



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/1682/2022

BETWEEN:

BGONI MULTI SERVICES LIMITED

CLAIMANT

VS

**1. FIRST CITY MONUMENT BANK }
2. UNION BANK OF NIGERIA PLC }**

DEFENDANTS

JUDGEMENT

The claimant commenced this action vide an amended writ of summons filed on 1/11/2022. The pleadings in this case are: [i] the claimant's statement of claim filed on 1/11/2022; [ii] the 1st defendant's statement of defence filed on 5/12/2022; [iii] 2nd defendant's statement of defence filed on 1/12/2022; [iv] claimant's reply to the 1st defendant's statement of defence filed on 20/1/2023 [v] claimant's reply to the 2nd defendant's statement of defence filed on 22/12/2023

In his statement of claim filed on 1/11/2022, the claimant seeks the following reliefs against the defendants thus;

1. A DECLARATION that the action of the 1st defendant blocking, freezing, restricting and or/ placing a no debit instruction on the claimant's account no: 4286884012 maintained with the 1st defendant is unlawful, invalid and ultra vires.
2. A DECLARATION that the action of the 1st defendant refusing to honour fund request by the claimant and preventing the claimant from operating its

account maintained with the 1st defendant amounts to a breach of the defendant's contractual obligation to the claimant.

3. AN ORDER of this honourable Court mandating the 1st defendant to immediately unblock, unfreeze remove the no debit instruction and the restriction placed on the claimant account no: 4286884012 domiciled with defendant.
4. AN ORDER of this honourable court mandating the 1st defendant to allow the claimant to continue to operate its account domiciled with the 1st Defendant unfettered.
5. AN ORDER of this honourable court restraining the 1st defendant from further blocking, freezing or further placing the claimant's bank account on a no debit status except with an Order of court with a competent Jurisdiction.
6. The sum of ₦500,000,000.00 (Five Hundred Million Naira) only as general damages against the 1st defendant for the embarrassment, loss of business, loss of goodwill resulting from the 1st defendant's breach of its contractual obligations to the Claimant.
7. 21% post judgment interest from date of judgment until final liquidation.
8. Solicitors cost of this action at ₦10,000,000.00 (Ten Million Naira).

At the trial, Mohammed Bello Goni, Managing Director of the claimant testified as PW1. He adopted his 1st statement on oath filed on 1/11/2022. He also adopted his 2nd additional witness deposition filed on 22/12/2022 and his 3rd additional witness statement on oath 20/1/2023 along with the claimant's reply to the 1st defendant's statement of defence and claimant's reply to the 2nd defendant's statement of defence. PW1 tendered **Exhibits P1, P2, P3, 4, 5 and 6.**

Ayodele Ete control officer of First City Monument Bank testified as DW1 for the 1st defendant. He adopted his statement on oath filed on 5/12/2022 and tendered **Exhibits D1, D2 and D3.**

Zakari Uthman Manager Internal Control of Union Bank testified as DW2 for the 2nd defendant. he adopted his statement on oath filed on 1/12/2022 and tendered Exhibit D4.

Evidence of PW1 – Mohammed Bello Goni

The claimant is a customer of the 1st defendant and it maintains an account with the defendant with account number 4286884012 which is a business account. On 27/4/2022, he initiated a transfer from the 1st defendant's banking application to pay a customer for the forex purchased from her but decided to make an oral complaint he was told by the customer service officer that the account had been placed on restriction and he will be unable to withdraw from the account, there was no lawful reason given for failure of the account to operate. PW1 pleaded with the defendant to activate the account to enable claimant continue with business but 1st defendant failed to unblock and unfreeze the account. Upon refusal of 1st defendant to attend to the complaint by resolving the issues on its account, he engaged his lawyer who wrote a formal complaint to the 1st defendant. The 1st defendant responded that it was going to revert its position as to why the account was frozen, blocked or restricted. That since the 1st defendant prevented the claimant from operating its account and accessing its funds; its business has ground to halt.

Under cross-examination of PW1 by 1st defendant counsel (SAMUEL C. ONUNKWO), PW1 admitted that he is a licensed Bureau De change operative and licensed by CBN but his license is not before the court and he receives alerts on his phone via text or email. He received an alert of N29,500,000 sometime in April, 2022 and as at the time he approached the bank he was unaware that there was a court order restricting the account. He admitted that bank was right in restricting his account based on bank orders. He is also aware that there is an ongoing investigation by the police as to the said funds in his account.

Under cross-examination of PW1 by 2nd defendant counsel (K.O BALOGUN), he admitted that on the said transaction he did not do know your customer because it was his neighbor and because he did not conduct know your customer, he did not know it was proceeds of crime. He has been doing BDC business since 2014. He goes to the office every day and it is from there he conducts his business. He is the sole signatory, and sole owner of the company and he has 5 staff he works with that he pays salaries for but in December he did not pay them. He does other business such as buying and selling of rams. Because of the issue he has with the bank he asked his staff to go and look for something for the month. The 2 with him now his brothers and that is why they did not go. He did not present the Exhibit P1; the cheque to the bank because at the time he wrote cheque, he was using his app and he went to the bank, to customer care and customer care told him his account had been frozen so he did not present the cheque. His total salary wage per month is N235,000. He acknowledged exhibits 4 and 6. The court orders and admitted that his accounts (paragraphs 10, 11, 14 & 15) of the additional witness statement on oath of 22/12/2022) were all restricted before the court orders were obtained.

He admitted that in Exhibit 6, there is an application to renew the order. He agreed that where fraud has been discovered by a bank it will be wrong for the funds to be released.

Exhibits tendered byPW1 are;

- 1. Bank Cheque tendered and marked as Exhibit P1**
- 2. Letter of 4/5/2022 Exhibit P2**
- 3. Letter of 6/5/2022 Exhibit P3**
- 4. An Order of the Federal High Court, Lagos division in Suit No FHC/L/CS/927/2022 made on 21/7/2022 Exhibit 4.**
- 5. An Order of the Federal High Court, Lagos division in Suit No FHC/L/CS/927/2022 made on 5/10/2022 Exhibit 5.**

6. An Order of the Federal High Court, Lagos division in Suit No FHC/L/CS/1424/2022 made on 2/8/2022 Exhibit 6.

Evidence of DW1 – AyodeleEte

Testified to being a control officer for the 1st defendant and claimant maintains an account with the 1st defendant and withdrawal was restricted in the claimants account along with numerous other accounts following a suspected fraudulent transaction alert by Union Bank Plc (2nd defendant) and there was a large inflow of funds into the claimants account with the 1st defendant suspected to be a fraud sum. Due to the alarm raised by Union Bank and the court order served on the 1st defendant the account was placed on restriction. That due to the fraud complaint and Central Bank of Nigeria (CBN) circular on Establishment of Industry Fraud Desk dated 11th June 2015 (Exhibit D1), while the 1st defendant was carrying out its investigation on the fraud complaint by Union Bank, debits were not allowed on the account until investigation was completed acting on the CBN circular and court order. While the investigation was ongoing, a court order was granted on all accounts suspected to be connected with the said fraud in suit No **FHC/L/CV/927/22 delivered on 24/5/2022 and further extended to 7/6/2022, Exhibits D2 and D3.** The claimants account was part of the account restricted by the court order on, page 11 no. 45 Exhibit D2. A court order was obtained by the claimant vacating the order obtained in Exhibit D2. The Nigeria police also served them with a court order from the Federal High Court with suit no: FHC/L/CS/1424 between Commissioner of Police vs. Union Bank Plc & 24 others dated 2nd day of August, 2022 restricting the funds in the claimant's account Exhibit D3. See page 24 at No. 45 of the order of Exhibit D3 listing claimants account. The restrictions on the claimant account was not done by the 1st defendant as they were just obeying a court order. The Post-No-Debit Ordered by the court was placed to prevent all the account holders from reaping the

proceeds of fraud and the Post-No-Debit placed on claimant account was in compliance with an order of court. The bank as a financial institution has a duty to curb suspected illegal and fraudulent transactions and to investigate it. The bank has not breached its duty to the customer but only exercised due care, skills and diligence.

