

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

Date:-3/6/2022

FCT/HC/CV/3598/2021

BETWEEN

OGHENENKARO ARUORIWO ESALOMI.....

APPLICANT

AND

GUARANTY TRUST BANK PLC

RESPONDENT

JUDGMENT

This suit was brought pursuant to the provisions of order 2 Rules (1),(2),(3),(4) and (5) of the Fundamental Right Enforcement Procedure Rules, 2009; sections 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), and under the inherent jurisdiction of this Honourable Court. Praying this Honourable Court for the followings:-

1. A declaration that the freezing of the Applicant's Guaranty Trust Bank account with account number 0110778131 operated in the name of the Applicant by the Respondent is unlawful and a violation of his fundamental right against compulsory acquisition of his interest in moveable and immoveable property as guaranteed

under section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

2. An order of this Honourable Court directing the Respondent to defreeze the Applicant's Guaranty Trust Bank account with 0110778131 operated in the name of the Applicant and allow the Applicant an unfettered access to his bank account.
3. An award of sum of ~~N5,000,000.00~~ (Five Million Naira) as general damages against the Respondent for unlawfully freezing the bank account of the Applicant for over a 3(three) months period thereby causing the Applicant psychological trauma, and financial hardship arising from the inability of the Applicant to withdraw funds from his Guaranty Trust Bank account number 0110778131 operated in the name of the Applicant.
4. An order of this Honourable Court restraining the Respondent, its agents and privies from interfering with the right of the Applicant to peaceable enjoyment of his right to own moveable and immoveable property (inclusive of funds in his Guaranty Trust Bank account with number 0110778131)
5. And for such orders of further orders as this Honourable Court may deem fit to grant in the circumstances.

Attached to this application is a statement of particulars in support of an affidavit and in support an of originating summons. 2 documents marked as exhibit AA1 and AA2 respectively and Applicant written address.

The facts of the case as averred in the affidavit deposed to by one Oghenekaro Aruoriwo Esalomi himself states inter alia that:-

1. That I am a businessman and a customer of the Respondent.
2. That sometime on the 17th of September, 2021 I tried carrying out some transaction via my Guaranty Trust Bank mobile application and discovered that I could not access my account.
3. That I tried to make use of the GTB(Guaranty Trust Bank) short code which *737# to buy airtimes and also pay for products I was to order for but I discovered that I could not.
4. That I initially thought it was probably a network challenge from my service provider.
5. That on the 19th of September, 2021, I confirmed from a colleague in my office if he had a similar challenge with his Guaranty Trust bank account but he told me that he could transact freely from his account.
6. That on the 20th of September, 2021 I tried to call the customer care officers of the Respondent through the Respondent's GT Connect help line but the network was poor so I sent an email to the Respondent GT Connect mail complaining, about the restriction on my account. The email is annexed as exhibit AA1.
7. That on the 21st of September, 2021 I decided to get into the banking hall of the nearest Guaranty Trust Bank Plc at No. 47 Gado Nasko Way, Kubwa, Abuja to complain about my inability to carry out transaction or withdraw funds from my Guaranty Trust Bank

account, on getting there, I was told by a female customer care staff that there was a restriction on the account and she would assist me to see what wrong.

8. That after waiting without any positive result I sent another complaint to the Respondent's complaint mail. The email is annexed as exhibit AA2. The certificate of compliance showing that exhibits AA1 and AA2 were sent from my mobile phone and printed is annexed as exhibit AA3 .
9. That I have gone to the bank to know how far they have gone but nothing was done as the restriction on the account still subsists.
10. That I have been waiting since 20th of September, 2021 for my account to be unfrozen but got nothing positive.
11. That the freezing of my account just two weeks after I lost my dad, Engr. Christopher Asanimi Esalomi who died on the 1st of September 2021.
12. That I needed to receive payments through the account from service rendered to my clients and as well withdraw money to support my family for the burial ceremony of my late father but I was handicapped.
13. That I had to borrow money to travel for my father's burial at Olomoro in Isoko South Local Government of Delta State.
14. That though our mother wanted to know why I was troubled during the preparation for my late father's death.

