

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

SUIT NO: CV/2736/2022

**BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
BETWEEN:**

ONWUMERIE OGOR GIFTCLAIMANT

AND

FIDELITY BANK PLCDEFENDANT

JUDGMENT

The claimant filed this originating summons with No. CV/2736/2022 and seeks for the interpretation of the following questions:

1. Whether the letter hereto annexed and referenced CR:3000/EFCC/HQ/AFF/T3/Vol. 03/843 "Investigation Activities Onwumerie Ogor Gift-6231654895" upon which the defendant freeze, placed a lien, took possession of /forfeited and/or acquired interest in the monies in the claimant's account can amount to a valid court order so as to enable the defendant to freeze the claimant account domiciled in the defendant?
2. Whether considering the provision of section 34 of the EFCC Act 2019, in the absence of a valid court order the letter CR:3000/EFCC/HQ/AFF/T3/Vol. 03/843 can be given effect to, to freeze, place a lien or place a post no debit, take possession of/forfeit, acquire interest in the monies vested in the claimant's account number 6231654895 for the subsisting period, without a valid court order?

3. Whether the act of the defendant to have unilaterally placed a lien or post no debit on the claimant's account number 6231654895 for more than three years without any valid order of court is not illegal, unlawful, null and void?
4. Whether the freezing of the claimant's account where he maintains account number 6231654895 amounts to a tort, a gross and brazen violation of the claimant's fundamental right to own, acquire and possess property and a breach of his right to personal liberty as enshrined in Article 4, Section 35 (1) of the constitution of the Federal Republic of Nigeria 1999 as amended?

Based upon the above, the claimant seeks for the following reliefs:

1. A declaration of this Honourable court that the defendant cannot lawfully freeze, place a lien or place a post no debit, take possession of/forfeit acquire interest in the monies vested in the claimant's account without a valid order.
2. A declaration that the letter referenced CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 "Investigation Activities Onwumerie Ogor Gift-6231654895" upon which the defendant froze, placed a lien, took possession of/forfeit and/or acquired interest in the monies in the claimant's account cannot amount to a valid court order.
3. A declaration that by virtue of the provisions of section 34 subsections (2) & (3) of the EFCC Act 2019, the defendant's act of freezing the claimant's account No. 6231654895 domiciled in the defendant without a valid court order is arbitrary and illegal.

4. A declaration that by virtue of the provisions of section 34 subsections (2) & (3) of the EFCC Act 2019, the defendant is duty bound to ensure that the instruction in letter with No. CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 is accompanied by a valid court order before freezing the account of the claimant domiciled in its bank.
5. An order of this Honourable Court directing the defendant to unfreeze the claimant's account No. 6231654895 domiciled in the defendant.
6. An order of this Honourable court directing the defendant to pay 17% interest as a result of inflation rate from 2019 to the time of filing of this suit on the total sum of money domiciled in the defendant unlawfully frozen by the defendant from the date the money was frozen to the date judgment is entered into.
7. An order of this Honourable Court directing the defendant to pay N6,000,000.00 (Six Million Naira) only as cost of exchange rate from 2019 to the time of filing of this suit on the total sum of money domiciled in the defendant, unlawfully frozen by the defendant to the date judgment is entered.
8. The sum of N500,000,000.00 (Five Hundred Million Naira) being exemplary damages to be paid by the defendant.
9. The sum of N50,000,000.00 (Fifty Million Naira) being cost of this suit.
10. Such consequential order or orders as the circumstances may warrant and as the Honourable Court may deem fit at the time of delivery of judgment for appropriate remedy to this claimant.

The originating summons is supported by a sixteen paragraphed affidavit and also an affidavit of urgency.

The defendant in response filed a counter affidavit dated and filed 18th January, 2023 and a written address of counsel in opposition to the suit.

The deponent stated that the claimant is in the United Arab Emirates by virtue of which the claimant is unable to depose to this affidavit by himself. The deponent stated that this is because the claimant's account with the defendant's has been frozen and as such the claimant is unable to access the funds with which the claimant will travel back to Nigeria thereby necessitating the filing of this suit.