Under cross examination by 2nd defendant counsel (MUSTAPHA LAWAL)DW1confirmed that he received a fraud alert from Union Bank and how inter-bank fraud works is that there is a fraud unit and whenever there is an incident of fraud, they alert the recipient bank via mail through fraud group and purpose is to take immediate action to avoid fraud proceeds leaving the system. The implication of not complying with the CBN directives as contained in the circular is that it attracts sanction as they are licensed by the CBN.

Under cross examination by Claimant Counsel (ZEKERI GARUBA) admitted that before they restricted the account they did not obtain a court order and immediately they received the alert they placed restriction on the account. DW1 denied that the court orders Exhibit D2 and D3 have long collapsed because of the ongoing court case. Looking at Exhibit 5 it revealed that the case relied on in exhibit D2 and D3 has been discontinued. Exhibit 6 and the order contained therein made on 2nd August lapsed in 90 days. He admitted that they have ongoing cases in court and he is a witness and based on the court order he has been standing as a witness for many cases.

Exhibits tendered by DW1;

- 1. Photocopy of CBN directives dated 11/6/2015 along with certificate of compliance Exhibit D1**
- 2. CTC of court order dated 24/5/22 Exhibit D2**
- 3. CTC of court order dated 7/6/2022 Exhibit D3**

Evidence of DW2 – ZakariUthman

Testified as the Manager, Internal control for the 2nd defendant that sometime in April 2022, the 2nd defendant received a fraud alert petition from one of its customers, ENL Consortium Limited through its letter of 26th April, 2022, on the fraud on its account No. 0050546481 with the 2nd defendant, Union Bank Plc running into ₦523,337,100.00 (Five Hundred and Twenty-Three Million, Three Hundred and Thirty-Seven Thousand, One Hundred Naira) by criminal breach and hacking into the said account Exhibit D4. Upon receiving the petition, 2nd defendant originally caused an investigation to be carried out and subsequently reported the incident to the Nigeria Police, Fraud Department which immediately launched a criminal investigation that revealed that the aforementioned sum was found to have been filtered, stolen and fraudulently transferred into and through (18) accounts within the 2nd defendant; and the funds were subsequently moved and further transferred into (169) different bank accounts in 28 different banks including micro finance banks. The Claimant's account number 4286884012 domiciled with the 1st defendant was one of the beneficiaries of the fraudulent transaction.

The sum of N29, 500, 000 (Twenty-nine Million Five Hundred Thousand Naira) Only was traced to the claimant's account number: 4286884012 domiciled with the 1st defendant and the 2nd defendant immediately took steps to mitigate the fraud, once its investigation connected the claimant's account with the fraudulent transfers from its Customer's corporate account. That in line with the CBN Regulations, the 2nd defendant via its Fraud Desk sent an email to the 1st defendant on 28th April, 2022, informing the Bank that the Claimant was suspected to be a beneficiary of fraudulent inflow from the 2nd defendant's customer's account and the 2nd defendant further requested in the said email that the claimant's account be restricted in order to secure and salvage the funds pending the more comprehensive ongoing criminal investigation by the Police; to prevent the transferred funds from being dissipated as it was observed that the beneficiaries of the fraudulent transfers were dissipating the funds very fast, this

being consistent with the pattern of operation with the perpetrators of wire scams/online banking scam; the defendants action was in line with the CBN guidelines Exhibit D1. The 2nd defendant promptly approached the court to secure the relevant court order on the restriction on the account of the Claimant; the Police also obtained a court order for the duration of the ongoing investigation to ensure that the restriction on the claimant's account and that of others are covered and protected, in accordance with the due process of law. The court orders were secured in addition to the temporary restriction of the claimant's account in accordance with the established procedures under the Central Bank of Nigeria's Regulations Exhibit D1. Court was urged to dismiss the suit of the claimant for lacking in merit as there is no cause of action against the defendants.

Under cross examination by 1st defendant Counsel (SAMUEL ONUNKWO) confirmed that 2nd defendant sent fraud alert to 1st defendant and this alert is in line with CBN guidelines. And according to paragraph 19 of his witness statement on oath, police have 2 applications before court for reversal of monies and to extend court order and the police are currently investigating account and Union Bank has also reported fraud. The case was reported to the police Special Fraud Unit, Lagos.

Under cross examination by the claimant counsel (ZEKERI GARUBA) admitted that the name of claimant is not mentioned in the document Exhibit D4 but it has nexus between ENL and claimant as statement of account works with narration of who made transactions. One statement showing purchase of dollars and he was able to trace all accounts monies were transferred to and that is the nexus. The money was moved at 1st instance to about 18 accounts and to 116 different accounts in different banks and one of these banks is in FCMB and it is in FCMB that claimant account is in. He was unable to bring to court any instrument showing the narration. He admitted that there is currently no valid subsisting court order in respect of the account. He confirmed that Exhibit D1 was not signed by the CBN

governor but by DipoFatogun Director Banking and payment system CBN and it was issued in 2015.

Exhibit tendered by DW1

1. ENL consortium account with union bank 20th April, 2022 along with certificate of compliance Exhibit D4

ADDITIONAL WITNESS STATEMENT ON OATH OF PW1 TO 1ST DEFENDANTS STATEMENT OF DEFENCE

According to PW1, neither the Central Bank of Nigeria nor Union Bank PLC is a Court of Law on whose directive or circular the 1st defendant can rely upon to block or restrict an account. The 1st defendant is only obligated by law to approach a High Court of competent Jurisdiction for an Order to restrict an account and not a directive or circular from either the Central Bank of Nigeria or Union Bank Plc. The account in issue has been blocked since April 2022 (Seven Months ago) and Suit No. FHC/L/CS/927/2022 was only filed at the Federal High Court Lagos long after restriction had been placed on the account and after the instant suit had been filed and suit No. FHC/L/CS/927/2022 has long been struck out and before the suit was struck out, the same Federal High Court Lagos division had vacated the ex parte Order made on the 24th day of May, 2022 which was extended on the 7th day of June, by an Order made on 21st day of July, 2022.

There is no live Suit or valid order in suit no FHC/L/CS/1424/2022 to allow for the continuous holding of the Claimant's account.

The restriction on the account has frustrated the claimant's business and same was done in bad faith. That there is no live or valid Order in both Suit No. FHC/L/CS/927/2022 and suit no FHC/L/CS/1424/2022 warranting the holding of the account. The order made on 2nd day of August, 2022 in suit no

FHC/L/CS/1424/2022 between COP v. Union Bank of Nigeria PLC & 28 Ors is an extinct exparte Order made to last for 90 days and 90 days had long elapsed.

ADDITIONAL WITNESS STATEMENT ON OATH OF PW1 TO 2nd DEFENDANTS STATEMENT OF DEFENCE

The 2nd defendant confirmed the case of the claimant that it arbitrarily directed the 1st defendant to place a restriction on the claimant without first approaching a court of competent Jurisdiction to obtain an Order. The 2nd defendant is not a Court of Law on whose Order the defendant can act upon to block or restrict an account. The 1st defendant is only obligated to approach a High Court of competent Jurisdiction for an Order to restrict an account and not a directive or an Order from Union Bank PLC, the 2nd defendant. Neither the Central Bank of Nigeria nor Union Bank PLC is a Court of Law on whose directive or order the 1st defendant can rely upon to block or restrict an account. The 1st defendant is only obligated by law to approach a High Court of competent Jurisdiction for an Order to restrict an account and not a directive or circular from either the Central Bank of Nigeria or Union Bank PLC. The Claimant's account has been blocked since April, 2022.

There is no live or valid order in suit no FHC/L/CS/1424/2022 warranting the continuous holding of the Claimant's account.

