



IN THE HIGH COURT OF JUSTICE
IN THE FEDERAL CAPITAL TERRITORY, ABUJA
HOLDEN AT WUSE ZONE 2, ABUJA
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME
ON WEDNESDAY 12TH DAY OF JULY, 2023.

SUIT NO: FCT/HC/CV/844/2022

BETWEEN:

AKBAK ENGINEERING & TECHNICAL SERVICES LIMITED CLAIMANT

VS

KEYSTONE BANK LIMITED DEFENDANT

JUDGEMENT

The claimant commenced this action vide writ of summons filed on 15/3/2022. The pleadings in this case are: [i] the claimant's statement of claim filed on 15/3/2022; [ii] the defendant's statement of defence filed on 23/6/2022; [iii] claimant's reply to the defendant's statement of defence filed on 6/7/2022.

In the statement of claim filed on 15/3/2022, the claimant claims the following reliefs against the defendants thus;

- I. A DECLARATION that in the circumstances of this case, the defendant does not have any legal justification whatsoever to place restriction on the claimant's account number: 1005255752: Akbak Engineering Services Limited without any court order or instruction from any statutory government agency and to refuse to act on the instruction and majority resolution of the claimant to lift such ban,**
- II. A DECLARATION that the acts of the defendant of refusing to lift the restriction on the claimant's account number: 1005255752: Akbak Engineering Services Limited, is illegal, ultra vires the defendant's power as a commercial bank and it was done without any justification**

and that such and/or refusal to lift the restriction on the claimant's account has caused a lot of severe hardship and loss on the claimant.

- III. AN ORDER directing the defendant to forthwith lift the restriction on the claimant's account number: 1005255752: Akbak Engineering Services Limited, to enable the claimant access its account and run its business**
- IV. AN ORDER directing the defendant to pay the Claimant the sum of N100, 000,000.00 (One Hundred Million Naira) only as General Damages.**
- V. Cost of the proceedings.**

At the trial, Emmanuel Usman Dibal, manager of the claimant testified as PW1. He adopted his statement on oath filed on 15/3/2022. He also adopted his additional witness deposition filed on 6/7/2022 along with the claimant's reply to the defendant's statement of defence. PW1 tendered Exhibits 1, 2, 3, 4 & 5 respectively. Exhibit 6 was tendered during cross-examination of PW1.

AkudoAnyanwu, Keystone Bank service manager testified as DW1 for the defendant's. She adopted her statement on oath filed on 23/6/2022 and tendered Exhibit D1 and DW2.

Evidence of PW1 –Emmanuel Usman Dibal

PW1 testified that claimant had been operating an account with the defendant and the signatory to the account was one AlhajiAbdulkadirBakari who is now deceased and upon his death the claimant Board of Directors by resolution appointed Mariam Bakari (a director and shareholder) as the claimants managing director and sole signatory to its account with the defendant.

Defendant was served with the resolution but claimant could not access the account. When Mariam Bakari went to the defendant's office at M.K.O Abiola house, central business district Abuja to make inquiries but was told by the officials of the defendant that some individuals had made some complaints on the account and that is why the defendant placed restrictions on the account. The claimant counsel wrote demanding the lifting of the restriction on the account and the defendant replied that it will not lift the restriction on the claimants account until the claimants furnished the defendants with the document of change the claimant filed at the corporate affairs commission (CAC). Claimant counsel replied that it was not the requirement of the law to furnish the defendant with evidence of filing the change in the claimant's signatory at the CAC provided the claimant has formally informed the defendant of its Board Resolution.

Due to the restriction on the claimant's Account, the claimant is now closing its business because it can no longer pay its staff salaries and allowances, nor can the claimant execute any contracts.

Claimant's customers, including National Hospital, Abuja, have started telling the claimant of their intention to stop awarding contracts for the claimant on the ground of the claimant's inability to execute the already awarded contracts/job orders to the claimant. The contracts could not be executed owing to lack of existing account to send funds and lack of access for the claimant to access the funds in the account with the defendant to execute the contract. Claimant calculated what it could have earned from its job orders to the tune of ₦1,186,711.60.

In the further statement on oath, PW1 testified that Fadimatu Bakari was physically present at the meeting of the claimant on 26th June, 2021 and the defendant was duly notified about that via the original resolution that was served on the defendant.

Claimant's solicitors served the defendant with 3 different letters, one from B. A. Wali & Associates and two from West - Wig Attorneys, demanding the defendant not to heed to the unfounded allegation and to uplift the restrictions on the claimant's account but the defendant refused to lift the restrictions on the claimant's account.

The claimant could not trace the copy of the 2nd demand letter to the defendant from West Wig Attorneys due to the packing and taking out of the belongings of the deceased Chief Executive of the claimant. That after the pleading and filing of this suit, the National Hospital, Abuja has retrieved the originals of the job orders awarded to the claimant, cancelled same and re-awarded to another company.