The deponent stated that in the course of his interaction with the claimant as a friend, he knows for a fact that the claimant operates account number 6231654895 with the defendant and the claimant informed him via telephone call that on the 5th of August, 2019 the following facts transpired which he believes to be true:

- i. That on the fateful day, the claimant made several attempts to withdraw money from the claimant's account to no avail.
- ii. That the claimant immediately proceeded to the said defendant's premises where he was informed that there was a directive issued by a law investigative enforcement agency to freeze the claimant's account as a procedural.
- iii. That being surprised with the information given by the defendants, the claimant made further efforts to have the claimant's account unfrozen, but the defendant failed to unfreeze.
- iv. That the claimant inquired of the defendant if there was a court order directing the defendant if there was a court directing the

defendant to freeze his account, but the defendant said there was no court order rather only a letter from the said law enforcement agency.

- v. That upon enquiries, investigation and further prove on the issue, the claimant was shown a letter at the bank purportedly written by the EFCC as the basis upon which the claimant's account was frozen.
 - vi. That the said letter with reference number CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 titled "Investigation Activities purportedly requested the defendant to place a lien on the account with a view to assisting the commission in effecting the arrest of the account owner.
 - vii. That apart from the said letter no court order was shown to the claimant directing the defendant to give effect to the content of the letter.
 - viii. That the claimant was never invited by the EFCC and has never been informed by the EFCC of the commission of the offence.
 - ix. That the claimant waited for the defendants to unfreeze the said claimant's account, but the defendant did not do so since 2019 and to the time of filing this suit.
7. That on behalf of the claimant and on the instruction of the claimant caused a solicitor to write a letter to the defendant wherein the defendant was requested by the said solicitor to unfreeze the claimant's account but the defendant remained

defiant, failed neglected and refused to unfreeze the claimant's account.

8. That the said letter was particularly intended to allude the defendant to its continued disregard for the rule of law.
9. That despite the receipt of the said letter by the defendant, the defendant has refused to unfreeze the claimant's account, and all entreaties for them to do so fell in deaf ears.
10. That the defendant has a duty of care and fiduciary responsibility to the claimant, and this Honourable Court has the power to enforce said duty of care.
11. That it is in the interest of justice that judgment is entered in favour of the claimant.

The counsel to the claimant, in his written address raised these issues for determination, thus:

1. Whether the letter hereto annexed and referenced CR:3000/EFCC/HQ/AFF/T3/Vol.03/843

“Investigation Activities” Onwumerie Ogor Gift 6231654895 upon which the defendant froze, placed a lien, took possession of/forfeited and/or acquired interest in the monies on the claimant's account can amount to a valid court order to enable the defendant to freeze the claimant's account domiciled in the defendant?

2. Whether considering the provisions of section 34 of the EFCC Act 2019, in the absence of a valid court order the letter CR:3000/EFCC/HQ/AFF/T03/Vol.03/843 can be given effect to, to freeze, place a lien or place a post no debit, take possession of/forfeit, acquire interest in the monies vested on the

claimant's account Number 6231654895 for the subsisting period, without a valid court order?

- 3. Whether the act of the defendant to have unilaterally placed a lien or post no debit on the claimant account with account number 6231654895 for more than three years without any valid court order is not illegal, unlawful, null and void?**
- 4. Whether the freezing of the claimant's account where he maintains account number 6231654895 amounts to tort, a gross and brazen violation of the claimant's fundamental right to own, acquire and possess property, and a breach of his right to personal liberty as enshrined in Article 4 section 35(1) of the Constitution of the Federal Republic of Nigeria (as amended)?**

The counsel submit that the court is with the sole power and authority to determine when an account should be frozen. From the facts deposed to in the affidavit it is quite clear that the defendant unilaterally froze the account of the claimant without seeking of a valid court order and even when this was brought to their attention and refused to depart from their illegal action and he submitted that this is a breach on the claimant's right to personal liberty.

The counsel submitted that the position of the law in the statutes is to provide the court with absolute power to supervise due process in matters relating to freezing or restricting an account as stipulated in section 34 of the Act.

The counsel submitted that it has been consistently been decided that the banks have a duty to ensure all instructions to freeze an account are supported by a court order it is their duty to ensure such orders are valid. The counsel cited the case of **G.T.B Plc V. Adedamola (2019) 5 NWLR (pt 1664) 30 at 43** to the effect 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 not

taking necessary steps to comply with the order of court at its peril.

The counsel further submitted that the letter is not a court order and can never suffice for same; and that the bank had the duty of care to ensure that instructions for freezing of an account is valid and their continued defence is a direct contravention with the rule of law.

The counsel submitted that the post no debit instruction to freeze the claimant's account is illegal, null and void. The position of the law is that there be procedural steps as enshrined in section 34 of the EFCC Act to ensure supervision by the Honourable court in the issues of account freeze and post no debit.

