1) – (10);** these exhibits situate at different times that the Managing Director has to advance his personal money to run the claimant due to the restriction placed on the company's account. These documentary evidence backed up by the oral evidence was not really impugned as stated earlier under cross-examination.

Indeed under cross-examination, PW1 stated that the company was not shut down because they had another account with 1st defendant which they used to run the activities of the company. That the money in this other account was to be used for other things but because of the restriction, they had to divert those funds and this affected the claimant's company.

PW2, the Managing Director similarly gave unchallenged evidence on the impact of the restriction on the activities of the company. I had already alluded to the different financial loans he had to give from his personal savings to run plaintiff because of the restriction vide **Exhibits P2 (1) – (10).**

PW2 also alluded to the loan he obtained for claimant in the sum of N97, 000 Euros (Ninety Seven Thousand Euros) which was credited to its account with 1st defendant on 28th June, 2014 vide **Exhibits D3 a** and **b**. That the loan was to be paid back by end of 2015 as clearly indicated in **Exhibit P3a**.

He stated in evidence that because he was not in Nigeria by December 2015, the claimant could not finalize the pay back process and when he returned to Nigeria in 2016, and gave approval for the payment, the claimant could not access the money in its account due to the restriction on the account and that the claimant has not been able to pay back the entire sum borrowed which has dented its credit worthiness with the company that gave it the loan, TERACON AG which has compromised the claimant's ability to get such facility in the future.

I note that **PW2** in evidence alluded to a contract with Triacta Nig. Ltd vide **Exhibit P6** which it claimed it was unable to execute because of the restriction on the account. I however note that the contract was awarded on 16th November, 2011 with a time frame for completion within 365 days from the signing of the contract. It is clear therefore that this contract with a time sensitive criteria for completion was given years before the restriction was placed on plaintiffs account. There is nothing in evidence situating that the contract was not concluded or that time for completion was extended beyond the 365 days provided in the contract. Nothing was equally proffered showing that the contract was going on at the time the restriction was placed on particular account. On the fluid facts relating to this contract, I am not sure the restriction has any real impact in the completion or execution of this particular contract.

There is equally nothing on the evidence to support the contention that the claimant could not meet up with its obligations to its suppliers. There was no evidence of any kind to support the claim that Local Purchasing Order (LPO) was given to one Ezeike (Nig.) Ltd to supply certain items which it supplied but that claimant was unable to make the payments. Neither the L.P.O or the invoice and delivery note pleaded were tendered. There is also nothing before

court to situate that the supplier Ezeike (Nig) Ltd has refused to make further supplies to claimant and that claimant is now forced to buy at uncompetitive prices since it does not have the cash to back up orders.

Despite the failure to prove creditably certain aspects of its case on damages, I am in no doubt as demonstrated above that the actions of the 1st defendant in placing a restriction on an account of claimant clearly caused enormous dislocations to its business operations and the claimant will thus be entitled to damages arising from the failure of 1st Defendant to ensure that the provisions of EFCC were complied with before freezing the account of claimant. See **G.T.B V Odeyemi Oluyinka Joshua (supra)**. The actions of 1st defendant is even more worrisome when it is noted that on the evidence, the restriction order(s) vide **Exhibit D1-D70** ended on 28th April, 2017 or put another way the last directive they received from 2nd defendant is dated 28th April, 2017, yet they chose or elected to continue with the restriction for no clear reasons.

If the argument was that **EFCC** or 2nd defendant gave the directive, why did the bank not do the needful when the directive stopped coming in 2017? Why did they not even seek a clarification from EFCC when the directive stopped coming in April 1st 2017? The 1st defendant did nothing and simply sat on the funds of the claimant for years and denying it access to its legitimate earnings. To sit on such huge sums for nearly 8 years is completely unacceptable. I am in no doubt that the claimant on the evidence has suffered so much damages arising from the unjustified restriction placed in its account. It is a notorious fact that the sum of **N38, 928, 012.61k the 1st defendant sat on since 2016** clearly will not have the same value today. If the court factors in the inflationary trends which the court can take judicial notice of, it is clear that the said sum must have taken a huge hit in its value. See **Nepa V Ali (1992) 8 NWLR (pt.259) 279 at 304 A-D**.

