

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/M/10536/2024
DELIVERED ON THE 16TH JULY, 2024**

BETWEEN:

INSPECTOR GENERAL OF POLICE.....COMPLAINANT

AND

1. ACCESS BANK PLC	}DEFENDANTS
2. GUARANTY TRUST BANK PLC		
3. UNION BANK PLC		
4. OPAY DIGITAL PAYMENT SYSTEM LIMITED		
5. MR. JOHNSON DANIEL.....		APPLICANT

RULING

By a Motion on Notice dated 28th day of June, 2024 and filed on the same day. The Applicant is praying this Court for the following reliefs as on the face of the Motion paper to wit:

1. **An Order** setting aside its order delivered on the 8th day of May, 2024.
2. **An Order** of Court directing Access Bank Plc to Unfreeze the Applicant’s account with N0: **0724375020**.

3. **An Order** of Court stopping the 1st and 2nd Respondent from arresting the Applicant if seen.
4. Omnibus prayer.

The Application is predicated upon 6 grounds as submitted by counsel on the face of the Motion paper.

The Applicant filed in support of his Motion a 41 paragraphs affidavit deposed to by Johnson Daniel (the Applicant) where he averred thus:

That he attempted on the 14th of May, 2024 to make transaction with the mobile Application of the 3rd Respondent but it was abortive.

That he went to the Bank branch at Lokoja to complain, he was informed that a Man called the branch Bank asserting to be a Police Officer from force Headquarters in Abuja ordering post-No-Debt be placed on his account.

That he questioned the Veracity of the call as he was never invited by the Police before, that sequel to his enquiry he was availed the number of the Man who called the Bank. He called the number severally but it was unavailable and later switched off.

That he asked his counsel to write to the Bank Manager to know the reason for the post-No-Debt placed on his account, the Bank Responded to same and both letters were pleaded from which he got to know that his account was frozen due to court order.

That he is a business Man into logistic services and engaged in business of legitimate procurement and sell of foreign currencies to interested customers.

That one Mr. Samuel Atawali (the suspect) under Police investigation who was his walk-in customer approached him to buy US Dollars whom he had never transacted with before until in the Month of February, 2024.

That they negotiated on the 7th of February for procuring US Dollars from him, transferred from one Usmain intercontinental ventures account into his access bank account the sum of **₦14,900,00**. Only for the purchase of **₹10,000.00** USD at the rate of **₦1,490.00** Dollars.

That he in turn forwarded the account details of one Philip Ugbede Musa with No: **0137030971** and instructed him to credit the account with the **₹10,000.00** USD.

That he collected **₹9,000.000** USD cash at the Guaranty Trust Bank Banking hall and paid into the Guaranty Trust Bank account himself and the cash of **₹1,000.USD** late that same day Receipts were collected same are attached.

That He again on the same day requested for the procurement of another **₹10,000.000** USD at **₹1,500.00** Dollars. He transferred **₹4,850,000** Naira only into his Access Bank account via account Name BABATUNDE AYINDE OSHO. He attached his UBA account statement showing the above said lodgment.

That again the suspect on 12th February, 2024 in furtherance of the said transaction via account name CHARMANNY BRIDGE Enterprise transferred the total sum of **₹146,000.00** into his Access Bank account bringing the total sum transferred to **₹14,895,500** only being monies meant for the purchase of the sum **₹10,000.00** USD 2nd request.

That he was only able to procure **₹360** USD only and same was handed to the suspect personally in cash, receipt of transaction was attached and pleaded.

That having not been able to give the suspect the balance of the USD the suspect instructed him to refund his monies on the 13th

day of February the equivalent of **₦9,000.00** USD into Audu Faith's Union Bank account with No: **0117831217** and Mookhies integrated services account.

That he transferred the sum of **₦9,000,00.00** and **₦4,500,000** respectively to the said Union Bank and **₦8,000,000.00** to Mookhies integrated services from his Access Bank account.