The Claimant cannot pay its staff salaries who now live a precarious life from hand to mouth.

Issues for Determination:

At the end of trial, K. O Balogun Esq. filed the final address of the 2nd defendant on 15/5/20223. Ngozi Mercy Ossai Esq. filed the final address of the 1st defendant on 17/5/2023. On 23/5/2023 ZekeriGaruba Esq. filed claimant's written address. On 31/5/2023, Ngozi Mercy Ossai Esq. filed the 1st defendant's reply on points of law. On 5/6/2023, K.O Balogun filed the 2nd 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 2nd defendant distilled a sole issue for the Court's determination, namely:

Whether having regard to the facts and the applicable law in this case, the Claimant's account was unlawfully restricted?

Learned counsel for the 1st defendant formulated the following issues for determination;

- i. **Whether the bank was right to place a lien on the claimant account?**
- ii. **Whether the plaintiff has placed enough evidence to move the court in his favor?**

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

- 1. Whether having regard to the current position of the law and the entire circumstances of this case, the defendant can lawfully freeze, restrict or block the Claimant's Account Number 4286884012, domiciled with it without first obtaining an Order of a Court of competent jurisdiction.**
- 2. Whether having regard to the provisions of the 1999 Constitution (as amended), other laws, and the entire circumstances of this case, whether the defendant ought not inform the Claimant before or after freezing, restricting or blocking his account domiciled with it.**

The claimant's reliefs 1 & 2, which I had earlier set out, are for declaratory orders to the effect that the defendant does not have any legal justification for restricting, blocking, freezing and/or placing a no debit instruction on the claimants account

and the refusal to honour fund request by the claimant and prevent the claimant from operating its account maintained with the 1st defendant amounts to a breach of the defendant's contractual obligation to 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 the main issue that calls for determination in this matter is the 1st issue as posited by counsel to the claimant. Which is;

Whether having regard to the current position of the law and the entire circumstances of this case, the defendant can lawfully freeze, restrict or block the Claimant's Account Number 4286884012, domiciled with it without first obtaining an Order of a Court of competent jurisdiction.

Submissions of Learned Counsel for the 2nd Defendant:

Balogun Esq. contends that at all material time, from the moment the initial restriction was placed on the claimant's account till the court orders were obtained by the 2nd defendant and the Nigerian Police respectively, till present when further actions have been caught by the institution of this instant suit by the Claimant, the restrictions on the claimant's account were lawful, legal and valid.

Counsel argued that the CBN regulation Exhibit D1 upon which the 1st defendant relied on to freeze the account is valid and legal as the Central Bank of Nigeria Act (CBN Act) under which the Central Bank of Nigeria Regulation was published is a

subsidiary legislation which has the force of law. Relying on **NNPC & ANOR V FAMFA OIL LIMITED (2012) LPELR-1812 SC, ABIA STATE UNIVERSITY V. ANYAIBE (1996) 3 NWLR (PT. 439) 646 @ 660 AND AKANBI V. ALAO (1989) 3 NWLR (PT. 108)118.**

Balogun Esq. submitted that CBN Governor in exercise of his power under the Act and or as he may wish to delegate to any of his directors per **Section 56 (2) of the Banking and Other Financial Institution Act, 2020 (BOFIA)** which empowers the CBN to make rules and regulations for the operation and control of all institutions under its control and was established to nip online banking fraud in the bud and prevent stolen funds from being dissipated and to enable the banks to secure as much funds as possible before securing a court order.

Both the 2nd defendant and the Nigerian Police obtained valid court orders: flowing from the lawful restriction on the claimant's account counsel submitted that after placing the initial restriction in line with CBN regulations, the 2nd defendant proceeded to court to obtain court orders and at all material times, these court orders were either extended or new ones obtained either by the 2nd defendant or the Nigerian Police.

Counsel argued that the claimant's reliefs 1-5 are premised on the grounds that his account has unlawfully been restricted and he has demonstrated succinctly that the restriction has always been lawful and therefore the reliefs must fail. Reliefs 6, 7 and 8 are equally premised that the action of the defendants is unlawful and having shown to the contrary, the reliefs too must fail.

Counsel submits that the claimant has not shown by evidence or demonstrated any damages, embarrassment, loss of business, loss of goodwill and or breach of contractual obligation arising from the actions of the defendants. The court of law is not a father Christmas, a Claimant will only be entitled to not only what he/she/it has claimed but what he/she/it has been able to establish and prove by leading credible and concise evidence on the preponderance of evidence. Relying

on **A. G. ABIA STATE V. A. G. FEDERATION (2006) 16 NWLR PART 1005 PAGE 265. AGBI VS. OGBE (2006) NWLR PART 990 PAGE 65. SHENA SECURITY CO. LTD VS. AFROPAK NIG. LTD & ORS (2008) 24 NSCQR PART 11 PAGE 287. ALHAJI M. B. AWODI & ANOR VS. MALI-AM SALIV AJAGBE (2014) LPELR 24219 (SC). GOYANG KAYLI VS. ESLY YILBUK & ORS (2015) LPELR 24323 (SC).**

In conclusion, the receipt of ENL Consortium Limited's fraud alert petition on 26th April, 2022 till 24th May, 2022, the claimant's account was restricted in accordance with the provisions of the CBN's Regulation on the Establishment of Industry Desk Fraud of 11th June, 2015. From 24th May, 2022 till 21st July, 2022, the claimant's account was validly restricted by an Interim Court Order obtained and extended in Suit No: **FHC/L/CSL/927/2022 BETWEEN UNION BANK V. ACCESS BANK & 28 ORS**, while from 2nd August, 2022 till 25th October, 2022 (by which time the 2nd defendant had notice of the pendency of this suit upon the Order of joinder granted by this Honorable Court) the claimant's account was validly restricted by the Interim Order of restriction obtained by the Nigerian Police **FHC/CS/L/1424/2022 BETWEEN COMMISSIONER OF POLICE AND UNION BANK OF NIGERIA PLC & 28 ORS** for 90 days and the restriction is still lawful till date, in view of the pending application not only to renew the restriction order but to also reverse all the stolen funds back to where they were stolen from.

Counsel urged the court based on its arguments above to dismiss the claimant's suit as the 2nd defendant has demonstrated in the foregoing that at all material time when the claimant's account was restricted, such restrictions were done in accordance with the provisions of valid and extant laws, regulations and Orders of court.

Submissions of Learned Counsel for the 1st Defendant:

On Issue one, Ngozi Ossai Esq. argued that rules of court are meant to be obeyed relying on **Mr. JOHN AYOADE V SPRING BANK (2014) 4NWLR (Pt1396)93 (CA) and ZENITH BANK v. IGBOKWE & ANOR (2013) LPELR-21975(CA)** and in the instant case, the defendant has shown the court that there were several court orders which necessitated the account of the claimant to be put on restriction such as exhibit D2.

The Claimant argued in his oral testimony to the court that the defendant froze his account without first getting a court order and this is the premise of their case in court, but the defendant did show the court the Central bank of Nigeria regulations on Establishment of Industry Fraud Desk 2015 where the CBN gave directive on how banks are to deal with bank fraud and also on inter-bank relationship as regards fraud related matters. **Section 56 of BOFIA** confers on the Governor of the CBN powers to regulate and supervise banking business and activities of BOFIs in Nigeria, as well as make rules and regulations for the operation and control of all institutions under the supervision of the CBN.

By virtue of **section 53 of the Banks and Other Financial Institutions Act 2020 (BOFIA)**, in so far as it relates to banks and other financial institutions, BOFIA supersedes any other laws or enactments, thus it may be argued that the circular, being a product of properly exercised powers under the BOFIA, is a policy statement and valid.

Assuming without conceding that the account was frozen before an order was gotten from the court what should the bank do in the face of a directive from the Central Bank of Nigeria which requires funds which are subject of suspected fraud to be temporarily held until investigation is concluded?