15. That on the 8th day of November, 2021 I retained the services of the law firm of O.H Okene & Co and instructed the firm to file this suit for the enforcement of my fundamental right.
16. That my right to freedom of movement as guaranteed under the constitution has been constructively infringed upon as I can't fuel my car nor withdraw money to pay for services.
17. That I could not attend family meetings with my sibling as my movement was restricted to a large extent by the freezing of my account.
18. That I have been compelled to borrow money to feed and transport to work on several occasions from friends and family members.
19. That money in my Guaranty Trust Bank with account No. 0110778131 and operated in my name is my property and not that of the Respondent.

The Respondent filed a six paragraph counter affidavit dated and filed on the 28th February, 2022 deposed to by one Monday Unwana, a litigation Secretary in the law firm of Counsel to the Respondent wherein he averred to the following facts:-

1. On Friday the 25th of February, 2022, in our office at No. 7B, Suez Crescent, Abacha Estate, Zone 4, Wuse, Abuja at about 4:30pm, I was present in the briefing were Mr. Oluwaseun Alao, a staff of the Respondent working in its Legal Department informed me, in the presence of my principal, Mr. Kingsley Odey, Esq. Oduduabasi

Ituen, Esq and Miss Grace E. Udobang, Esq, of the following facts which I verily believed to be true: that:-

- a. He has gone through the facts deposed to by the Applicant in his affidavit setting out facts in support of the originating motion and the reliefs contained therein, and that the Applicant has not stated the true and correct position of facts.
- b. He confirms that the depositions of the Applicant in paragraph 1,7,8 and 9 are correct, but only to the extent that the Respondent receive the Applicant's complaint with respect to the restriction placed on his account and reason for the restriction was duly communicated to him on his subsequent visit to the bank.
- c. The deposition in paragraph 2 of the Applicant's affidavit in support is true, but only to the extent that the Applicant is a customer of the Respondent. The Respondent cannot however affirm or deny the fact the Applicant is a businessman or is engaged in any business or trade at all.
- d. Contrary to the depositions in paragraphs 3,4,5 and 6 of the Applicant's affidavit, he is aware that the reason the Applicant was unable to carry out transaction on his Guaranty Trust Bank account was as a result of the restriction place by the Respondent pursuant to an order of the Federal High Court, sitting in Port Harcourt, Rivers State, in Suit No: FHC/PH/CS/131/2021 between GODSWILL ABANUM- BANKS & 189

ORS (all collectively suing by their lawful attorney, RECOVADEBT LIMITED) V CENTRAL BANK OF NIGERIA & 26 OTHERS on the 9th of September, 2021 by Hon. Justice Stephen Dalyop Pam. A certified True Copy of the order of Court dated 9th September, 2021 is hereto attached and marked "Exhibit GTB1"

- e. He is also aware that by the order of Court at page 9, particularly order No. 6 of the ruling delivered by Honourable Justice Stephen Dalyop Pam of the Federal High Court in suit No. FHC/PH/CS/131/2021 BETWEEN GODSWILL ABANUM - BAN KS & 189 ORS (all collectively suing by their Lawful Attorney, RECOVADEBT LIMITED) V CENTRAL BANK OF NIGERIA & 26 OTHERS, the Applicant's Guaranty Trust bank account number: 0110778131 was listed as one of the accounts to be placed on a stay of all debit transactions by the Honourable Court.
- f. In response to paragraph 10 of the Applicant's affidavit, he is aware that the restriction placed on the Applicant's account by an order of the Honourable Court, can only be lifted via an order of the same Court or on appeal to the Court of Appeal.
- g. Paragraphs 12, 13,14,15,16,17,18 and 19 of the Applicant's affidavit are denied. He further states that, the Respondent is not responsible for any perceived hardship or inconvenience that the Applicant may have likely experienced as a result of his inability to operate his account and that the Respondent was only complying with an order of Court served on the bank.

- h. In response to paragraph 20 of the Applicant's affidavit the Respondent only acted in line with the valid order of Court served on it. The Respondent does not deny the title or ownership of the funds in the Applicant's account domiciled with the bank, but that he is aware that the bank being a legal entity is bound to comply with all laws, regulations policies and directives of the Central bank of Nigeria and all orders of Court.
- i. The bank has not received any contrary order to lift the said restriction placed on the Applicant's account.