The counsel cited the case of **G.T.B. Plc V. Odeyemi Oluyinka Joshua (2021) LPELR – 53173 (CA)** to the effect that section 34 of the EFCC Act provides a safeguard to prevent the EFCC from interfering arbitrarily with the rights of the customers of the banks or other financial institutions to their funds.

The counsel submitted that the claimant till this day has not still not been invited by any law enforcement agency and that the EFCC has no sufficient evidence to even cause a formal invitation and the spirit of the law has been polluted in the sense that if due process was followed, the court would never granted a post no debit and the claimant would be living freely but as a result of the defendant's non-compliance to due process the right of the claimant has been arbitrarily interfered with.

On the issue No. 2, the counsel cited the case of **Fidelity Bank Plc V. Bayuja Ventures Ltd. (2010) LPELR – 8873 (CA)** to the effect that banks has no right or power by itself.

On his part, the defendant state that the account of the claimant with the defendant was not any time frozen and that the defendant is a national bank which the claimant could not have gone to the defendant in United Arab Emirate to do any

confirmation regarding his account physically since the defendant does not operate or exist outside the shores of Nigeria as any enquiry or confirmation can only be done here in Nigeria.

It is stated that though the defendant is in receipt of EXH. "OG1", but did not freeze the claimant's account because there was no court order, and that the claimant was put on caution which lasted within 72 hours.

The deponent stated that the claimant's restriction allegation against the defendant is not true but self imposed. That the claimant went to the bank to access the account on the 5th August, 2019, while the letter EXH. "OG1" was received on the 8th of August, 2019 and that the claimant has not placed before this court any proof that his account was frozen by the defendant.

The counsel to the defendant proposed a sole issue for determination, thus:

Whether from the facts set out by the claimant in the originating summons and the defendant's counter affidavit, the claimant has made out a case against the defendant requiring judgment to be enforced in his favour or grant the reliefs sought to freeze the account of a customer, by itself, to freeze the account of a customer, be it its staff or otherwise, and/or to prevent such a customer with money?

On the issue of exemplary damages, the counsel cited the case of **Ezeagwu & Ors V. Nwonu (2016) LPELR** where the court relying on the case of **F.R.A Willams V. Daily Times of Nigeria (1990) LPELR – 3487 (SC)** where it was held that exemplary damages are awarded for two categories to wit (1) oppressive, arbitrary or constitutional action (2) where the defendants act which has been held to be tortuous was done with a guilty knowledge, the motive being the economic advantage outweigh the chances of economic or even physical damage.

The counsel submitted that the defendant has no business entertaining directives that do not comply with the due process and as such the defendant has caused a direct devaluation of the moneys in the account of the claimant by depriving his access for all these years in the face of the decline in the Naira against the foreign exchange and this is a flagrant disregard for the rule of law and the claimant's fundamental right.

The counsel lastly submitted that on the authority of his submission he urge the court to adequately compensate him for the hardship suffered over the years.

The defendant admitted in his counter affidavit that the EFCC has no power, by section 34 of the EFCC Act to give directive or instructions to bank to freeze the account of a customer without an order of court and he cited the case of **G.T.B. Plc V. Adedamola (supra)** and that obeying such directive without an order of court constitutes a flagrant disregard and violation of the right of the customer.

The counsel submitted that the defendant maintain that it never frozen or restricted the account of the claimant, and even though the defendant received such letter, but it never obeyed such directive and even if it obeyed, it will only last for 72 hours.

The counsel submitted that the defendant is a National bank and so does not operate outside the shores of Nigeria, and so the claimant could not have gone to the defendant premises anywhere outside the shores of Nigeria to make such enquiry as it doesn't exist.

It is submitted that a close look at the letter from the EFCC will disclose that the said letter was served on the defendant on the 8th of August, 2019 by 2:07pm in the afternoon and there is no way the defendant could have represented the EFCC and freeze the account prior to the arrival of the letter and so the claimant got wind of existence of such letter through any source only known to him, and took such advantage to

impose restrictions on himself and lastly submitted that under the principle of equity, the claimant must have come with a clean hand and that the claimant has no placed before the court a proof that the defendant restricted his account either by dishonoured cheque or computer generated evidence or any relevant document or material to substantiate his claim, and he cited the case of **Omo Boriowo V. Ajasin (1984) 1 SC 6202**. The counsel then urge the court to discountenance this suit and dismiss it.