Ossai Esq. submitted that the acts of the defendant were valid and legal as the CBN Regulation was published pursuant to the powers granted under the CBN Act and it is thus, a subsidiary regulation with the force of law. Referring to **NNPC & ANOR V. FAMFA OIL LTD (2012) LPELR 1812 SC**

Counsel posed the following questions assuming without conceding again that a bank freezes the account of a customer without a valid order on grounds that it seeks to arrest a fraud should each case not be treated on its merit?

Should the court just punish a bank even when protecting depositor's funds? These are novel and grey areas which the court needs to make pronouncement upon.

On Issue 2, Counsel submitted that he who asserts must prove. Relying on **Sections 131, 132 and 133 of the Evidence Act, 2011** and it is the law that a party in an action for declaratory relief must succeed on the strength of his evidence not on the weakness of the defense. Referring to **ANDREW & ANOR V. INEC & ORS (2017) LPELR-48518(SC)** and in the instant case, claimant has not placed before this court any credible evidence to prove his claim. The case of the claimant is that his account was placed on restriction

In the case of **F.M.F.LTD V EKPO (2004) 2 NWLR (PT. 856) 100 AT 128-129 PARAS H-D**, it was stated that the burden of proof is two-fold; the first is the ability of the plaintiff to establish and prove the entire or reasonable portion of his case before a court of law and the second is called evidential burden.

The defendant only has a duty to adduce evidence in rebuttal when the claimant has discharged her burden. Court was referred to **SECTION 133 (2) OF THE EVIDENCE ACT, TRADE BANK PLC V. CHAMI (2003) 13 NWLR (PT. 836) 158 AT 203 AND ELEME V. AKENSUA (2000) 13 NWLR (PT. 683) 92 AT 104 PARAS. C-D.**

The 1st defendant had presented a court order on which the said account received fraudulent money and in obedience to the court order, a lien was placed on the account. 1st defendant has also shown that investigations are been conducted by the police as regards to the claimant's account in relation to the fraud complaint of and other suspected accounts.

The reliefs sought by claimant were addressed together by counsel on prayers **I, II, III, IV And V**. A lien was placed on the sum because it was suspected to be proceeds of fraud. Court was urged to refuse the prayer to unblock, unfreeze, remove the no debit instruction, or the restriction on grounds that the matter is sub judice because there is evidence placed before the court of a pending motion on notice and motion ex parte for reversal of the sum suspected proceed of fraud and order for renewal against the claimant's account before the Federal High Court Lagos division. There is no evidence that the Federal High Court Lagos division has made a pronouncement disposing of the pending suit as the matter is still on-going. Any pronouncement by this court is likely to jeopardize the outcome of the decision before the Federal High Court Lagos division.

On Prayers **VI** and **VII** there is no evidence before the court on how the claimant deserves these damages prayed for because of business of BDC he is engaged in, counsel posed the question for the court to answer which is; Whether an unlicensed person can operate a Bureau De Change in Nigeria (BDC)?

It was established before this honourable court during cross-examination wherein the claimant submitted that he has no license or document giving him the authority to practice as a BDC.

BDC is governed by the CBN through the Revised Operational Guidelines for Bureaux De Change in Nigeria 2015. Guideline 1.0 paragraph 1.4 states that "No person shall carry on the business of Bureau De Change (BDC) in Nigeria, except with the prior authorization of the CBN"

Guideline 20.0 of the Revised Operational Guidelines for Bureau De Change in Nigeria 2015 provides that "a BDC that contravenes any provision of this guideline shall be sanctioned in line with the penalty table (annexed) and other extant laws/regulation".

The penalty for operating an unlicensed BDC as provided by the table of penalties for infractions by Bureau De Change (BDC) is the outright closure of the institution and prosecution of the owners.

The claimant can therefore not get compensation for any loss of proceed as claimed in his statement of claim. Claimant cannot be seen to benefit from an illegal venture and cannot reap a benefit when he should be behind bars.

On Prayer Viii, counsel relied on the case of **NWANJI V COASTAL SERV. NIG LTD (2004) 18 NSCQR 895N** that parties should bear the cost of their lawyers fee and not the reverse.

Submissions of Learned Counsel for the Claimant:

ZekeriGarubaESq. raised an objection to the admissibility of the document admitted and marked as exhibit D1. The grounds of the objection are;

- a. Exhibit D1 is a public document which ought to be certified or alternatively;
- b. A photocopy of a public document which is not certified is inadmissible in law.
- c. Exhibit D1 is not computer generated document that requires compliance under Section 84 of the evidence Act.

Counsel submitted that Exhibit D1 being a public document ought to comply with the provision of **Section 89, 90 and 105 of the Evidence Act** before it can be admissible in law. By virtue of the said provisions, only a certified true copy of a public document is admissible as secondary evidence of its contents. Relying on **GBADAMASI V. JULIUS BERGER NIG LTD 2021 5NWLR (PT. 1770) 419**. The inadmissible evidence having already been admitted in evidence, the only option open to the court is to strike out and expunge the evidence from the Court's record. Relying on **GIWA VS. YARBUN, (2011) ALL FWLR (PT.565) PQ 254 AT 284**

Garuba Esq. further submitted that it is immaterial that the evidence is relevant. Once a document failed to pass the test of admissibility it is immaterial that it is relevant. Relying on **CHEVRON NIGERIA LTD V ADERIBIGBE (2012) 4 NWLR (PT. 1289) 1**. The document is not a computer generated document and as such the certificate of compliance attached to same is irrelevant.

Claimant counsel referred to Paragraph 24 of the 2nd defendant's Statement of defense wherein the 2nd defendant contended that there is no cause or action against the 2nd defendant and also paragraph 26 of the Witness Statement on Oath and concedes that indeed there is no cause of action against the 2nd defendant and the reliefs sought in this suit against the 2nd defendant. Court was urged to strike out the 2nd defendants statement of defense and final written address and all other processes filed on behalf of 2nd defendant.

On ISSUE ONE, Garuba Esq. argued that 1st defendant has no powers to tamper with any account domiciled with it without obtaining a court order. **Section 97 of BOFIA** provides that where the Governor has reason to believe any transaction undertaken in any account in any bank may involve commission of any criminal offence; the Governor may make an ex parte application for an order at the Federal High Court and obtain such court order to freeze the account. Similar provision can be found in **SECTION 34 OF THE EFCC ACT, MONEY LAUNDERING ACT AND ICPC ACT**. counsel submitted that there was no valid Order relied upon by the 1st defendant before the claimant's account was restricted. The effect of failure to obtain an Order of Court before restricting an account was stated in **GTB v. ADEDAMOLA (2019) 5 NWLR (PT 1664) P 30 AT 43 E-F and GUARANTY TRUST BANK PLC v. ODEYEMI OLUYINKA JOSHUA (2021) LPELR 53173(CA)**.

Counsel submitted that where the law provides for the procedure to be followed in doing an act, that procedure, and no other, must be strictly followed referring to

OKPALAUZUEGBU v. EZEMENAR (2011) 14 NWLR (Pt. 1268) 492 at 524 - 525, paragraphs G-A.

This court was referred to the suit of **Hon. Justice J.E. Obanor of the Federal Capital Territory High Court 29 Sitting at Jabi, Abuja in Suit NO. CV/1750/2022 between GARBA DAHIRU VS. FIRST CITY MONUMENT BANK** being judgment delivered on the 22nd May, 2023 a sister case of the present suit wherein the court held that it is not the duty of the defendants to meddle with the duty of the court and the police, the defendants are required by law to refer perceived allegations to the Nigerian Police Force who shall investigate and prosecute where the outcome of the investigation demands so. It is only the court that is imbued with the power to make an order for the freezing of the account of the claimant.