During cross examination of PW1 by learned counsel for defendant, [Patrick Ogu Esq.] PW1 admitted that he is not a signatory to the account and may not know transactions that occurred in the account but he prepares schedule of payment and he does not see the alerts and debits. He knew there was issue with the account because as the manager he is responsible for the salary account and when he takes the schedule to the bank the schedule is turned down and that is how he came to know that there was an issue with the account. He prepares the schedule and the signatory to the account signs on the schedule and that is when the bank will honor it.

He identified the schedule which was admitted as Exhibit 6. He admitted not knowing debit on account and it is the duty of the account holder to confirm if there is a debit or restriction. He admitted that in December 2021, he took schedule to bank and could not deposit but before then he cannot tell exact date but have it all in record. He also remembers January, 2022. They accessed account for 2 months after signatory was changed.

PW1 tendered the following documents:

- 1. Letter from B. A. Wali & Associates Exhibit 1**
- 2. The Claimant's resolution appointing Mariam Bakari, Exhibit 2**
- 3. Demand letter 25th November, 2021 Exhibit 3**

4. Reminder letter of the 6th December, 2021 Exhibit 4

5. Job Orders given to the Claimant by the National Hospital Abuja from August, 2021 — February, 2022 Exhibit 5

6. Breakdown of the Job Orders in tabular form Exhibit 6

Evidence of DW1 – AkudoAnyanwu:

Sometime in July into August 2021, the defendant received information via a board resolution purportedly passed by all the directors of the board on June 26, 2021 informing the defendant of the demise of the said AlhajiBakari, and appointing one Mariam Bakari as the new sole signatory to the claimant's account.

Defendant verified the information and in line with the defendant's obligation to carry out validly issued instructions from its customers, the defendant proceeded to effect the change of signatory on August 4, 2021 appointing the said Mariam Bakari as the new sole signatory to the claimant's account. Claimant proceeded to carry out several transactions and issue instructions on its account through its new sole signatory including the instruction of November 22, 2021 instructing the defendant to debit its account to the tune of ₦1,512,000.00 for the payment of salaries to its staff.

Sometime in late November/early December 2021, the defendant received a complaint from one of the Directors of the claimant, FadimatuBakari, alleging fraud/forgery and stating that she was never privy to the aforementioned board resolution of June 26, 2021 which was purportedly passed by all the claimant's directors. The said FadimatuBakari also demanded that the defendant reverse the mandate change on the claimant's account.

That in view of the grave allegations of fraud by one of the claimant's directors, the defendant was obligated to take immediate steps toward securing the claimant's funds and determining the veracity of the allegations. To this end, and in line with its obligation under the extant laws and the Central Bank of Nigeria's regulations on the prevention of fraud, the defendant took proactive steps to protect the funds of the claimant, and requested for the claimant's Corporate Affairs Commission documentation to enable the defendant determine the actual directors of the claimant with whom the defendant can deal with.

That upon concluding its further due diligence plus Know-your-Customer enquiries and establishing no factual/legal basis for the complaint of fraud received, the defendant immediately restored operation on the account on December 13, 2021 since which date the claimant's account has remained unrestricted and accessible. That the action of the defendant was a prudent way to protect the funds of the claimant.

During cross examination of DW1 by V. M. Aghoghovbia Esq., learned counsel for the defendant admitted that claimant maintains a corporate account with the defendant bank. she denied the bank blocking the account without any written complaint. That there was a written complaint from a director of the company claiming fraud and she was

unaware of the change of mandate. As the main account holder was deceased and they got a board resolution appointing a new account holder. She insisted there was a written complaint but it is a copy.

DW1 tendered the following documents:

- 1. Keystone Bank Ltd statement of account of Akbak Engineering Tech Services 1/1/21-4/7/22 Exhibit D1**
- 2. CTC of CBN regulation dated 11/6/2015 Exhibit DW2**

Issues for Determination:

At the end of trial, Patrick Ogu Esq. filed the final address of the defendant on 22/5/20223. Bashir S. Ahmed Esq. filed the final address of the claimant on 30/5/2023. On 5/6/2023, Patrick Ogu Esq filed the defendant's reply on points of law.

On 14/6/2023, the learned counsel for the parties adopted their respective final addresses.

Learned counsel for the defendant distilled a sole issue for the Court's determination, namely:

Whether the claimant has proved their case against the defendant to the reliefs sought in view of the peculiarity of this case?

Learned counsel for claimant posed two issues for determination, viz:

- 1. Whether the defendant is not estopped from raising objection from the second time on the issue of admissibility of the documentary exhibits which the Honourable Court had already overruled the defendant and admitted in evidence during trial.**
- 2. Whether the claimant has established its case against the defendant to enable the claimant to be entitled to the reliefs sought in this Suit.**

The claimant's reliefs I & ii, which I had earlier set out, are for declaratory orders to the effect that the defendant does not have any legal justification to place restriction on the claimants account number without any court order or instruction from either the claimant or any statutory government agency and the refusal to lift the restriction on the claimants account is illegal, ultra vires the defendants power as a commercial bank and it was done without any legal justification and that such and/or refusal to lift the restriction on the claimant's account has caused a lot of severe hardship and loss on the claimant. It seems to me that the success or otherwise of the other reliefs sought by the claimant will largely depend on the decision of the Court on the declaratory reliefs.