Thus, the claimant filed this suit and sought for the interpretation of the issues as formulated earlier as by way of originating summons. See the case of **Olomada V. Mustapha (2011) 1 All FWLR (pt. 559) p. 1086 of 1137 – 1138, paras. H-A**.

The first issue is: **whether the letter hereto annexed and referenced CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 "Investigation Activities Onwumerie Ogor Gift" 6231654895 upon which the defendant freeze, place a lien, took possession of/forfeited and/or acquired interest in the monies in the claimant's account can amount to a valid court order so as to enable the defendant to freeze the claimant's account domiciled in the defendant?**

The claimant exhibited a document, which is a letter written to the defendant by the EFCC and the document was used upon which to freeze the account o the claimant. The document with reference No. CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 "Investigation Activities Onwumerie Ogor Gift 6231654895" is a letter addressed to the defendant and not a court order. Assuming but not acceptable that it is an order, certainly it is not a court order upon which the defendant would rely upon it to freeze the account of the claimant, this is because the letter given is in contravention of section 34 of the EFCC Act 2019 which provides:

“(1) Notwithstanding anything contained in any other enactment or law, the chairman of the Commission or any officer authorised 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 or any enactments specified under section 6 (2) (a) – (f) of this Act, apply to the court exparte 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 contact of the financial institutions 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,”

By the above quoted provisions of section 34 (1) of the EFCC Act, the chairman or any other officer authorized by him can apply to the court exparte for an order to freeze the account of any person when it is satisfied that the money in the account of such person is made through the commission of a crime under the EFCC Act or any other enactment. So the area of concern in the above quoted provisions is “may apply to the court exparte to issue or instruct a bank examiner or to such other appropriate regulatory authority to issue an order as specified in Form B to the schedule to this Act”, and by this it can be inferred to mean that the chairman or any other person authorised by him, can apply to the court exparte for an order to freeze the account of a person whom it is reasonably suspected the money in that account is made through the commission of a crime. I therefore answer the above question in the negative that the letter referenced

CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 “Investigation Activities Onwumerie Ogor Gift” 6231654895 is not an order of court upon which the defendant can make use of it to freeze the account of the claimant, or exercise or place any lien or acquire any interest in the monies of the claimant and I therefore so hold. Unless and until the chairman or any other person authorised by him obtain an order of court *ex parte*, the chairman cannot freeze the account of the claimant at all and to this I so hold.

The second issue is: **whether considering the EFCC ACT 2019, in the absence of a valid court order, the letter CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 can be given effect to, to freeze, place a lien or place a post no debit, take possession of/forfeit, acquire interest in the monies vested in the claimant’s account No. 6231654895 for the subsisting period, without a valid court order?**

In considering the above quoted provisions of section 34 of the EFCC Act, the chairman or any other person authorised by him cannot freeze, place a lien or place a post no debit, take possession of/forfeit acquire interest in the monies vested in the claimant's account no. 6231654895 for the subsisting period without a valid court order and I therefore answer the above question in the negative, and I therefore so hold.

The next question is: **whether the act of the defendant to have unilaterally placed a lien or post no debit on the claimant’s account number 6231654895 for more than three years without any valid order of court is not illegal, unlawful, null and void?**

It is in the affidavit of the claimant that upon enquiries, investigations and further prove on the issue, the claimant was shown a letter at the bank purportedly written by the EFCC as the basis upon which the claimant's account was

frozen and apart from the said letter no court order was shown to the claimant directing the defendant to give effect to the content of the letter and the claimant was never invited by the EFCC and has never been informed by the EFCC of the commission of any offence, and even though it was denied by the defendant that the account was frozen, and that the claimant waited for the defendant to unfreeze the said claimant's account, but the defendant did not do so since 2019 and to the time of filing this suit.

To this, the provisions of section 44(2) (k) of the constitution of Nigeria, 1999 (as amended) will come limelight which provides:

“No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in a manner and for the purposes prescribed by law that, among other things:

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law:

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry...”