The 1st defendant's act complained about is unlawful, null, void and ultra vires. Relying on the case of **MACFOY VS U.A.C LTD., (1961) A1,1, F.,R.Pg.i 172** If an act is void. it is in law a nullity. It is not only bad, but incurably bad. There is no need for an Order of Court to set it aside.

On ISSUE 2, Counsel submitted that the failure of the 1st defendant to serve the claimant with a notice before purporting to freeze, block and/or restrict his account domiciled with the 1st defendant operated to deny the claimant fair hearing relying on **Section 36 of the 1999 constitution as amended and KALU v. STATE (2011) 4 NWLR (1238) 429 at 448, paragraph F.** counsel further submitted that being the custodian of the claimant's monies and in view of the fiduciary relationship existing between the claimant and the 1st defendant, 1st Defendant owes the claimant a duty of care at common law to protect the Claimant's pecuniary and proprietary interests in the aforementioned Account. **DONOGHUE v. STEVENSON (1932) A.C. 562**

CLAIMANT'S RESPONSE TO THE 1st and 2nd DEFENDANT'S FINAL WRITTEN ADDRESSES (to be taken together).

Counsel argued that there is no provision in the CBN Act where the Bank is vested with powers to make regulation, Exhibit D1.

CBN Act regulates the activities of the Bank (CBN), its Staff, its functions, structure etc and not dealing with commercial Banks. The power to make exhibit D1 is not derived from the Act as argued by the 2nd defendant counsel. The argument canvassed by the defendants is misleading. Counsel further submitted that BOFIA is a 2020 Act and a 2015 letter called a regulation by the defendants (Exhibit D1) cannot be said to have been made pursuant to BOFIA 2020. Exhibit D1 having pre-dated the BOFIA cannot be said to be its product. According to section **56(2) of BOFIA** the Governor has the exclusive power to make regulations but Exhibit D1 was made by one **DipoFatokun, Director Banking and Payment System Department** and the powers of the Governor under section 56(2) cannot be sub-delegated going by the maxim of **DELEGATUS NONPOTEST DELEGARE** a delegated power cannot be sub-delegated. Referring to **IBRAHIM v. OJOMO (2004) 4 NWLR (Pt. 862) 89** in the construction of a statute that where the words of a statute are clear and unambiguous, those words shall be so construed as to give effect to their ordinary or literal meaning and enforced accordingly. Exhibit D1 is not backed nor supported by any law rather a mere pieces of paper with no utilitarian value.

Counsel argued in its paragraph 5.12-5.13 of its Final Written Address that there are two applications for renewal, that it is on the basis of the applications the claimant's account remained restricted but there are no applications for renewal anywhere.

1ST DEFENDANT'S REPLY ON POINTS OF LAW IN RESPONSE TO THE CLAIMANT'S WRITTEN ADDRESS

On the issue that DW1 was not a witness of truth. Ossai Esq. argued that the 1st Defendant witness (DW1) is a control officer in the bank and the most qualified to give evidence on behalf of the bank because the control unit is responsible for

such duties. Mr. AyodeleEti based on the court record, answered all questions based on his position as a control officer in the bank and not as a lawyer. DW1 answered all questions put to him to the best of his knowledge and was not invasive or hiding any fact. The court was urged to discountenance the position of the claimant on DW1

On defendant lacking the powers to freeze the account of the claimant, due to the peculiarity of this matter if the bank is to have waited for another second, all the money would have been diverted and lost because of the uniqueness of online and cyber-crime. This is the reason a temporary restriction was placed on the account of the claimant and many others and a court order was immediately applied for and gotten by Union Bank PLC (EXHIBIT 4) before the police took over the matter thereby securing another court order (EXHIBIT 6) and as such union bank had to withdraw their own suit as seen in EXHIBIT 5 to allow the police take over the matter. Counsel further submitted that the cases of **ACCESS BANK PLC V AGBASIERE, GTB V. ADEDAMOLA (2019) supra and GTB V. ODEEMI OLUYINKA JOSHUA (2021) LPELR 53173**, and host of other similar cases. Heavily relied upon by claimant counsel will not apply due to the peculiarity of this case and each is only an authority for what it decides relying on **ACCESS BANK PLC V. ONWULIRI (2021) | SC (PT. 1) 47** and **IZELE V. INEC & 2 ORS (2018) 4 SC (Pt. 111) 207**.

Claimant in his final written address did state that the 1st defendant has refused to un-freeze the account of the claimant despite the fact that the order dated the 24th day of May, 2022 gotten by the Union Bank and served on the defendant and also the order gotten by the Commissioner of Police dated the 2nd day of August, 2022 has also expired, by the virtue of the suit filed on the 25th day of May, 2022 which is this instant suit, the hands of the defendant had been tied by law. It is trite law that once a matter is before a Court, parties are to maintain status quo until a final pronouncement by the Court. **ABUGO v. AROMIJAINO (2015) LPELR-46142(CA)**

EXHIBIT D1 is a computer generated evidence in that it was sent to all commercial banks through the CBN website and all banks were mandated to download the document from, so being a document gotten from a website, it falls under the category of computer generated evidence as provided for in Section 84 of the Evidence Act, 2011. Ossai Esq. argued that the objection by the claimant that the document does not fall under the purview of Section 84 of the Evidence Act is false. It is a settled principle of law that once a document is pleaded in support of a claim in a suit and such document is relevant, such document should be admissible. Referring to **ABUBAKAR v. CHUKS (2007) LPELR-52(SC)**

CBN Regulation EXHIBIT D1 were published pursuant to the powers granted under the CBN Act thereby making it a subsidiary regulation within the force of law been a directive from a regulatory body which governs the day-to-day activities of banks in Nigeria. That EXHIBIT D1 was not signed by the CBN Governor is misguided as 'MrDipoFatokun' is an Executive Director in CBN and an Executive in CBN can sign a letter/directives on behalf of the CBN Governor who cannot be everywhere and cannot do everything at the same time.

Court was urged to discountenance the objection and rely on Exhibit D1 which defendant relied upon to act before securing the court order.

2nd DEFENDANT'S REPLY TO CLAIMANT'S FINAL WRITTEN ADDRESS

On the issue of the Exhibits before the Court Balogun Esq. submitted that from the totality of the exhibits, the pleadings and the oral evidence in support of the claimant's claim failed to lead any evidence, as to the time the claimant's account came under lawful restriction.

On the admissibility of 'Exhibit D1 and lack of good faith counsel conceded to the fact that it is a public document it is no longer recondite that issue of law that an admitted pleading and evidence do not require further proof. The tendering of Exhibit D1 is a mere surplusage. The fact that the defendant acted under the CBN directive and guidelines before securing court order was never disputed. Court was

urged to rely on and attach weight to the undisputed facts as pleaded and the subsequent unchallenged evidence that was led on it, the effect that the defendant acted as statutorily obligated under the CBN guidelines and directive.

On issue of cause of action against the 2nd defendant K.O Balogun Esq. argued that the Claimant has not made a specific claim against the 2nd defendant and the question is, whether there is in dispute amongst the parties, that the fraud occurred in the 2nd defendant, and that it was the 2nd defendant that escalated the fraud alert to the 1st defendant through the interbank fraud desk procedure. It is also pleaded and in evidence before the court that 28 banks were caught up in the web including the 1st defendant of the fraud that originated from the 2nd defendant. Counsel submitted that the undisputed and unchallenged combination of facts in this case is that the account of a customer of the 2nd defendant, ENL Consortium was hacked-into and over a billion naira was stolen and the money was subsequently transferred into 169 accounts in 28 banks including the claimant account in the 1st defendant. Exhibits D2 and D3 were obtained to not only put a restriction on the account of the claimant in the 1st defendant but also into all the 169 accounts in the 28 banks.

Counsel submitted that the above are the combination of facts with aggregate of material facts that is before this court constituting the cause of action.

Balogun Esq. concluded that the 2nd defendant's money is at stake and will suffer the consequences if the action goes the other way.

