

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

BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 5TH DAY OF JULY, 2024

SUIT NO.: CV/2966/2018

BETWEEN:

HON. SULEIMAN ISIYAKU CLAIMANT

AND

DIAMOND BANK PLC DEFENDANT

JUDGMENT

DELIVERED BY HON. JUSTICE J. ENOBIE OBANOR

The Claimant commenced this suit by filing a Writ of Summons on 10th October, 2018 wherein he sought the following reliefs:

- a. A declaration that the Defendant has no right, privilege or duty to freeze the Claimant's bank account with Account No. 0029449346 from 13th September, 2018 till date allegedly on the request of the Economic and Financial Crimes Commission (EFCC) without an order of a court of law to that effect.*
- b. A declaration that the Defendant's failure to allow the Claimant access to the Claimant's money in the Defendant's custody from 13th September, 2018 till date amounts a breach of contract.*
- c. An Order of the Honourable Court directing the Defendant to, within 24 Hours of delivery of judgment in this suit, vacate every restriction placed by the Defendant on the Claimant's bank account No. 0029449346.*

- d. An Order of the Honourable Court directing the Defendant to, within 7 days of delivery of judgment in this suit, pay the Claimant the sum of N7,000,000.00 (Seven Million Naira only) as exemplary and or punitive damages for breach of contract, embarrassment and inconveniences suffered by the Claimant as a result of the Defendant's refusal to allow the Claimant access to the Claimant's money in his bank account No. 0029449346 from 13th September, 2018 till date.*
- e. An order of the Honourable Court directing the Defendant to, within 7 days of delivery of judgment in this suit, pay the Claimant the sum of N700,000.00 (Seven Hundred Thousand Naira only) as costs incurred in pursuing the Claimant's rights and maintaining this suit.*

The Defendant responded to the claims of the Claimant by filing a Statement of Defence on 1st February, 2019.

To further his course, the Claimant filed a reply to the Defendant's Statement of Defence.

The hearing of this suit began on 5th June, 2023 with the Claimant testifying as CW1. He adopted his Witness Statement on Oath deposed to on 10th October, 2018 and subsequently on 3rd July, 2023 adopted his 2nd Witness Statement on Oath deposed to on 22nd March, 2019.

It is his testimony that as a customer of the Defendant, he maintains a Savings Extra Account (No. 0029449346) with the bank's branch at the UAC Building, Central Business District, Abuja.

He further testified that on 13th September, 2018, he issued a cheque for N40,000 to Mr. Austin Ahusimhere, which was dishonoured by the bank with the notation "DAR" (Drawer's Attention Required). Despite having a sufficient balance of N45,702.58 in his account, the cheque was not honoured, leading him to personally inquire at the bank. He was informed by one Mr. Augustine Anongo that his account had been frozen at the request of the Economic and Financial Crimes Commission (EFCC), and he was subsequently detained in the banking hall with the assistance of Police Officers.

During his detention, he was denied the opportunity to perform his religious prayers, being treated like a common criminal in front of other customers. After being released without any involvement from the EFCC, he assumed the account restrictions had been lifted. However, on 17th September, 2018, another cheque he issued for N45,000 to his lawyer, Mr. Godwin Chigbu, was similarly dishonoured, further tarnishing his reputation.

He asserted that at no time was he indebted to the Defendant or under investigation by the EFCC. He was neither notified of any allegations nor invited by the EFCC. Despite writing to the bank on 17th September, 2018, demanding the removal of the account restrictions, the Defendant failed to comply or provide evidence of the EFCC's request.

He stressed that his relationship with the bank was purely contractual and that the unwarranted freezing of his account constituted a breach of this contract, causing him significant inconvenience, embarrassment, mental stress, and trauma. He testified that he was portrayed as a common criminal, damaging his reputation and standing in society.

Documents tendered by the Claimant are as follows:

1. Letter dated 17th September, 2018 titled "*Complaint against my illegal detention and the freezing of my bank account No. 0029449346 by Diamond Bank Plc*" – Exhibit A.
2. A copy of cheque dated 13th September, 2018 issued in favour of Austin Ahusimhere to the tune of N40,000 – Exhibit B.
3. A copy of cheque dated 17th September, 2018 issued in favour of Godwin Chigbu to the tune of N45,000 - Exhibit C.
4. A copy of receipt dated 27th September, 2018 issued by Godwin N. Chigbu, Esq. – Exhibit D.