By the above quoted section, it can be construed that no property of another person shall be taken away compulsory or shall be acquired compulsory except in the manner mentioned in paragraph (k) of subsection (2) of section 44 of the constitution. The question is: can three years be taken as temporary? The answer is in the negative, that is to say the three years of freezing the account of the claimant is inordinate without any

investigation or enquiry. It is in the affidavit of the claimant that the claimant was never invited to the EFCC for him to be told of the crime that he committed and he was never told of the offence he alleged to have committed that caused the EFCC to give instruction to the bank. See the case of **Annam V. B.S.J.S.C. (2006) All FWLR (pt 296) p. 848 at 856, paras. F-G** where the Court of Appeal, Jos Division gave the interpretation of the word "Temporary" to mean lasting for a time only, existing or continuity for a limited short time. So the period of three years taken without investigating into the activities of the claimant in account no. 6231654895 is inordinate and it is against the spirit of section 44 of the 1999 constitution and is therefore null and void. The defendant in his affidavit alluded to the fact that the order to freeze should not exceed 72 hours and therefore three years is inordinate.

The last question is: **whether the freezing of the claimant's account where he maintains account No. 6231654895 amounts to a tort, a gross and brazen violation of the claimant's fundamental right to own, acquire and possess property and a breach of his right to personal liberty as enshrined in Article 4, section 35(1) of the constitution of the Federal Republic of Nigeria 1999, (as amended)?**

The freezing of an account of the claimant without a valid court order by the defendant is a gross and brazen violation of his fundamental right to own a property in Nigeria and is a breach of his fundamental right under section 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and I therefore so hold. See the case of **G.T.B. Plc V. Odeyemi Oluyinka Joshua (supra)**.

Now, the question that agitates in the mind of this Honourable Court is: **whether the claimant is entitled to the reliefs sought?**

On the relief No. I, and by virtue of section 34 of the EFCC Act, 2004 the defendant is not empowered to freeze the account of the claimant or even to place a lien or post no debit without a valid court order first had and obtained by the EFCC *ex parte*. It is in the affidavit in support of the originating summons that the claimant made attempts to withdraw money from the said account but proved unsuccessful and that when he proceeded to the defendant premises, he was told that this was a directive issued by the law enforcement agency to freeze the claimant's account. It is incumbent to look at the letter written by the EFCC to see whether there was a directive of freezing the account of the claimant, more particularly paragraph 4 of the letter dated 5th August, 2019.

Paragraph 4 of the letter reads:

“More so, you are requested to place the account on caution with a view to assisting the commission in effecting the arrest of the account owner whenever seen and contact the following number 07039537587 and 08056648303”

By the above quoted paragraph 4 of the letter, it can be inferred that the commission did not categorically give instruction for the freezing of such account rather that it should be placed on caution, and to this, it can be inferred that the defendant acted on its own to freeze the account and that is unlawful having regard to the absence of a valid court order obtained *ex parte*, and I therefore so hold.

On the relief No. 2, and in the spirit of section 34 of the EFCC Act, the letter dated 5th August, 2019 cannot be said

to amount to a valid court order having not obtained it from the court.

By the provision of section 34 of the EFCC Act, the court must have an impact to grant such an order even though ex parte to freeze the account of the claimant and so as there is no valid court order, such letter dated 5th August, 2019 can never be a valid court order and it is not so.

On the relief No. 3, and in the spirit of section 34 of the EFCC Act, the defendant's act of freezing the claimant's account No. 6231654895 domiciled with the bank without a valid court order is arbitrary and illegal.

On relief No. 4, and until and unless the instruction is accompanied by a valid court order, by the provision of section 34 of the EFCC Act, the defendant is duly bound to ensure that there is a valid court order before proceeding to freeze the account of the claimant.

An order is hereby given to the defendant to unfreeze the claimant's account number 6231654895 domiciled with the defendant.

The claimant did not disclose under what circular that he is claiming 17% interest, and to that, the claim fails.

The claimant did not disclose how the sum of N6,000,000.00 as cost of exchange rate, and no evidence exist as to how he arrived at that figure as cost of exchange rate from 2019 to the time of filing this suit, and as such the claim fails.

Exemplary damages are awarded when a defendant's willful act was tortuous, violent, oppressive, fraudulent, wanton or grossly reckless and they are awarded both as a punishment and to set a public example. See the case of **F.B.N V. Attorney Gen. of Federation (2019) All FWLR 288 at 327, paras. B-C.**

In the instant case, the defendant solely relied on the letter from the commission with No. CR:3000/EFCC/HQ/AFF/T3/Vol.03/843 to have frozen the account of the claimant which is not a court order and therefore no malice was established by the claimant against the defendant, and the claim fails.

The claimant did not give in the affidavit as to how much he has spent as court fees in filing this suit and the claim also fails.

Hon. Judge
Signed
11/6/2024

Appearances:

Parties absent and no representation.

Richard Adeyemo Esq appeared for the claimant.