The law is well established that a party seeking a declaratory order or relief must adduce credible and sufficient evidence to prove his case. He must succeed on the strength of his

case and not on the weakness of the case of the adverse party. See the case of **AROWOLO V. OLOWOOKERE [2011] 18 NWLR [PT. 1278] 280.**

In the light of the above principles, the evidence adduced by the parties and the submissions of the learned counsel, the Court is of the considered opinion that two main issues that call for determination in this matter. Are as posited by counsel to the claimant. They are:

- 1. Whether the defendant is not estopped from raising objection to the second time on the issue of admissibility of the documentary exhibits which the Honourable Court had already overruled the defendant and admitted in evidence during trial.**
- 2. Whether the claimant has established its case against the defendant to enable the claimant to be entitled to the reliefs sought in this Suit.**

SUBMISSIONS OF LEARNED COUNSEL FOR THE DEFENDANT:

On claimant's alleged negligence on the part of the defendant, OguEsq argued that the PW1 is not a signatory to the account of the claimant and in line with **Sections 37 And 38 Of The Evidence Act**, his evidence is hearsay and court was urged to attach no probative value to same. Relying on **KAKIH V. PDP (2014) 15NWLR PART 1430 PAGE 418-419 PARA H-A.** court was urged to attach no probative value to the exhibits admitted by the claimant as they are photocopies and the court can expunge earlier admitted documents. Referring to **NWABUOKU V. ONWORDI (2006) ALL FWLR PART 331 PAGE 1236 AT 1252**

Exhibit P4 wherein defendant instructed claimant to file the change in signatory to the CAC pending which restrictions will remain on the account aligns with the testimony of DW1 specifically paragraph 9 of the witness statement on oath and facts admitted need no proof and the court is expected to act on it. Referring to **ATANDA V. ILIASU (2013) 6NWLR PART 1351 PAGE 529 AT 551 PARA A**

Counsel argued that defendant had a duty to ensure that they are dealing with the authorized persons of the claimant, hence the need for the claimant to furnish the defendant with certified true copies of their regularization with the CAC. In line with exhibit DW2 the CBN regulation. Bank has a duty to protect the funds of its customers relying on **UNION BANK OF NIGERIA PLC. V. NTUK (2003) 16 NWLR PART 845 AT PAGE 183 AND ODULATE V. FIRST BANK (2019) LPELR 47353**

Ogu Esq. submitted that defendant safeguarded the funds of the claimant in their custody when it received fraud related complaint as regards the account of the claimant which came immediately after the death of the sole signatory to the account. Relying on **KEYSTONE BANK LIMITED V. MARKETING AND MEDIA LIMITED (2016) LPELR CA and ZENITH BANK V. DAILY TIMES OF NIGERIA PLC. & ANOTHER (2022) LPELR C.A**

PW1 gave contradictory evidence in paragraphs 15 and 16 of the witness statement on oath. The claimant alleged that from August 2021 till February 2022, the claimant could not access its account with the defendant which is contrary to the narratives/entries in the account statement of the claimant Exhibit DW1 which states that the account statement reads from 1st January 2021 to 4th July, 2022 which shows withdrawals from the account in August and December 2021 thus discrediting the evidence of the witness when he said he could not execute the contract with national hospital due to its inability to access their account. Ogu Esq. submitted that the evidence of PW1 should not be attached any probative value. Referring to **OMISORE V. AREGBESOLA (2015) ALL FWLR PART 813 PAGE 1673 AT 1771 PARA E-F**

Counsel concluded by stating that on the imaginary scale, the defendant has shown credible evidence and point out the inconsistencies and gaps in the evidence of the claimant, that would make this Honourable Court to dismiss this case and excuse the defendant from any liability whatsoever. Relying on **C & C CONSTRUCTION COMPANY LIMITED V. OKHAI (2004) FWLR (PART 190) 1433 and ODOFIN & OTHERS V. MOGAJI & OTHERS (1978) NSCC 275 AT 277.**

SUBMISSIONS OF LEARNED COUNSEL FOR THE CLAIMANT:

ON ISSUE ONE, defendants counsel had urged this court to expunge the documents relied upon by claimant counsel and counsel to the claimant submitted that the defendant has not appealed against the ruling of the court admitting the said documents and they are caught up by the doctrine of estoppel. Relying on **TANKO V MODI (2019) 8 NWLR (PT 1675) 387 @ 405, PARAS B-G.**

ON ISSUE TWO, Bashir Ahmed Esq. submitted that the defendant has a contractual relationship with the claimant and owes the claimant obligations not to refuse to honour the claimant's instructions. The defendant's blocking the claimant's account amounts to breach of the contract between claimant and the defendant and refusal to allow the account of the claimant function is a sheer breach of contract. Relying on **LINTON IND. TRADING CO. (NIG.) LTD V. CBN (2015) 4 NWLR (PT. 1448) 94 @ 108, PARAS. C- E**

PW1's testimony covering paragraphs 14-21 was never discredited under cross-examination and Court was urged to rely on the piece of evidence to show that the defendant has subjected the Claimant to both financial hardship and reputation damages. Referring to **YONBISH V. MWANMUT (2020) 9 NWLR (PT. 1728) 149 @ 165, PARAS. A – B and LAWANI V. GRILLO & ORS (2018) LPELR – 44912.**

By virtue of exhibit 6, claimant suffered a huge loss to its reputation by the acts of the defendant, claimant is entitled to aggravated or exemplary damages by virtue of exhibit 3.