The Claimant was subsequently cross-examined by the Defendant's Counsel and thereafter closed his case.

The Defendant on 24th April, 2024 opened its case and applied for the substitution of its witness from Adaobi Ezewuzie to Boluwatito Kehinde Ajayi which was granted by the Court. Boluwatito Kehinde Ajayi gave evidence as DW1. He testified that he is the Branch Customer Service Manager of the Defendant in this suit. He confirmed that the Claimant is a customer of the Defendant, maintaining a Savings Extra Account (No. 0029449346), and that their relationship had been good.

He explained that on 27th August, 2018, the EFCC served the Defendant with a letter dated 3rd August, 2018, requesting that the Claimant's account be placed on a "No Debit Status" due to an ongoing investigation. The letter also instructed the bank to detain

the Claimant if he visited the bank and to contact the EFCC immediately.

He stated that following these instructions, the Defendant placed the Claimant's account on "No Debit Status." Consequently, when the Claimant issued a cheque for N40,000 on 13th September, 2018, it could not be honoured. When the Claimant visited the bank to inquire, he was informed about the EFCC's instructions and was detained briefly.

DW1 further stated that during his detention, the Claimant was allowed to pray within the bank premises and was subsequently permitted to speak with DSP Danmadami Abubakar from the EFCC. After the conversation, the Claimant was released. The bank took care not to involve Police Officers to avoid causing any scare or apprehension among other customers.

He averred that the Defendant acted in compliance with the EFCC's instructions and in good faith, fulfilling its civic duty to assist law enforcement.

The Defendant maintained that the Claimant's account was sufficiently funded at the relevant time and that the Defendant acted lawfully throughout the incident. He also gave evidence that the Defendant did not breach the contractual relationship and is not liable.

In the course of giving evidence, the Defendant tendered the Letter of Instruction from the EFCC to the Defendant dated 3rd August, 2018 which was admitted in evidence as Exhibit DD.

DW 1 was cross-examined by the Claimant's Counsel and the Defendant thereafter closed its case.

The Court ordered that parties file their Final Written Addresses and the parties complied and equally adopted their respective addresses on 26th June, 2024.

The Claimant's Counsel filed their Written Address on 20th June, 2024 wherein he posed two (2) issues for determination thus:

- (1) *Whether the Defendant did not breach the contractual relationship between her and the Claimant by freezing the Claimant's account without an order of court and by refusing to honour the Claimant's cheques.*
- (2) *Whether the Claimant is entitled to the reliefs sought in this case.*

Before canvassing arguments in support of the issues raised, Counsel raised a preliminary issue on the admissibility of Exhibit DD. He contended that Exhibit DD admitted by the Court should not have been admitted as it was legally inadmissible. He argued that even though the document was admitted, improperly admitted evidence can be expunged at the judgment stage. He relied on the Supreme Court case of SHANU V. AFRI-BANK (2002) 6 SCNJ 454.

He further argued that Exhibit DD, being a document authored by the EFCC, is a public document under Section 102 of the Evidence Act. According to Sections 89(e) and 90(1)(c) of the Evidence Act, the only admissible secondary evidence of a public document is its certified true copy. Since Exhibit DD was a photocopy and not a certified true copy, it was inadmissible.

He concluded that despite the relevance of Exhibit DD, it is inadmissible under the provisions of the Evidence Act, and therefore, it should be expunged.

In arguing issue 1, Counsel submitted that by virtue of the Claimant's account holder status with the Defendant, a contractual banker/customer relationship exists between them and it is an established duty of a bank to honour and pay cheques drawn by the customer if there are sufficient funds in the customer's account. The Claimant stated that on the dates of 13th and 17th September 2018, he had more than enough funds in his account to cover the cheques he presented, which the Defendant did not specifically deny. He further argued that the Defendant's refusal to honour the cheques constituted a breach of contract. He relied on several authorities including U.B.N PLC V. CHIMAEZE (2014) ALL FWLR (PT. 734) 48 at 72-73 AND IDE CHEMISTS LTD V. NATIONAL BANK OF NIGERIA LTD (1976-1984) 3 NBLR 111 at 118

He contended that the letter from the EFCC (Exhibit DD) only instructed the bank to "flag" the account, not to freeze it. No court order was presented alongside the EFCC's request, which is a statutory requirement for freezing an account.