That pursuant to his instruction he transferred the balance of **₦56,000** to Atawali Samuel Opay account **7040051665** as contained in Exhibit C.

That on the 21st of February the suspect initiated another transaction, requesting for the purchase of US Dollars and transferred from his Odusken Multi resources Nig. Ltd account the total of **₦5,000,000** and from Audu Faith Enyo-Ojo's account the same of **₦1,000,000** for the said purchase.

That when he was not able to procure the said Dollars he instructed him to refund the monies into his Odusken Multi Resources Nig. Ltd account with Jaiz Bank No. **0007483202** the sum of **₦5,000,000** which was made on the 21st February, 2024.

That the suspect later sent him a voice note asking him to hold on from transferring the **₦1,000,000** as he was going to further

purchased **₦1,000. USD** at the rate of **₦1900** Dollars, on the 22nd February, 2024 he transferred additional **₦900,000.00** from Audu Faith Enyo –Ojo account to his access Bank account to make up the amount for the purchase of the said **₦1,000 USD** same were procured and delivered to the suspect and receipt also attached.

That all transactions between him and the suspect was purely commercial for purchase of Dollar currencies, he was unaware the suspect was involved in a financial crime as he was never a privy to who he was or his business engagement it is not in his business purview to profile his customers before rendering them services.

That he is a victim of investigation being conducted by the 1st and 2nd Respondents as his account with the 3rd Respondent is put on post-No-Debit and threat of arrest by the 1st and 2nd Respondent due to an innocent commercial transaction in his normal course of business which has affected his business, psychological and emotional wellbeing.

That he had not defrauded, aided or abetted any cause of crime perpetrated by the suspect and his account too was never a

warehouse for the commission of crime by the suspect or any other person.

That the allegation by the 1st and 2nd Respondents on their Ex-parte Application for order to place a post-No-Debit on his account is false as it does not contain proceed of crime.

That he had suffered untold hardship by freezing his Bank account his business have suffered considerably too and the continues freezing of his account has prejudiced him in so many ways, it has affected his business operations and goodwill.

That lifting the order of this Court on his account will not prejudice investigation by the 1st and 2nd Respondents against the suspect as his account is not housing any crime proceeds of the suspect.

Counsel submitted a written address wherein he formulated a sole issue for the determination of this court to wit:

“Whether from the circumstance of this Application, the part of the Ex-parte order made by this Honourable Court on the 8th of May, 2024 as relates to the Applicant can be vacated /set aside in exercise of its discretion in favour of the Applicant?”

Counsel in his argument on the powers of the court to set aside its order. He relied on section 6 (6) (a) and (b) of the constitution and the inherent powers of the Court. for the purpose of Clarity S.6 (6) (a) & (b) shall be reproduced.

“(6) The judicial powers vested in accordance with the foregoing provisions of this section.

- (a) Shall extend notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law;
- (b) Shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relative thereto, for the determination of any question as to the civil rights and obligations of the person.”

He argued that the ground for setting aside the order or Judgment of this Court have been enumerated in several Judicial authority he cited ***SUNDAY OLAYEDE VS. THE STATE (2017) LPELR – 479965 (SC) (Pt 37 paras A)***

CALEB UNIVERSITY & ANOR VS. ODERINDE & ORS (2022) LPELR 59123 (CA) (Pt. 14 -15 paras E)

Some of the import of these authorities is to the effect that when a court gives an order or Judgment based on fraud, misrepresentation, concealment of facts by the party who benefits from such order or Judgment. The court has the discretion to set aside its order or judgment given or delivered base on such fraud, mistake, and misrepresentation.

This Application is unopposed by the Respondents having been served with the Application, it is an uncontroverted or unchallenged action which in law is deemed as admission on the part of the Respondents it is on this note that I find this Application to be Meritorious.

Accordingly, the Application is hereby granted.

SIGNED:
HON. JUDGE
16/07/2023.

Appearance:

Charles Oyoyo, Esq, for the Applicant.