Counsel submitted that damages flow naturally from a breach of a contractual relationship by the bank. Referring to **UNITY BANK PLC V. AHMED (2020) 1 NWLR (1705) 364 at 390, paras. F – G.**

DWI stated during cross-examination that the defendant placed restriction on the claimant's account owing to a complaint of fraud by one of the directors of the claimant but that complaint was not tendered in court. Showing defendant is withholding evidence from the court and the court is entitled to enter presumption of withholding evidence against the defendant. Referring to **OGUDO VS. STATE (2011) 18 NWLR (Part 1278) page 1 at 31 para G-H**

Counsel submitted that failure to call a vital witness raises the presumption under **Section 149 (d) of the Evidence Act** that had he been called the evidence he would have led would have been unfavorable to the Respondent.

AhmedEsq. argued that there defendant does not have any legal justification to freeze the Claimant's account without a court order. By virtue of exhibit 3, the defendant constituted itself as a court of law or arbitrator between company directors. **Referring to G.T.B. PLC V. ADEDAMOLA (2019) 5 NWLR (PT. 1664) 30 @ 42 - 43, PARAS. A — H** as a bank or any investigation agency has no power whatsoever to freeze any person's account without a court order.

cases of **UNION BANK PLC V. NTUK (2003) NWLR (PT. 845) @ 183 and NWOSU V. ZENITH BANK PLC (2015)** supra are in support of the claimant's case as the bank cannot freeze the account without an order of court and the bank ought to write to its customer for confirmation of change of signatory to the account.

DEFENDANTS REPLY ON POINTS OF LAW

Counsel's argument against the documentary evidence of the claimant is not on the admissibility of the documents. Rather the legal argument is on the weight and probative value and court was urged not to attach probative weight and value to them. Relying on **NWABUOKU V. ONWORDI (2006) ALL FWLR PART 331 PAGE 1236 AT 1252 PARA C-F per Tobi JSC** Court was urged to hold that the documentary evidence tendered by the claimant, though admitted does not carry probative value and weight.

Thus, defendant is not caught up with the issue estoppel as canvassed by the claimant as the above legal arguments of admissibility of documentary evidence and probative weight to be attached therein are distinct and different legal arguments.

The claimant relied on the judicial authorities of **G.T.B. PLC V. ADEDAMOLA (2019) 5 NWLR (PART 1664) 30 @ 42 -43, AND MEGA WEALTH LIMITED V. S.E.C (2017) 13 NWLR (PART 1583) 345 @ 378, PARA. D-E AND 380 PARA A - C.**counsel to the defendant distinguished them from the case at hand and argued that the duty of the Bank is to safeguard the customers' funds in the custody of the Bank.

The Bank is duty bound to ensure that customer's funds are safeguarded especially when the sole signatory of the account is dead as happened in the instant case;the bank is duty bound to safe guard the funds of the customer, which is the claimant. Relying on Exhibit DW2.

DECISION OF THE COURT

On issue One,

Counsel to the defendant had urged court not to attach probative value to all the exhibits 1-5 tendered through DW1 as they were tendered through PW1 who is not a signatory to the account and is not a director in the claimant company.

It is trite that where a document was wrongly admitted in evidence by a court, the same court has the power to expunge it at the judgment stage since it can only base its judgment on legally admissible evidence and documents. See **NWAOGU V. ATUMA [2013] 17 NWLR [PT. 1364] 117 AND ETIM V. AKPAN [2019] LPELR-48681 [CA]**.

I have considered the exhibits 1-5 relied upon;

The query is that PW1 is a mere manager and the documents should not have been tendered through him in his witness statement on oath he had this to say in paragraph 1;

"That I am the Manager of the Claimant and as such, I am conversant with the facts of this case."

The manager of the company is presumed to be knowledgeable of the day to day running of the company.

In **STANDARD TRUST BANK LTD V. INTERDRILL NIG LTD &ANOR (2006) LPELR-9848(CA) (PP. 15 PARAS. A)**

"The law ascribes to a limited liability company the possession of a brain and a nerve centre, which controls what, it does. Since it cannot form an intention within its abstract body, to operate, it must act through its agents; its employees or servants, who are often regarded as the hands to do the work of the company these are not in law, regarded as representing the mind or the will of the Company. Another category of employees of the legal fiction is the managers and directors; the law ascribes the right to control the will and mind of the company to this category of higher employees; the state of their minds is treated by the law as that of the limited liability company, a mere legal fiction".

Therefore, the law on hearsay evidence does not apply to him as he is aware of the documents relied upon and I so hold.