The court has taken all the above into consideration in assessing the question of damages to be awarded. I am aware and note that in **Access Bank Plc V. Maryland Finance Co. and Consultancy Service (2005)3 NWLR (pt.913)460,** the Court of Appeal advised that courts should not be carried away in making award of damages; that the court must not allow its mind to be affected by any high sounding figure claimed but that the court must look at the whole case dispassionately and let its award be a proper and sober assessment of the entire case.

Guided by this advice by the law lords at the Superior Court of Appeal and taking into account the totality of the factors adumbrated above, particularly the length of time 1st Defendant unjustifiably sat on the funds of claimant, it is my considered opinion that the sum of **N10, 000, 000** (Ten Million Naira) will be just and reasonable as damages in the circumstances and a sober assessment of the entire case and a fair recompense. It also sends a clear and direct signal to all financial institutions to keep strict fidelity to the law as severally interpreted by our Superior Courts that any directive to place a "Post No Debit" on any account without a **Court Order** must be discountenanced. It is not a matter of choice for the Banks. If they however elect or choose to ignore pronouncement of courts with respect to the powers of EFCC in that respect, then they let themselves open to avoidable sanctions. There will always be consequences for unacceptable behavior. I say no more.

The final Relief (e) is for the sum of Four Million, Ninety-two Thousand, Eight Hundred Naira (N4, 092, 800.00) being Legal Practitioners' fees and cost of prosecuting this action.

This relief I must confess is one in which on the authorities, there is still no clarity with respect to its availability. The claim for solicitors fees is in the nature of special damages, but what is the jurisprudence on this type of Relief.

I had course to address this issue in the unreported case of **Suit No. HC/CV/1499/14 – Between: Mr. Ibrahim Mohammed & 1 Anor and Minister FCT and 2 ors** delivered on 17th December, 2020. I prefer to repeat what I stated therein as follows:

"Let me however state that in law, costs are no more than an indemnity to the successful party to the extent that he is justly damnified for costs reasonably incurred in the ordinary course of the suit or matter having regard to its nature but not to any extra-ordinary or unusual expenses incurred arising from rank, position or wealth or character of either of the parties or any special desire on his part to ensure success. See generally the book **Civil Procedure in Nigeria (2nd Edition) by Fidelis Nwadialo at pages 752-753**. Indeed the learned author in the same book at **page 753** posited and referred to a decision in **Smith Vs Butler (1875) LR 19Eq.475** where it was held that any charges merely for conducting litigation more conveniently may be called luxuries and must be paid by the party incurring them.

I now come to the question of whether a claim for solicitors fees is one that can be granted under the present state of Nigerian Law. In **Guinness Nigeria Plc V Nwoke (2000) NWLR (pt.689) 135 at 150**, the Court of Appeal held unequivocally that a claim for solicitors fees is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between parties. After this decision, there are however now a plethora of cases from the Court of Appeal which appear to have adopted a clear radical position contrary to that espoused in the **Nwoke** case. These later decisions postulates or recognises that a claim for solicitors fees forms part of Nigerian Legal Jurisprudence and where established can be granted. See the cases of **International Offshore Construction Ltd & ors V Shoreline Liftboats Nig. Ltd (2003) 16 NWLR (pt.845) 157; Divine Ideas Ltd V Umoru (2007) All FWLR (pt.380) 1468, Lonestar Security Ltd (2011) LPELR – 4437 (CA).**

It appears to me apposite here to specifically refer to the case of **Naude V Simon (2014) All FWLR (pt.75) 1878**, where the Court of Appeal made these interesting pronouncements when endorsing the point that a claim for solicitors fees is in the realm of special damages and is cognisable under Nigerian Law. In the said case, one of the issues submitted to the court for determination, was whether the trial court was right in awarding costs of charges incurred by the Respondent in the prosecution of its case against the appellants. In determining this issue in the affirmative, the Court of Appeal considered the earlier cases that held that a claim for solicitor's fees are unethical and unrecoverable and held that they do not represent the current position of the law. The Court per **Akomolafe-Wilson JCA at pp. 1904-1906H-H** stated as follows:

"The authorities cited by the appellants' counsel in my view have been overtaken by more recent authorities that permit the payment of solicitor's fees as expenses for litigation in Nigeria. The principle of law is that a successful party is entitled to be indemnified for costs of litigation which includes charges incurred by the parties in the prosecution of their cases. It is akin to claim for special damages. Once the solicitor's fee is pleaded and the amount is not unreasonable and it is provable, usually by receipts, such a claim can be maintainable in favour of the claimant… Having regard to the above recent cases, it is no more in doubt that damages for cost, which includes solicitor's fees and out of pocket expenses, if reasonably incurred are usually paid by courts if properly pleaded and proved. In short, the

decision of this honourable court in the cited cases Ihekwoaba V ACB Ltd and Guinness (Nig.) Plc V Nwoke, where this court held that the payment of solicitor's fees as damages is not supported in this country does not represent the present state of mind of the courts in this country. In more recent times, it is common for solicitors to include their fees for prosecution of cases and pass same to the other party as part of claims for damages, which have been awarded by the courts once the claims are proved."

I had specifically referred to this very clear pronouncement for the important reason that it specifically referred to the Court of Appeal cases of **Nwoke (supra)** and that of **Ihekwoaba V ACB Ltd (1998) 10 NWLR (pt.571) 590** which is in agreement with the decision in **Nwoke** and her lordship Akomolefe-Wilson J.C.A stated that these cases do not **"represent the present state of the mind of the courts in this country."**

The cases unfortunately "**on the present state of the minds of court with respect to claim for solicitors fees"** may not with the greatest respect be availing in view of the pronouncement of the Apex Court which affirmed the position in **Ihekwoaba's case (supra)** on the impropriety of a claim for solicitors fees. In **Nwanji V Coastal Services Ltd (2004) 36 WRN 1 at 14-15**, His noble Lordship Samson Odenwigie Uwaifor JSC expounded the law on this point in the following graphic and instructive terms:

> ***"There is the award of N20,000.00 as professional fees allegedly paid by the respondent in respect of Fougerolle's case. It was fees said to have been paid by the Respondent to defend a suit brought against it by Fougerolle in regard to non-delivery of the goods in question. I can find no basis for this award… Secondly, it is an unusual claim and difficult to accept in this country as things stand today because as said by Uwaifo, JCA in Ihekwoaba V ACB Limited (1998) 10 NWLR (pt.571) 590 at 610-611:***
>
> ***"The issue of damages as an aspect of solicitor's fees is not one that lends itself to support in this country. There is no system of cost taxation to get a realistic figure. Costs are awarded arbitrarily and certainly usually minimally. I do not therefore see why the appellants will be entitled to general or any damages against the auctioneer or against the mortgage who engaged him in the present case, on the ground of solicitor's costs paid by him."***

It is needless to say that the above decision is binding on the Court of Appeal and all subordinate or lower courts to the Apex Court under the doctrine of *stare decisis*. See **Osakwe V FCE (Technical) Asaba (2010) 10 NWLR (pt.1201) 1.** I also note that this decision was not referred to in the decisions of the Court of Appeal which gives an indication that their conclusions may have been different if their attention was drawn to it. Before rounding up, it is important to draw attention to the case of **Rewane V Okotie-Eboh (1960) NSCC (vol.1) 135 at 139** where the Supreme Court per Ademola CJF, page 135 at 139 stated thus:

"Costs will therefore be awarded on the ordinary principles of genuine and reasonable out of pocket expenses and normal counsel cost usually awarded for a leader and one or two juniors"

I am not sure that this pronouncement can be over stretched to apply to a claim of solicitors fees as special damages. The pronouncement was not made in the context of legal fees as special damages expended by a litigant which is passed on to the adversary. The cost the court was referring too here is the usual cost or indemnity the courts award to a successful party for costs reasonably incurred in the course of the suit or proceedings but not to any extra-ordinary or unusual expenses incurred arising from rank or position or wealth or character of either of the parties or indeed any special desire on his part to ensure success.

Even if I am wrong with respect to the correct import of the said decision in **Rewane V Okotie-Eboh (supra),** it is clear that the decision of **Nwanji V Coastal Services Ltd (supra)** is clearly a later decision and in law where there are conflicting decisions, lower courts are bound by the latter or last decision of the Supreme Court. See **Osakue V F.C.E (Technical) Asaba (supra)**.