On the call by the claimant to the Court to strike out the name of the 2nd defendant, Balogun Esq. submitted that this is calling on the court to overrule itself when claimant previously argued against the joinder application in a similar vein and court overruled the claimant. This would make the court to reprobate and approbate. If the Claimant was dissatisfied with the decision of the court, joining the 2nd defendant to the suit, the constitutional recourse given to him by section 241 of the constitution is to appeal against the ruling.

On Issue one and section 97 of BOFIA and section 34 of the Economic and Financial Crimes Commission (EFCC) Act Claimant misinterpreted section 97 of BOFIA. The law simply defined powers of the CBN's Governor, in so far as it relates to freezing of a bank account. This is not applicable in the Claimant's claim. The obligation therein, is to the CBN Governor and not to commercial Banks. It has not been alleged that the Governor gave the directive for restriction to be placed on the Claimant's account. Relying on **AKPANUDOEDEHE & ORS V. AKPABIO &ors (2011) LPELR-4944** It is a basic rule of statutory Interpretation that where words of a statute are clear and unambiguous, those words shall be construed as to give effect to their natural or literal meaning from words as used, because that will be in the Interest of Justice.

The undisputed fact of the case is that a temporary restriction was placed on the account of the claimant and 169 others pending the time an order of the court was secured. Reliance by claimant on **ACCESS BANK PLC V. AGBASIERE (WITHOUT ANY CITATION BY THE CLAIMANT) AND GTB V. ADEDAMOLA (2019) 5 NWLR (PT. 1664) 30 @43E-F AND GTB V. ODEYEMI OLUYINKA JOSHUA (2021) LPELR 53173** will not avail him as cases are authority for only what they decide. Referring to **ACCESSBANK PLC V. ONWULIRI (2021) 1. SC (Pt. 1) 47** the facts are not similar and are not the same, thereby making the cases not to be applicable and binding on the court. The fact of this case is unique and peculiar. It is an online scam, not the usual case of EFCC freezing accounts as was the case in the cited decisions, meaning interpretation of section 34 of the EFCC Act. The uniqueness of online or cybercrime is a reality as presented before court, the reality is that if the Bank had waited a second more, all the money stolen from the 2nd defendant's customers ENL would have been filtered away in seconds. The uniqueness of this type of crime must be taken into consideration to distinguish the existing position and authorities, from the recent trend of online cybercrime.

The justice of the case is that all the existing decisions have not addressed the urgent but volatile problem that has the propensity to disrupt our economy and can make anyone a victim and bankrupt a corporation in seconds, should be addressed to prevent and curb as much possible the danger inherent in it.

Court was urged to look at the big picture of the entire public and the overall depositors' fund that have the potential of being victim of online scam.

On Issue Two it was submitted that the totality of the Claimant's issue two is a rehearse of issue one only being couched as an infringement of the constitution. The fact before the court is that the Claimant was immediately informed about the restriction being placed on his account. Hence, the totality of all the argument and authorities cited by the Claimant on denial of fair hearing goes to no issue and court urged to reject them for being inapplicable to this case.

On Duty of Care the issue between the Claimant and the 1st Defendant is simply contractual. It is governed by the Banker and Customer's relationship but subject to the law of the land wherein the overriding issues of suspicion of crime is involved. In the case at hand, the Claimant practically admitted to have received proceeds of crime into the account in issue. The duty of care, if any, is the overriding interest of the law and the society as a whole. court was urged to hold that the tortious liability principle of duty of care is not applicable to the case of the claimant.

DECISION OF THE COURT

Counsel to the claimant had urged court to discountenance the Exhibit D1 as same is a public document that ought to be certified and that attaching a certificate of compliance to the document pursuant to section 84 of the evidence act will not render it admissible in law.

I have considered the document Exhibit D1 it was admitted during trial by DW1.

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]**.

In the instant case, the controversy is the status of the Exhibit D1. I have taken my time to peruse the document, it is a circular to all banks from the CBN ordinarily, this document ought to be classified as a public document requiring certification to be admissible before this court, but it is a correspondence between the CBN and commercial banks as the heading suggests thus; TO ALL DEPOSIT MONEY BANKS, SWITCHES AND PAYMENT SERVICE PROVIDERS. It is therefore not a document that requires certification since it is not a public document according to **section 102 of the evidence act, rather they are private documents under section 103 of the evidence act** and do not require certification since they are correspondences between the CBN and the 1st and 2nd defendants. See **MR. EZEKIEL THOMAS & ANOR v. HAJIYA RAKIYA SANI & ORS (2020) LPELR-51115(CA) (Pp. 18-19, para. C-C)**.

I find that Exhibit D1 remains admissible in evidence.

ON SOLE ISSUE FOR DETERMINATION

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 provides:

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 6 to prove that the defendant restricted the account of the claimant. Exhibit 1 is the FCMB cheque of N3,000,000 that was to be presented to the bank, Exhibit 2 letter to FCMB by counsel to the claimant which states;

Dear Sir/Madam,

**DEMAND FOR IMMEDIATE RELEASE OF THE UNDERLISTED
ACCOUNTS UNLAWFULLY RESTRICTED WITH AN APOLOGY**

The above subject matter refers.

We act as solicitors to BgoniMultiServices; GarbaDahiru; Mohammed Bello Habib; Usman Mohammed; Mohammed Abubakar; AshafaSaidu& Da Rabi Global Ventures (hereinafter refer to as our Clients) and on their instruction we write you this letter.

Recall that our Clients personal and business accounts domiciled in your bank were suomotu placed on restriction with without notice, justification or explanation.

Surely, the restriction placed on the accounts of our Clients is not only unlawful, the same egregiously violates their right to acquire and own property guaranteed under the constitution of the Federal Republic of Nigeria, 1999 (as amended) and for which our clients right to pursue a claim in damages against you has crystallized.

Exhibit 3 is the letter from FCMB to the counsel to the claimant

Dear sir,

**RE: DEMAND FOR IMMEDIATE RELEASE OF THE UNDERLISTED
ACCOUNTS UNLAWFULLY RESTRICTED WITH AN APOLOGY**

We refer to your letter of May 4, 2022 and served on the Bank on May 5, 2022, which has been received and referred to us for further action. We wish to inform you that we have accordingly caused an investigation to be commenced in respect of the issues raised in your letter.

Exhibit 4,CTC of Order of court between UNION BANK OF NIGERIA PLC V ACCESS BANK & 28 ORS with SUIT NO: FHC/L/CS/927/2022 dated 5/10/2022 wherein Federal High court ordered;

1. That the court Order made Ex-parte on 24th May, 2022 and extended on the 7th June, 2022 are herein vacated against the following interest:
 - a) Providus Bank Account No. 1300350248 belonging to one Fussytch Phones.
 - b) the 1st to the 28th Respondents in the instant suit.

Exhibit 5, CTC of Order of court between UNION BANK OF NIGERIA PLC V ACCESS BANK & 28 ORS with SUIT NO: FHC/L/CS/927/2022 dated 21/7/2022 wherein Federal High court ordered;

1. That Suit No. FHC/L/CS/927/2022 is hereby struck out upon the Notice of Discontinuance dated and filed on 1st September, 2022
2. That I make no order as to cost.

Exhibit 6, CTC of order of court between COMMISSIONER OF POLICE V UNION BANK & 28 ORS with SUIT NO: FHC/L/CS/1424/2022 dated 2/8/2022 wherein the Federal High Court ordered;

2 AN ORDER OF INTERIM PRESERVATION/forfeiture/Attachment or freezing injunction restraining the 2nd – 28th Respondents, its privies, agents and/or any officer and all other officers under their control and command, from releasing the funds of 90 days pending the conclusion of police investigation and/or prosecution. Page 3 item 45 BGONI MULTI SERVICES LTD.

CROSS EXAMINATION OF PW1 BY SAMUEL ONUNKWO

Ques: As at time you came to court were you aware that there are court orders restricting account?