Exhibit 5 is the national hospital orders it is clear and apparent that national hospital is a public institution and the only admissible form for a public document is the certified true copy. Per EKANEM, J.C.A stated in **NASARAWA STATE GOVERNMENT & ORS V. J.M. TECHNOLOGIES LTD (2019) LPELR-48082(CA) (PP. 7 PARAS. C)**

"It is indeed the law as stated by appellants' counsel that the only admissible copy of a public document is a certified true copy of it. This is by virtue of **Sections 89(e) and 90(1)(c) of the Evidence Act, 2011 (as amended).**"

I hereby mark the Exhibit 5 as rejected and expunge it from the record.

On Issue 2,

In order for the Court to determine if the claimant has adduced credible or sufficient evidence to prove that defendant had a duty to restrict the account of the claimant, the starting point is to state the position of the law on burden of proof in civil cases.

Section 133[1] & [2] of the Evidence Act, 2011 provide:

- 1) 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.**
- 2) If the party referred to in subsection [1] of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.**

From the above provisions, it is the law that in civil cases, the claimant has the first or initial burden to prove the existence or non-existence of a fact relied upon in support of his claims. However, the burden of proof in civil cases is not static; it shifts from one party to the other depending on the state of the pleadings. In the case of **OLAIYA V. OLAIYA [2002] 8 NWLR [PT. 782] 652**, it was held that in civil cases, the burden of proof may shift depending on how the scale of evidence preponderates. Where the claimant gives evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established, the burden will shift to the defendant to disprove that fact.

In the instant case, the claimant tendered Exhibits 1 to 4 to prove that the defendant restricted the account of the claimant. Exhibit 1 is the letter written to A. A. Machika & Co. by claimant counsel complaining as follows;

2.It is our client's brief that the above name bank account with Keystone Bank has been blocked at the instant of your client's complaint

3. We have the instruction of our clients to bring to your attention the following regarding the account;

a) Workers salaries are being paid from the account

b) Sources of consumable to be used by the company are funded from the account

c) our clients and third parties have injected their resources/money into business of the company to prevent termination of the company's contract with National Hospital.

d) Continue freezing the account will cause a serious business problem to the company which may affect its relationship with National Hospital to the advantage of the company's competitors

4. following 3a to d above, we are of the opinion that it will be advantageous to all parties for your client to withdraw her complaint with a view to lifting the caveat on the account.

Exhibit P2 is the extract of the minutes of the meeting appointing MISS MARIAM BAKARI as sole signatory and managing director of the account. Exhibit P3 is the letter by the claimant demanding immediate reversal of the debit restriction placed on Account No. 1005255752 belonging to CLAIMANT refers as follows;

"... It is equally our clients instructions that for some months now you have willfully and without legal justification placed a restraint on the said account; thereby preventing our client from making any withdrawals or payments therefrom. That upon complaint to you, you simply informed our client that some individuals have made a complaint against the company for which reason you placed the account on the said restriction. That despite several requests, our client was not furnished with the details of the said complaint nor its legal basis."

Consequently, we have our client's instruction to call your attention to the following:

1. That your contract relating to the said account was with AKBA Engineering and Technical Services limited and not with any particular individual

- 2. That a company acts through its board of directors and appointed agents and that it is a breach of banker-customer relationship for you to refuse to make payment upon demand by our client regarding amounts standing to its credit.**
- 3. That to the best of our clients knowledge there is no order from any court of law or from any constituted authority with requisite constitutional power authorizing you to act in the manner you did.**
- 4. That our client suspects that your company seems to be acting in connivance with some individuals to frustrate and paralyze its business and will hold you responsible for same.**

The gamut of this letter is to demand from you the immediate lifting of all restraints on debits, withdrawal and payments from the account as quoted above...

Exhibit P4 is the letter from keystone stating thus;

Kindly advise your client to urgently ensure that the changes in the company is properly filed at Corporate Affairs Commission (CAC) and the relevant documents made available to us within 7 days of this letter.

Consequent upon when we do not get the relevant updated CAC documents, we shall continue to enforce restriction on the account until the company shareholders issued as resolved.

The PW1 under cross examination stated;

Question: Since you admitted you may not know debit how did you know claimant could not access account?

Answer: As a manager I am responsible for salary of account when I took schedule to bank the schedule would be turned down that's how I know there is an issue with account

Question: Who prepares schedule

Answer: I prepare schedule

The totality of the evidence of the claimant is that their account was frozen and they have not been allowed access to it due to the restriction placed on the account by the defendant and further buttressed by exhibit P4 and because of same they lost business with their clients especially the National Hospital, Abuja.

The case of the defendant in a nutshell is that sometime in late November/early December 2021, the defendant received a complaint from one of the Directors of the claimant, FadimatuBakari, alleging fraud/forgery and stating that she was never privy to the aforementioned board resolution of June 26, 2021 which was purportedly passed by all the claimant's directors. The said FadimatuBakari also demanded that the defendant reverse the mandate change on the claimant's account. See Paragraph 9 of the statement of defence and witness statement on oath.

Exhibits DW1 and DW2 were tendered through the witness. DW1 is the account statement of the claimant from 1st January, 2021 to 4th July, 2022 and DW2 the CBN guidelines which specifically states that the fraud desk deposit money banks offer the following services;

3. Block and/or Place No Debit restrictions on accounts upon receipt of fraud complaint

According to Section 56(2) of the BOFIA, the CBN Governor is empowered to make rules and regulations for the operation and control of all institutions under the supervision of the bank.