The Claimant concluded that the Defendant's actions were a gross breach of their contractual relationship and urged the court to hold the Defendant liable for damages.

In arguing issue two (2) raised, Counsel for the Claimant opined that by failing to honour the two cheques issued by him, the Defendant breached its contractual relationship and is liable for damages due to the breach of contract.

He emphasized that once a Court finds a party liable for breach of contract, the award of general damages should follow, as established in NCC V. MOTOPHONE LTD & ANOR (2019) LPELR-47401(SC).

He argued that the value of the funds in his account has depreciated significantly over time and that he was unfairly treated and detained in the bank and has suffered reputational damage due to the dishonoured cheques and incurred legal fees for this action, evidenced by Exhibit D. He cited cases like Balogun Vs N.B.N. Ltd. (1978) 3 SC (Reprint) 111 @ 117

He concluded by urging the court to consider all the pleaded and proven facts to grant all the prayers sought.

The Defendant's Counsel filed their Final Written Address on 25th June, 2024. In the said address were distilled two (2) issues for determination viz:

- 1. Whether given the facts and circumstances of this case, and evidence before the court, the Defendant could be held legally liable for the assistance offered to the EFCC which included the temporary restriction on the Claimant's account.*
- 2. Whether the Defendant's actions can be regarded as malicious, vindictive or oppressive as to warrant punitive damages.*

On Issue 1, he argued that they should not be held legally liable for the assistance provided to the Economic and Financial Crimes Commission (EFCC), including the temporary restriction on the Claimant's account and that the EFCC can request assistance from entities like the Defendant, including the flagging of accounts for investigative purposes, under Section 13 of the Money Laundering Act. Private citizens and corporate bodies have a civic and legal duty to assist law enforcement agencies when reasonably requested, as outlined in Section 27 of the Administration of Criminal Justice Act,

2015. He relied on the case of *FABIYI V. STATE* (2013) LPELR-21180 (CA).

The Defendant asserts that they acted in good faith, performing their civic duty in response to a letter from the EFCC requesting actions such as placing a caution and a Post No Debit (PND) on the Claimant's account.

On issue 2 he argued that exemplary or punitive damages are a distinct category of damages that require specific evidence to be proven in court and that a Claimant seeking such damages must demonstrate that the Defendant's actions were not only wrongful but also outrageous, vindictive, and oppressive. He relied on *OKAFOR V. LAGOS STATE GOVERNMENT & ANOR.* (2016) LPELR-41066 (CA), He argued that the Claimant has failed to provide specific evidence of how the Defendant's actions caused embarrassment and inconvenience. The vague claim that it affected his reputation and standing in society is insufficient without further proof.

He argued that the Defendant's actions, if considered wrongful, are not malicious, vindictive, or oppressive as it acted in accordance with the law and directives from the EFCC.

Therefore, he submitted that the Defendant's actions do not warrant the award of punitive damages, and the court should so hold.

Having considered the pleadings and evidence before the Court, I shall adopt the issues raised by the Claimant in the determination of this suit to wit:

- (1) *Whether the Defendant did not breach the contractual relationship between her and the Claimant by freezing the Claimant's account without an order of court and by refusing to honour the Claimant's cheques.*
- (2) *Whether the Claimant is entitled to the reliefs sought in this case.*

Before delving into the substantive issue, I shall address the preliminary issue raised by the Claimant on the admissibility of Exhibit DD tendered by the Defendant and admitted by the Court. As stated earlier, Counsel to the Claimant is contending that Exhibit DD admitted in evidence on 5th June, 2023 should be expunged from the record as it is a photocopy of a public document.

This Exhibit was provisionally admitted into evidence based on the arguments presented. However, the crucial question now is whether it should be formally admitted into evidence.

There is no doubt that the said document is a photocopy of a public document and it is trite that the only admissible secondary evidence of public documents is a certified true copy of same. See *AROMOLARAN v. AGORO*(2014) LPELR-24037(SC).

By law, where an inadmissible documentary evidence is admitted in a proceeding, either with the acquiescence or against the opposition of an adverse party, the law gives the Courts, both trial and appellate, the license to expunge it from their decisions.