Learned counsel to the claimant has however drawn my attention to the decision of **UBN Plc V Chimaeze (2014) 9 NWLR (pt.1411) 166 at 75-76**, where the Supreme Court appears to recognize solicitors fees as special damages which are recoverable once proven or unchallenged. The Court per Kekere-Ekun JSC stated thus:

> **"The respondent pleaded in paragraphs 21 and 22 of his amended statement of claim and proved through exhibit MOC 7 that he was charged a fee of N250, 000.00 (two hundred and fifty thousand naira) by his solicitors, out of which he had paid N150, 000.00, leaving a**

balance of N100, 000.00 (one hundred thousand naira). His claim was for the total solicitor's fee of N250, 000.00. Even if he had only paid N150, 000.00 (one hundred and fifty thousand naira), he was still liable for the balance. The appellant/cross-respondent made a general denial of the averments in paragraphs 21 and 22 of the amended statement of claim in paragraphs 2 and 20 of its statement of defence. A general traverse is not an effective denial of essential or material averments in the opposing party's pleading… In the instant case, the appellant/cross-respondent failed to rebut the credible evidence led by the respondent in this regard. I therefore agree with the concurrent findings of the two lower courts that the respondent/cross-appellant was entitled to his claim for special damages. No reason has been advanced to warrant interference with these findings as they are fully supported by the evidence on record."

I read the above decision carefully and the earlier decision of the Supreme Court in **Nwanji V Coastal Services Ltd (supra)** was not referred to. If it is taken that this decision represents the position of the Supreme Court, been a later decision, the implication is that the Relief for solicitors fees can be recovered if proven.

In this case, on the pleadings and evidence, the claimant in paragraph 9 pleaded that the claimant commissioned a legal practitioner who charged **N200, 000** to perfect the claimants brief over the subject matter and in paragraph 16 the claimant pleaded that it incurred legal expenses in the sum of **N3, 892, 800.00**. Indeed in this paragraph, the claimant pleaded the correspondence or agreement with their legal practitioner showing the agreement as to fees for prosecution of this suit.

Unfortunately in evidence, the claimant did not tender any iota of evidence to support either the fees charged or that fees were indeed paid. The correspondence or agreement pleaded to support the averment in paragraph 16 relating to fees was not tendered. That paragraph and the averment is thus deemed as abandoned. In addition being a relief in the realm of special damages, this relief has to be creditably established. There is absolutely no evidence to support this relief for solicitors fees. It accordingly fails.

The case having substantially succeeded, cost of the action will be awarded or granted on terms as streamlined hereunder.

On the whole, the single issue raised as arising for determination is answered substantially in favour of claimant against 1st defendant. For the avoidance of doubt, I accordingly make the following orders:

1. **It is HEREBY DECLARED that the 1st Defendant's failure to allow plaintiff access and to exercise its right to withdraw from its account number 0012869322 domiciled at the 1st Defendant' branch office situate at Central Business District, Federal Capital Territory Abuja and by extension the sum of Thirty Eight Million, Nine Hundred and Twenty Eight Thousand, Twelve Naira, Sixty One Kobo (N38, 928.012.61k) standing to the credit of the claimant in the said account is wrongful.**

2. **It is HEREBY ORDERED that the 1st Defendant forthwith allows the claimant unrestricted access to the sum of Thirty Eight Million, Nine Hundred and Twenty Eight Thousand, Twelve Naira, Sixty One Kobo (N38, 928.012.61k) standing to its credit in its account number 0012869322 with 1st Defendant.**

3. **The sum of N10, 000, 000 (Ten Million Naira) is awarded as damages in favour of Claimant against 1st Defendant for the wrongful restriction placed on account number 0012869322.**

4. **I award cost assessed in the sum of N100, 000 payable by 1st Defendant to Claimant.**

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Hon. Justice A.I. Kutigi

<u>Appearances:</u>

1. ***Ogo Uwaje, Esq., K.B. Okara, Esq. and Ohiole Kadiri, Esq. for the Claimant.***

2. ***Olisakwe Chioma for the 1st Defendant.***

3. ***Aliyu Bokani, Esq., for the 2nd Defendant.***