Need I state at this point that the CBN regulation relied on by the defendant as captured above does not tally with section 97 of BOFIA which states that;

"where the Governor has reason to believe that transactions undertaken in any account with any bank, specialised bank or other financial institution are such as may involve the commission of any criminal offence under any law, the Governor may make an ex-parte application for an order of the Federal High Court Anyone who has an account with any bank or other financial institutions in Nigeria can be affected".

The relevant words in the section are "where the Governor has reason to believe transactions undertaken in any account..." This means individuals, organisations, corporate entities, and others, maintaining an account with any bank in Nigeria, are subject to this provision.

1. The CBN Governor, on his own, does not have the power to order the freezing of any account; only the Federal High Court has the power to make such order, after which the CBN can direct any bank, pursuant to the Court order, to freeze the accounts specified in the order. If the CBN makes an attempt to order a commercial bank to freeze the bank account of any person, such order will be invalid.
2. The role of the CBN is to bring an ex-parte application with an accompanying affidavit on oath to the FHC for an order to freeze an account.
3. The grounds upon which the CBN can apply to the Court for an order to freeze an account is if the CBN Governor has reasons to believe that transactions undertaken in such bank account may have involved the commission of any criminal offence under any law in Nigeria.
4. Where an account has been frozen, the CBN Governor shall refer the matter to the relevant government agency, except where the matter relates to the contravention of the provisions of any enactment administered by the CBN, like the BOFIA Act, the Foreign Exchange (Monitoring and Miscellaneous) Provisions Act.

However, The Constitution is the Supreme law of the land. The Constitution confers jurisdiction in the Court. By the combined provisions of Section 1 (1) and (3) of the Nigerian Constitution, any law or enactment that contradicts the provisions of the Nigerian Constitution shall, to the extent of its inconsistency, be null and void. Thus, the

provisions of the CBN Regulation; sections 56(2) and 97 of the BOFIA cannot oust the judicial powers and jurisdiction of the High Court as conferred by Section 6 (6) (a) & (b) and 236 of the Constitution of the Federal Republic of Nigeria 1999. Thus, the bank cannot restrict an account prior to obtaining a court order doing so would be unconstitutional.

In **WEMA BANK V. OYEKANMI (2017) LPELR-50503(CA) (PP. 35-36 PARAS. D)** Per **OGAKWU, J.C.A**

"A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to the operations within its contract with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with its customers. Thus, the duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer"in **GTB V. REGISTERED TRUSTEES OF NEPWHAN (PP. 18 PARAS. B) (2021) LPELR-54609(CA)"** Per **YAHAYA, J.C.A..**

In **MEKWUNYE VS. EMIRATES AIRLINES (SUPRA)**, the Supreme Court held that once a breach of contract is established by the plaintiff, then damages follow, and the general damages to be awarded, are the losses that flow naturally. It is not pleaded or proved but generally assumed. see also **RE:ABDULLAHI (2018) 14 NWLR (PT.1639) 272 AT 295."**

Both parties are in unison on the fact that the defendant bank responded to a complaint filed by the complainant which gave rise to the restriction being placed on the account. Exhibit P1 is an admission on the part of the claimant as it is a letter written to the complainant's lawyer urging it to advise the client to withdraw the complaint.

e) Following 3a to d above, we are of the opinion that it will be advantageous to all parties for your client to withdraw her complaint with a view to lifting the caveat on the account.

Exhibit P2, that upon complaint to you, you simply informed our client that some individuals have made a complaint against the company for which reason you placed the account on the said restriction

It is trite that facts admitted need no further proof see **KANO V. THE GOVT OF ADAMAWA STATE & ORS (2014) LPELR-24161(CA) (PP. 53 PARAS. A)** Therefore it is clear that there is a complaint against the claimant which was filed at the defendant bank. The argument of claimant counsel that failure of defendant to present the complaint amounts to withholding of evidence will not avail the claimant because the claimant himself has acknowledged that there was a formal complaint filed at the bank even though neither party tendered it in evidence but both parties admitted them in their evidence.

Therefore, the question which calls for answer is whether the defendant can restrict the account based on the complaint and the CBN directives?

Exhibit P4 states thus; Consequent upon when we do not get the relevant updated CAC documents, we shall continue to enforce restriction on the account until the company shareholders issued as resolved.

In **ZENITH BANK V. WAILI (2022) LPELR-57349(CA) (PP. 38-40 PARAS. E) PER GEORGEWILL, J.C.A;**

referring to **G.T. Bank Plc V. Adedamola (2019) 5 NWLR (Pt. 1664) 30 @ p. 43**, where it was held inter alia thus:

"Before freezing a customer's account or placing any form of restrain on any bank account, a bank must be satisfied that there is an Order of Court".

The lower Court was therefore right when it held that the relationship between the Respondent and the Appellant was that of a Banker/Customer and thus contractual in nature, a breach of which may lead to damages as it is the duty of the Appellant, the Bank to exercise reasonable care and skill in dealing with the account of the Respondent, its customer.