Section 90(1)(c) of the Evidence Act 2011 states thus:- "90(1) The secondary evidence admissible in respect to the Original Documents referred to the several paragraphs of Section 89 is as follows:- (c) In

paragraph (e) or (f) a certified copy of the document but no other secondary evidence is admissible." It was decided in the case of BREDERO (NIG) LTD v. SHYANTOR (NIG) LTD & ORS(2016) LPELR-40205(CA)Per MOHAMMED MUSTAPHA, JCA (Pp 30 - 30 Paras C - E).

"... it is settled law that the Court can expunge an inadmissible document admitted with or without objection, see NIPC LTD. V. THOMPSON ORGANIZATION LTD. (1966) 1 NLR 99 at 104 where LEWIS, J.S.C. stated the law as follows:- "It is of course the duty of counsel to object to admissible evidence and the duty of trial Court any way to refuse to admit inadmissible evidence, but if notwithstanding this evidence is admitted still through oversight or otherwise then it is the duty of the Court when it comes to give judgment to treat the inadmissible evidence as if it had never been admitted."

Consequent upon the above, Exhibit DD is inadmissible and is hereby expunged.

ISSUE 1

(1) Whether the Defendant did not breach the contractual relationship between her and the Claimant by freezing the Claimant's account without an order of court and by refusing to honour the Claimant's cheques.

The law is well-established that anyone seeking the court's judgment on any legal right or liability must provide proof of those facts.

MAIHAJA v. GAIDAM(2017) LPELR-42474(SC)Per EJEMBI EKO, JSC (Pp 61 - 62 Paras E - B)

"Section 131(1) of the Evidence Act, 2011 provides 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. Put streetwise, he who asserts must prove his assertion. It therefore logically follows that what is alleged without proof can be denied without proof. When a fact is asserted without proof then the existence of the alleged fact is not established. That is why Section 132 of the Evidence Act provides further that 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."

It is not in contention that the parties have a banker-customer relationship. It is important to remember that the banker-customer relationship involves duties, rights, and obligations grounded in good faith. In this context, the banker is responsible for receiving cheques from the customer and must honour them as long as there are sufficient funds. If a banker unjustifiably dishonors a customer's cheques, they are liable to the customer for damages resulting from harm to the customer's credit. See *DIAMOND BANK LTD v. UGOCHUKWU*(2007) LPELR-8093(CA).

It was held in *ABADA (NIG) LTD v. UNITY BANK OF (NIG) PLC & ORS* (2018) LPELR-44003(CA)**Per JAMES SHEHU ABIRIYI, JCA (Pp 13 - 14 Paras F - B)**

*"A bank is obliged to pay cheques drawn on it by its customer provided that the customer has sufficient fund to satisfy the amount payable on the cheque and there are no legal bars to payment. A customer whose cheque has been wrongfully dishonoured is entitled to claim damages against the bank. The claim may be for breach of contract and/or for libel. See *Allied Bank (Nig) Ltd V. Akubueze**

(1997) 6 NWLR (Pt. 509) 374 and F.A.T.B Ltd V. Partnership Inv. Co. Ltd (2003) 18 NWLR (Pt. 851) 35 SC."

This then leads up to the vital question, 'does the Defendant have a justifiable reason to have dishonoured the cheques of the Claimant?

The Defendant in its defence stated that it received an instruction from the EFCC asking it to place a 'No Debit Entry' on the Claimant's account and it only complied with the directive of the EFCC.

It is not novel that a court order must be obtained before any bank account can be frozen.

It was succinctly held in ACCESS BANK PLC v. AGBASIERE (2022) LPELR-58489(CA) **Per PATRICIA AJUMA MAHMOUD, JCA (Pp 12 - 12 Paras E - E)** that

"As a general rule, a bank can only legally freeze the account of its customer pursuant to a Court order."

Section 34(1) of the Economic and Financial Crimes Commission (Establishment) Act 2004 provides as follows:

34(1): "Notwithstanding anything contained in any other enactment of law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the Commission of an offence under the Act and/or enactments specified under Section 7(2) (a)-(f) of this Act apply to the Court ex parte for power to issue or instruct a bank examiner 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 of 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 or other Financial Institution to freeze the account. (Underlined for emphasis)

By Section 34(1) of the Economic and Financial Crimes (Establishment) Act 2004 above, the Chairman of the Commission or anyone authorised by him, before freezing the account of any person under investigation may obtain an ex-parte order of Court to do so. In this case, the Appellant blocked the account of the Respondent without an order of Court. Section 97 of the Banking and Other Financial Institution Act, 2020 has provision similar to Section 34(1) of the Economic and Financial Crimes (Establishment) Act, 2004.