5 Paragraph 21 of the Applicant's affidavit is not correct. In response thereto, I state that it will not be in the interest of justice to grant the reliefs sought by an Applicant in this application, as it will only amount to penalizing the respondent for complying with order of Court.

The Applicant also filed a further affidavit and reply on points of law in support of Applicant's motion on notice.

1. That on the 28th day of February, 2022, at about 5:30pm, I received a call from my lead Counsel in the law firm of O.H Okene & Co. informing me that a counter affidavit has been filed by the Respondent and that Court processes and a Court order from the Federal High Court Port-Harcourt with suit No. FHC/PH/CS/131/2021 (GODSWILL ABANUM BANKS & 189 ORS VS CENTRAL BANK OF NIGERIA & 22ORS) had been attached to the counter affidavit .

2. That the Respondent's counter affidavit raised fresh issues that has made it necessary for me to depose to this further affidavit.
3. That my Counsel advised me that there is need for him to travel to Port-Harcourt and apply for a certified true copy of the originating process filed to be sure that I was not a party in the suit wherein the order freezing my Guaranty Trust Bank account (with account No. 0110778131) was made since the names of the Applicants as expressed on the face of order read: " GODSWILLS ABANUM BANKS & 189 ORS(ALL COLLECTIVELY SUING BY THEIR LAWFUL ATTORNEY, RECOVADEBIT)" and neither was I a Respondent in that suit.
4. That my lead Counsel, O.H Okene Esq, travelled to Port- Harcourt, River State and obtained a certified true copy of the originating process filed as a defence of justification. The copy of the originating process filed is annexed as exhibit BB1.
5. That a close look at exhibit BB1, shows that I was never a party to the suit.
6. That the averment in paragraphs 4(b),(c),(d),(e),(f),(g) and (h) of the Respondent's counter affidavit are false and misleading.
7. That paragraph 3 of the Court order granted in favour of the Applicants in suit No. FHC/PH/Cs/131/2021 by Hon. Justice S. Dalyop Pam on the 9th day of September, 2021, shows that it was an order directed at all the Respondent in that suit (including the Respondent in this suit who was the 17th Respondent in that suit

No. FHC/PH/CS/131/2021) to show cause why the 1st Respondent in that suit (Central Bank of Nigeria) should not direct the head office of all banks and financial institution in Nigeria, including the 13th -23rd Respondent, to freeze all accounts belonging to or linked to the 4th – 8th and 10th -12 Respondent in their respective banks or financial institutions, pending the determination of the motion on notice to be filed upon the grant of leave as sought in this application.

8. That the 6th relief in the order makes it clear that the order to show cause was to operate as a stay of all debit transactions on all bank accounts held by or linked to the 4th,5th,6th,7th,8th,10th,11th,and 12th respondents in the 12th – 23rd respondents/bank pending the show of cause or determination of the motion on notice to be filed upon the grant of leave as sought in the application filed by the Applicants in suit No. FHC/PH/CS/131/2021.

9. That the names of the 4th, 5th, 6th, 7th, 8th, 10th, 11th, and 12th Respondents to whom the order was directed are as set out below.

- (a) 4th Respondent ----- MBA Trading and Capital Investment Limited
- (b) 5th Respondent----- Dr. Maxwell Odum Chiz
- (c) 6th Respondent----- Mrs. Vodina West
- (d) 7th Respondent----- Mr. Ede Agida Peter
- (e) 8th Respondent----- Professor Akume Andrew

(f) 11th Respondent-----Mr. Leon Michael Dorsett

(g) 12th Respondent-----Mr. Kevin Ndango

10. That I am not one of the persons mentioned in paragraph 10(a) to 10(g) above and neither is my name the same with that of 4th Respondent whom the order specifically directed the freezing order should be enforced on her bank accounts as stated in the 4th relief stated in the Court order specifically mentioned in the 4th relief.

11. That the Respondent (who is the 17th Respondent in suit No. FHC/PH/CS/131/2021, owed me a duty as its customer to protect my bank account from being wrongly frozen most especially when the respondent saw that the account number did not tally with the account name which ought to be that of the 4th Respondent and not my name.

12. That there is no way the Respondent can be misled into believing that my bank account belonged to the 4th respondent in suit No. FHC/Ph/CS/131/2021, when it was the Respondent in this suit that opened the Guaranty Trust Bank account with account No. 0110778131 in my name.