Ans: I am not aware

Ques: But you are aware now that there are court orders restricting your account?

Ans: I am aware now

Ques: Will I be wrong to say bank was right in restricting your account based on bank orders?

Ans: yes bank was right

Ques: Are you aware that there is a court order gotten by police asking that said N29,500,000 be preserved by bank?

Ans: *yes*

Ques: *Are you also aware that there is an ongoing investigation by police as to the said funds in your account?*

Ans: *yes I am aware*

CROSS-EXAMINATION OF PW1 BY K.O. BALOGUN

Ques: *Did you carry out KYC with respect to said customer?*

Ans: *Yes*

Ques: *Tell court what you did?*

Ans: *Bio-data, the person is in our market, what we are doing if I have USD my neighbor can ask me whether I have USD my neighbor can ask me whether I have USD, if it is my neighbor I will not bother to take his KYC because see his office, see my office.*

Ques: *Because you did not do KYC you were not able to know it was proceed of crime?*

Ans: *yes*

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 1st defendant based on a fraud alert sent by the 2nd defendant and because of same they lost business with their clients.

The case of the 1st defendant is that they received a fraud alert from the 2nd defendant and based on same placed a temporary restriction on the account of the claimant domiciled in the 1st defendant bank before a court order was obtained. The temporary restriction was based on Exhibit D1 which is the CBN guidelines which specifically states that ***the fraud desk deposit money banks offer the following services;***

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

Exhibit D2 is the interim injunction obtained against the claimant account domiciled in the 1st defendant bank CTC of Order of court between UNION BANK OF NIGERIA PLC V ACCESS BANK & 28 ORS with SUIT NO: FHC/L/CS/1424/2022 dated 24/5/2022 wherein Federal High court ordered;

3 AN ORDER OF INTERIM INJUNCTION restraining the under listed Banks and financial institutions, privies, agents and/or any officers and all other officers under its control from releasing the funds in the following accounts until the hearing and determination of the originating motion.

Exhibit D3, CTC of Order of court between UNION BANK OF NIGERIA PLC V ACCESS BANK & 28 ORS with SUIT NO: FHC/L/CS/927/2022 dated 07/6/2022 wherein Federal High court ordered;

1. That the ex-parte order made on 24th may, 2022 is hereby extended to the 30th day of June, 2022 when the Originating Motion shall be heard and determined or any other date convenient to the Court for the hearing and determination of the said pending Originating Motion which has already been served on the Respondents
2. That this order extending the life span of the said ex-parte order shall be equally served on the Respondents.

Under cross examination of DW1 by Claimant counsel ZekeriGaruba the following facts were revealed;

Question: Before you restricted account did you obtain court order?

Answer: No

Question: I will be correct that the fraudulent alert was sometime in April 2022?

Answer: I don't have date offhand

Question: it was immediately you received alert you placed restriction on the account?

Answer: yes

The case of the 2nd defendant in a nutshell is that the account of the 2nd Defendant's customer, ENL Consortium Limited, No. 0050546481 was breached and hacked into by criminals and in the process stole and transferred the sum of (Five Hundred and Twenty-Three Million, Three Hundred and Thirty-Seven Thousand, One Hundred Naira) into over 3000 different accounts in about ten banks in Nigeria; The Claimant's Account number: 4286884012 with the 1st Defendant is one of the beneficiaries of the stolen funds, with the sum of N29, 500, 000 (Twenty-nine Million Five Hundred Thousand Naira) Only, being transferred into it; The case is currently being investigated by the Special Fraud Unit (SFU) of the Nigeria Police Force and the criminal investigation has gotten to an advanced stage and the culprits which may include the Claimant may be charged to court very soon.

Cross examination of the DW2 by claimant counsel;

Question: in paragraph 10 of the witness statement on oath an email was sent from your bank to FCMB informing them of fraudulent inflow 21st April it was based on email FCMB placed restriction on account of claimant?

Answer: yes

Question: You know by practice of banks before restriction can be placed on bank account, bank will have to approach court of law for an order to do so?

Answer: Yes but with earlier CBN circular tendered, banks have a relationship where we can alert other banks to restrict the account that received fraudulent monies pending when we approach court for a proper order. If we had waited till we got court order all the monies would have been gone that is reason why CBN gave that bank circular that banks entered into that arrangement

Exhibit tendered via DW2 is the ENL consortium account with union bank 20th April, 2022 along with certificate of compliance Exhibit D4

The case before this court is that the claimant account domiciled in the 1st defendant bank was suspended without informing him and based on a fraud alert, the 1st Defendant received from the 2nd defendant. From April 27th, 2022 the claimant has been denied access to his account and he only became aware of this fact when he went to his bank app. online to carry out a transaction. This suspension was done without a recourse to the police authority and without obtaining a court order.

Both DW1 and DW2 admitted that there was a temporary suspension of the account of the claimant pending obtaining the court order of 24th May, 2022 Exhibit D2.

Was it legal or valid to suspend the account pending the obtaining of a court order? The counsel to 1st and 2nd defendant had argued tenuously that the CBN regulation Exhibit D1 has the force of law being a regulation the CBN Governor is empowered to implement based on section 56 of BOFIA. This court cannot at this stage shut its eyes to the law.

Need I state at this point that the CBN regulation relied on by the defendants Exhibit D1 does not tally with section 97 of BOFIA which states **“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.

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.

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.

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.

On the legality of freezing an account of a bank customer without an order of court, I find instructive the case of **FIDELITY BANK PLC V BAYUJA VENTURES (2012) ALL FWLR (PT 646) 546 PER OKORO JCA** as he then was **“there is no law or rule of practice in this country which allows an individual who suspects another of having committed a crime to take the laws into his hands or resort to self-help. The procedure in all civilized countries**

including Nigeria, is that such suspects are reported to law enforcement agencies who, after investigation and if the suspect is found culpable, is charged to court. It is only the court that can pronounce a person guilty of a crime. no other institution or individual is endowed with such power”.

“The offence called fraud was clearly defined by the apex court in **Onwudiwe v Federal Republic of Nigeria (2006) ALL FWLR (Pt. 319) 774, (2006) 10 NWLR (Pt. 988) 382** which is criminal in nature. By section 138 of Evidence Act, a criminal offence must be proved beyond reasonable doubt before an accused person can be convicted. But in this case, no such thing happened. The defendants arbitrarily and without any lawful excuse resorted to self-help by unilaterally freezing the accounts of the claimant. No person or institution, no matter how highly placed or powerful is allowed to take laws into his hands else we may descend into chaos.

In **Governor of Lagos State v Ojukwu (1986) ALL NLR 235** I have no hesitation but to agree with the learned trial judge that the actions of the appellant was not only illegal but also unconstitutional.”

Ogunwumiju JCA as she then was concurring and condemning the unilateral action of the bank in freezing the customers’ money as illegal and unconstitutional had this to say:

“it amounts to nothing more than a resort to self-help which is unacceptable, and amounts to lawlessness and brigandage for the appellant to unilaterally freeze the account of the respondent. No one is allowed to resort to self-help, if not, we shall all descend into a state of anarchy”

Balogun Esq had urged court not to rely on the following cases;

- 1. ACCESS BANK PLC V. AGBASIERE 2022) LPELR-58489(CA)**
- 2. GTB V. ADEDAMOLA SUPRA**

3. GTB V. ODEYEMIOLUYINKA JOSHUA (2021) LPELR 53173

4. ACCESS BANK PLC V. ONWULIRI (2021) 1. SC (Pt. 1) 47

As these cases will not avail claimant as cases are authority for only what they decide.