The Defendant's defence that it only complied with the directive of the EFCC is unfounded as it has a duty to carry out due diligence before complying with such directives and depriving the Claimant of his money in its custody. It unfortunately did not exercise due diligence, and therefore cannot escape the harsh hammer of the law.

In *G.T.B. PLC v. ADEDAMOLA* (2019) 5 NWLR (pt. 1664) 30 at 43, it was decided as follows:

"Before freezing customer's account or placing any form of restraint on any bank account, the bank must be satisfied that there is an order of Court. 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. I must add that, the judiciary has the onerous duty of preserving and protecting the rule of law, the principles of rule of law are that, both the governor and the governed are subject to 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 to the occasion speak, frown, and condemn arrogant display of power by an arm of government. It is in the interest of both government and citizens that laws are respected, as respect for the rule of law promotes order, peace and decency in all societies, we are not an exception. Our financial institutions must not be complacent, reticent and toothless in the face of brazen and reckless violence to the rights of their customers. Whenever there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed."

The Defendant has allowed itself to be led to the slaughterhouse by the EFCC and shall be held liable for its actions. The Defendant as an established corporation should have a Compliance Officer to guide it on what is obtainable in law. Ignorance of the law is not an excuse.

The contention by the Defendant that it was only carrying out its Civil duty does not hold water as that civil duty is in contravention of the law. The Defendant ought to know that the EFCC is not a Court of law and does not have the power to issue such an order without the Order of Court. The Defendant had no business obeying an unlawful directive of the EFCC and is only expected to comply with a lawful directive of the EFCC.

For clarity, even if Exhibit DD had not been expunged from the record, the decision of this Court would remain unchanged.

Issue 1 is hereby resolved in favour of the Claimant as this Court holds that the Defendant breached the contractual relationship between the party by refusing to honour Exhibits B and C.

ISSUE 2

Whether the Claimant is entitled to the reliefs sought in this case.

Having held that the Defendant breached the contractual relationship, it therefore follows that the Claimant is entitled to damages.

In **UNITY BANK v. AHMED(2019) LPELR-47395(SC)UWANI MUSA ABBA AJI, JSC (Pp 23 - 23 Paras B - E)** held as follows:

"It must not be emphasized that where there is a breach of the contractual relationship by the bank, damages must naturally follow. A judge may with reason make an award of any such sum as he considers the circumstances of the breach of contract warrants although there has been no proof of any actual loss. See ALLIED BANK OF NIGERIA LTD V. JONAS AKUBUEZE (1997) 6 SCN3 116. The award of damages is inescapable where there is proof of breach."

It is necessary to state that the Defendant did not deny that since 2018 it froze the said account the account has remained frozen. This is about 6 years. The value of the said sum has depreciated considering the steady decline of our beloved currency.

As a result of the actions of the Defendant the Claimant instituted this suit and engaged the services of a lawyer evidenced by Exhibit D.

It is my view that having breached the contractual relationship and gaining support from the decisions above, I hold that the Claimant is entitled to the reliefs sought.

Issue 2 is also resolved in the Claimant's favour.

I hereby enter judgment in favour of the Claimant as follows:

1. I declare that the freezing of the Claimant's bank account with Account No. 0029449346 from 13th September, 2018 till date by the Defendant without an order of a court of law is illegal.
2. I declare that the Defendant's failure to allow the Claimant access to the Claimant's money in the Defendant's custody from 13th September, 2018 till date amounts to a breach of contract.
3. I hereby make an order directing the Defendant to vacate every restriction on the Claimant's bank account No. 0029449346 forthwith.
4. I hereby make an order that the Defendant shall pay the Claimant the sum of N2,000,000.00 (Two Million Naira only) as exemplary and or punitive damages for breach of contract, embarrassment and inconveniences.
5. I hereby make an order that the Defendant shall pay to the Claimant the sum of N500,000.00 (Five Hundred Thousand Naira only) as costs incurred in pursuing the Claimant's rights and maintaining this suit.

HON. JUSTICE J. ENOBIE OBANOR

Judge

Appearances:

For the Claimant; Godwin N. Chigbu, Esq.

For the Defendant; Okechukwu Ajunwa, Esq.