The Supreme Court had stated **SEE AGBANELO V. UBN (2000) 4 SC (PT. 1) 233 @ P. 24**, firmly and with finality inter alia thus:

"The Defendant's duty to exercise reasonable care and skill in regards to the customers affairs is undoubted... A Bank has a duty under its contract with the Customer to exercise reasonable care and skill in carrying out its part with regards to operations within its contract with its Customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the Customer."

In the instant case, the bank owes a fiduciary duty to its customers and upon receipt of a complaint ought to investigate the complaint notify the claimant. The bank has no power to freeze or restrict an account without an order of the court and without reverting back to the client.

It is confusing that there was a purported complaint by FADIMATU BAKARI when from the content of Exhibit P4 FadimatuBakari was present at the board meeting appointing Mariam Bakari as the sole signatory to the account. There appears to be no basis for restricting the account on the basis of a complaint by a participant at the meeting.

There is no law that states that before bank can effect changes they must register the resolution at CAC, it is a subtle way of refusing the request of the customer.

In paragraph 11 of the statement of defence defendant averred;

11. Upon concluding its further due diligence plus Know-your-Customer enquiries and establishing no factual/legal basis for the complaint of fraud received, the Defendant immediately restored operation on the account on

December 13, 2021 since which date the Claimant's account has remained unrestricted and accessible.

This is a clear admission by the defendant that they indeed froze/restricted the account of the claimant but have now restored same back.

Paragraph 11 aforementioned reveals that the account is now active and facts admitted need no further proof. Exhibit DW1 was tendered to show that the claimant has been making withdrawals from its account especially during the period of the restriction. Exhibit DW1 is for a period of 1st January, 2021 to 4th July 2022 and the case of the claimant is that they had no access to the account and could not pay salaries of their staff.

Under cross-examination of PW1 by defendant counsel he stated as follows;

Question: Prior to December 2021 have you been able to pay salaries to your staff?

Answer: I don't have the record with me now

Question: In Paragraph 19 of the written statement on oath you mentioned that claimant would have made a profit of N1,186, 711.60 from contracts as you could not access your account. Does this give you an idea of monthly profit?

Answer: At time of filing suit those are job orders we had on ground I don't have record with me.

Question: Prior to December 2021 when company could not access account who was signatory to account?

Answer: Mrs. Mariam Bakari

Question: Before December, 2021?

Answer: Initially it was the father after his demise on 31/1/2021

Question: Since that time, the company never accessed account?

Answer: they accessed account after the directors came together to have a meeting which is board resolution that was tendered.

Answer: after board resolution we accessed account for 2 months I do not have record.

From the evidence of defendant the restriction must have been for a 2 week period see paragraphs 7-9 and 11 of the statement of defence;

7. That upon verification of the aforementioned information from the claimant and in line with the defendant's obligation to carry out validly issued instructions from its customers, the defendant proceeded to effect the change of signatory on August 4, 2021 appointing the said Mariam Bakari as the new sole signatory to the claimant's account.

8. That the claimant proceeded to carry out several transactions and issue instructions on its account through its new sole signatory including the instruction of November 22, 2021 instructing the defendant to debit its account to the tune of ₦1.512,000.00 for the payment of salaries to its staff.

9. That sometime in late November/early December 2021, the Defendant received a complaint from one of the directors of the Claimant, Fadimatu Bakari, alleging fraud/forgery and stating that she was never privy to the aforementioned board resolution of June 26, 2021 which was purportedly passed by all the claimant's directors. The said Fadimatu Bakari also demanded that the defendant reversed the mandate change on the claimant's account.

11. That upon concluding its further due diligence plus Know-your-Customer enquiries and establishing no factual/legal basis for the complaint of fraud received, the defendant immediately restored operation on the account on December 13, 2021 since which date the Claimant's account has remained unrestricted and accessible.

The essence of tendering the account statement was to discredit the PW1 and show they had access to their account and could pay salaries during the period of August and December, 2021 and could not execute the contract with National Hospital. However, the statement of account was dumped on the court and the witness did not speak to the credit and debit transactions that occurred in the account.

In **UNION BANK OF NIGERIA PLC V. ONWUKWE (2017) LPELR - 43229 @ 27 - 28**, it was enunciated that:

"The law is trite that Documentary evidence tendered and admitted in proof of a party's case remains dormant, unless and until they are activated by oral evidence to allow the Court speaks to them. Where the party dumps them on the tribunal or Court, without relating them to the averments in its petition, the umpire (the Court) will not discern and decide what document is meant to prove which particular averment in the petition" A. C. N v. Nyako (2015) 18 NWLR (Pt. 1491) 352 @ 395."

In **NAGEBU CO. NIG. LIMITED V. UNITY BANK PLC (2014) 7 NWLR (PT. 1405) P. 42 AT P. 84 PARAS. E-H**, the Court of Appeal per Abiru, JCA held that:

"As a general principle, a statement of account cannot, on its own, amount to sufficient proof to fix liability on the customer for the overall debit balance shown on the account. Any person who is claiming a sum of money on the basis of the overall debit balance in a statement of account should adduce both documentary and oral evidence explaining clearly the entries therein to show how the overall debit balance was arrived at...Where there is a dispute on the indebtedness, the party cannot just toss and dump before the

court the statement of account in proof of the indebtedness of the customer for the overall debit balance therein. It must demonstrate through oral evidence given by an official who is familiar with the accounts, how the debit balance was arrived at”.