In **GTB V. ADEDAMOLA & ORS (2019) LPELR-47310(CA) (PP. 21-24 PARAS. A)** Per **ABUBAKAR, JCA** the court held;

"In this case there is no evidence that the applicant committed any criminal offence, or was even reasonably suspected to have committed any offence. The EFCC has not come up with anything suggestive that Akinshiku Roy mentioned the Applicant as having conspired to commit the alleged offence he was accused of. Even if the Applicant was alleged to have committed a criminal offence, EFCC cannot on its own direct the Bank to place restriction on his accounts in the Bank without an order of Court. The law allows EFCC to come even with ex-parte application to obtain an order freezing the account of any suspect that has lodgements that is suspected to be proceeds of crime. No law imposes a unilateral power on the EFCC to deal with the applicant this way. Again Guaranty Trust Bank has no obligation to act on EFCC'S instructions or directives without an order of Court...." The above is the reasoning of the learned trial Judge. The Economic and Financial Crimes Commission has no powers to give direct instructions to Bank 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. The Courts must rise to the occasion speak and frown against arrogant display of powers 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 rule promotes order, peace

and decency in all societies, we are not an exception. Our Financial institutions must not be complacent and appear 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."

I cannot but disagree with counsel to the 2nd defendant as the cases reproduced above and relied on by claimant counsel although not on all fours with the suit presently before me but have one thing in common being that before a bank can place a restriction on a customer's account, a court order must be obtained from a court of competent jurisdiction.

Recently, **the FCT HIGH COURT in GARBA DAHIRU V FCMB & 1 OR per Hon. Justice J. EnobieObanor on 22nd May 2023 in SUIT NO: FCT/HC/CV/1750/2022**, the CTC of the judgment of which was supplied by learned counsel for claimant, the court also pronounced on the illegality of Post NO Debit order stating "the law is however clear that neither the Nigeria Police, the 2nd defendant nor the Central Bank of Nigeria can on its own volition direct the 1st defendant to freeze an account and continue to restrict such account continuously without obtaining an Order from a court of competent jurisdiction first.

Although a persuasive authority, I feel persuaded by that judgement of a court of co-ordinate jurisdiction, it being in line with a long line of authorities such as **ACCESS BANK V AGBASIERE (SUPRA), GTB V ADEDAMOLA (SUPRA)**

From the evidence adduced before this court, the police is still investigating the fraud claim and this does not give the 1st defendant the power to restrict the account of the claimant without an order of court. The regulation relied on does not over-ride the constitutional duty of a bank to its customers. Since the findings of the police have not been concluded, this court cannot assume the guilt of the

claimant it is mere speculation and this court does not delve in speculations. **MAI-KIRI V. YAHAYA (2018) LPELR-46595(CA) (PP. 26-28 PARAS. D)**

From all the exhibits tendered there is no subsisting order freezing the account of the claimant. I understand and can identify with the position of the 2nd defendant that they needed to preserve the money in view of the trend of 'yahoo' yahoo' and online scams but the law remains the law and we cannot take the laws into our hands it will amount to self-help on the suspicion of the commission of a crime.

2nd defendant counsel had argued that on Prayers Vi And Vii there is no evidence before the court on how the claimant deserves damages prayed for because of business of BDC he is engaged in as it was established before this honourable court during cross-examination wherein the claimant submitted that he has no license or document giving him the authority to practice as a BDC.

CROSS EXAMINATION OF PW1 BY 1ST DEFENDANT COUNSEL

Question: Are you licensed by CBN to do BDC?

Answer: yes

Question: Is there a document before this court showing your licensed by CBN?

Answer: I don't have it here

CROSS EXAMINATION OF PW1 BY 2nd DEFENDANT COUNSEL

Question: You have confirmed to court you do not have your license for BDC before this court?

Answer: yes

From what occurred in open court, I find it ludicrous to presume that the claimant is not a licensed BDC merely because he did not present before this court a copy of his license to operate as BDC. The case this court is called to determine is

whether the defendants can place a restriction on the account of the claimant domiciled in the 1st defendant bank without a court order regardless of whether or not claimant is a licensed BDC operator and I so hold.

Now, having determined that the court order was not obtained before the restriction was placed on the claimant's account, what is the quantum of damages claimant is entitled to?

The quantum of damages would arise as a result of any loss suffered by the customer by reason of the breach. The failure of the bank to pay the money due on demand by the claimant without justification is a breach of contract. **See N.M.B PLC V AIYEDUN INVEST LTD (1998) 2 NWLR (Pt 536) 221 @ 231.**

The only question that arises here is as to what quantum of damage to be awarded the claimant?

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 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; Section 56 and 97 of the Banks and Other Financial Institutions Act ("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.

The conduct of the 1st defendant is abominable, it was mindless, unfair and unjustifiable and the 1st defendant ought to be damnified in substantial damages which are at large on the strength of the authorities as damages flow naturally from the breach of contract between the claimant and the 1st defendant.

I refuse the 21% interest in respect of the post judgment sum. See **ALHAJI SULEIMAN MODIBBO V ALHAJI DANJUMA HAMMANJODA (2014) LPELR 24184 (CA)** it was stated as follows: "The 10% interest awarded by the lower court is a post judgment interest and falls within the powers conferred upon the court by the above provision to award at its discretion. The court is therefore clothed with jurisdiction to award the 10% post judgment interest. See **LAMURDE LOCAL GOVT V KARKA (2010) 10 NWLR (PT 1203) 574 AT 585** where My **Lord Yahaya JCA** stated thus: it is plain, that the trial judge was well within the legal parameters in awarding the 10% interest on the judgment sum. Not only was the interest prayed for in the statement of claim, but the rules of court also empower the trial judge to make the award." Per Jauro JCA.

This court shall not award solicitors fees In **GUINNESS NIG. PLC V NWOKE (2000) 15NWLR (PT 689) 135 AT 150** the court of appeal held that a claim for solicitors fee is outlandish and should not be allowed as it did not arise as a result of damage suffered in the course of any transaction between the parties. Similarly in the case of **NWANJI V COASTAL SERVICE LIMITED (2004) 36 WRN1 AT 14-15** the apex court referring to the decision in **IHEKWOABA V ACB LIMITED**

(1998) 10NWLR (PT 571) 590 AT 610 held that there is no basis for award of solicitor fee and that it is an unusual claim which is difficult to accept in this country as things stand today since there is no system of costs taxation to get a realistic figure and costs are awarded arbitrarily and certainly usually minimally. This claim must therefore fail.

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;

1. A DECLARATION that the action of the 1st Defendant blocking, freezing, restricting and or/ placing a no debit instruction on the Claimant's Account No: 4286884012 maintained with the 1st Defendant is unlawful, invalid and ultra vires.
2. A DECLARATION that the action of the 1st defendant refusing to honour fund request by the claimant and preventing the claimant from operating its account maintained with the 1st defendant amounts to a breach of the defendants contractual obligation to the claimant
3. AN ORDER of this honourable Court is granted mandating the 1st defendant to immediately unblock, unfreeze remove the no debit instruction and the restriction placed on the claimant account no: 4286884012 domiciled with defendant.
4. AN ORDER of this honourable Court mandating the 1st defendant to allow the claimant to continue to operate its account domiciled with the 1st defendant unfettered.
5. AN ORDER of this honourable Court restraining the 1st defendant from further blocking. freezing or further placing the claimant's bank account on a no debit status except with an Order of court with a competent Jurisdiction.

6. The sum of ~~N~~30,000,000.00 (Thirty Million Naira) only as general damages against the 1st defendant for the embarrassment, loss of business, loss of goodwill resulting from the 1st defendant's breach of its contractual obligations to the Claimant.
7. 10% interest on post judgement sum is awarded from date of judgment until final liquidation is refused.
8. Solicitors cost of this action is refused.

HON. JUSTICE NJIDEKA K. NWOSU-IHEME

[JUDGE]

APPEARANCES:

- 1. Zekeri Garuba Esq with O. D Ogunniyi esq for Claimant**
- 2. N.M Ossai Esq for 1st Defendant**
- 3. Favour Otuniyi Esq H.B of K.O Balogun Esq for 2nd Defendant**