The Apex Court, in the case of **OKEREKE V. UMAHI & ORS (2016) LPELR -40035 (PP. 54-55, PARAS. E-A)**

“when dealing with documents admitted in evidence without oral evidence from the witness, who tendered same, had this to say:”... “Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a Court or Tribunal and expect the Court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to a breach of the principle of fair hearing”.

The written address captured the entries and payments into the account but it is trite that no matter how brilliant and persuasive counsel's address may be, it can never take the place of evidence. See **ABUR NGOBUA v. THE REGISTERED TRUSTEES OF NKST (2022) LPELR-59076(CA) (Pp. 19 paras. C).**

I therefore discountenance the exhibit and attach no weight to it.

The evidence of the witness of the claimant remains unchallenged and unshaken under cross examination. I find that the discrepancy in the evidence of the witness is not material and is a minor discrepancy. See **HECTARES KONSORTS LIMITED & ANOR V. LOWER BENUE RIVER BASIN DEVELOPMENT AUTHORITY & ORS (2020) LPELR-50357(CA) PER OTISI,JCA (PP. 45-46, PARAS. F-E).**

Court was urged to discountenance the cases of **G.T.B. PLC V. ADEDAMOLA (2019) SUPRA @ 42 -43, AND MEGA WEALTH LIMITED V. S.E.C (2017) SUPRA @ 378, PARA. D-E AND 380 PARA A - C.**as they are distinguishable from the suit at hand.

I have considered the cases and yes I agree that each case has to be considered based on its own peculiarities as no two cases are the same but they can be similar see the admin. & exec. of the estate of **ABACHA V. EKE-SPIFF & ORS (2009) LPELR-3152(SC) (PP. 64 PARAS. D)**However, what both cases have in common with each other and with this case at hand is that before a bank can freeze an account, a court order must be obtained.

Therefore, I discountenance the argument of defendant case on this point. The defendant had no power to freeze the account before obtaining the court order. The CBN directive cannot take the place of the law on the requirement to obtain a court order before freezing an account. Sections 56(2) of BOFIA, section 34 of the EFCC Act, etc. the bank had a duty to their customer to inform them of the complaint which they failed to do and left the claimant to discover by himself when he tried to make a withdrawal which goes against the fiduciary relationship between both parties.

The only question that arises here is as to what quantum of damage to be awarded the claimant. Claimant calculated what it could have earned from its job orders to the tune of ₦1,186,711.60. however, this court expunged the purported job orders having found them to be legally inadmissible. The law is trite that he who asserts must prove see **MV "WESTERN STAR" & ORS V. B.L. LIZARD SHIPPING COMPANY LTD (2013) LPELR-21470(CA) (PP. 30-31 PARAS. G)** The claimant did not satisfy this court by cogent evidence of the loss of job orders based on the restriction to the account and I so hold.

The general rule established in the case of **HARDLEY V BAXENDELE** which is that a party in breach is only liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract provided that such damage could reasonably have been within contemplation of the parties at the time when the contract was made, is usually NOT applicable to cases of banker to its clients. Damages in such cases like one on hand, of breach of banker duty to customer "is at large", which is to say that in such cases, the court may award such amount as it seems reasonable in the circumstances of the breach of contract even though there is no proof of actual loss.

So held the Supreme Court in the case of **BALOGUN V NATIONAL BANK OF NIGERIA LTD (1978) 3 SC 155** and followed by the Court of Appeal in **SALAMI V SAVANNAH BANK (1990) 2 NWLR (PT 130) 106 @ 127.**

The law is trite by virtue of section 131 of the evidence act that he who asserts must prove. This court is satisfied that the claimant had been able to prove their case to entitle them to judgment. I hereby answer the sole issue for determination in the affirmative and in favor of the claimant and **I HEREBY ORDER AND GRANT AS FOLLOWS;**

- I. A DECLARATION that in the circumstances of this case, the defendant does not have any legal justification whatsoever to place restriction on the claimant's account number: 1005255752: Akbak Engineering Services Limited without any court order or instruction from any statutory government agency and to refuse to act on the instruction and majority resolution of the Claimant to lift such ban,
- II. A DECLARATION that the acts of the defendant of refusing to lift the restriction on the claimant's account number: 1005255752: Akbak Engineering Services Limited, is illegal, ultra vires the defendant's power as a commercial bank and it was done without any justification and that such and/or refusal to lift the restriction on the claimant's account has caused a lot of severe hardship and loss on the claimant.

- III. AN ORDER directing the defendant to pay the Claimant the sum of N3, 000,000
(Three Million Naira) only as general damages.
- IV. Parties to bear their own costs.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME

[JUDGE]

Appearance:

- | | |
|-----------------------------|----------------------|
| 1. Bashir Ahmed Esq. | for Claimant |
| 2. Patrick Ogu Esq. | for Defendant |