13. That the respondent has not denied freezing my bank account but only relies on compliance with an order of Court that the Court had no jurisdiction to make against me most especially as I was never a party in the suit No. FHC/PH/CS/131/2021 wherein the order freezing my Guaranty Trust Bank account was made.

14. That I was never a Respondent in that suit and despite the fact that my Guaranty trust bank account was mistakenly typed with several other account number to confirm that the account numbers listed belonged to the 4th, 5th, 6th, 7th, 8th, 11th, and 12th, respondent or were linked to them, the Respondent in this suit (who was the 17th Respondent in suit No. FHC/PH/CS/131/2021 wherein the order was made) had an opportunity to correct that mistake or error by filing an affidavit to show cause why my Guaranty Trust Bank account No. 0110778131, not bearing the name of any of the parties to whom it was directed, should not be frozen but the Respondent deliberately refused to do so.
15. That 4th relief in the order directed the 13th -23rd Respondents to show cause why they should not be compelled pursuant to section 177 of the Evidence Act, 2011, to produce their bankers book or financial books to the Court that granted the order to account for the Applicants' funds deposited into the 4th – 8th and 10th -12th Respondent's accounts with the 13th -23rd Respondents particularly the 4th Respondents accounts set out below pending the determination of the motion on notice to be filed upon the grant of leave as sought in the application.
16. That the last 5 lines of the 4th reliefs in the order granted in suit No FHC/PH/CS/131/2021 makes use of the words"..... particularly, the 4th Respondent's accounts set out below, pending the determination of the motion on notice...."

17. That the order in the 4th relief granted by the Federal High Court Port- Harcourt shows that all the accounts listed as accounts to be frozen were meant to be the bank accounts of the 4th Respondent whose name appears as MBA TRADING AND CAPITAL INVESTMENT LIMITED IN EXHIBIT GTB1 attached by the Respondent in this suit and also reflected in the originating processes filed in suit No. FHC/PH/CS/131/2021 which has been annexed as exhibit BB! To this my further affidavit.

18. That the bank accounts listed in the 4th relief amongst other reliefs granted by the Federal High Court Port Harcourt on the 9th day of September,2021 and which were all listed as bank accounts bearing the name of the 4th Respondent which is a company are:-

- (a) Access Bank Plc account Numbers:-
0100996970,0099992982,0769178200,0008004900
- (b) Ecobank Nigeria Limited-----Account No. 0070002747
- (c) First Bank of Nigeria Limited-----Account No. 301420728
- (d) First City Monument Bank Limited-----Account No. 5460019011
- (e) Guaranty Trust Bank Plc-----Account No. 0110778131
- (f) Sterling Bank Plc-----Account Nos. 0073780970,0071457827
- (g) Suntrust bank Nigeria Limited-----Account No. 0001300481
- (h) United Bank for Africa Plc-----Account No. 1023254410
- (i) Union Bank of Nigeria Plc-----Account No. 0097012398
- (j) Unity Bank Plc-----Account Nos. 0049002313,0045852077,0048970105
- (k) Zenith Bank Plc-----Account No. 1016394347

19. That my Guaranty Trust bank account with account No. 0110778131 which was included is a personal account bearing my name and not even a bank account belonging to any of the Directors or shareholders of the 4th Respondent whom the application in the originating process as well as the Court order in suit appears to have intended to freeze.
20. That there is nowhere where my name was mentioned as an agent of staff or Director of the 4th Respondent in suit No. FHC/PH/CS/131/2021 .
21. That the respondent has in- house Counsel who should have advised the Respondent on the implication of not filing an affidavit to show cause why Guaranty Trust Bank account should not be frozen as the account details supplied by the Applicant in suit No. FHC/PH/CS/131/2021 is at variance with the name of the party against whom it was granted.
22. That the use of the words all accounts linked to the 4th,5th,6th, 7th, 8th, 10th, 11th, and 12th, Respondents does not presuppose that accounts not bearing the names of the parties against whom the freezing order was made should be frozen.
23. That the federal High Court that granted the order freezing my account has no jurisdiction to handle matters relating to investments and securities.
24. That matters touching on securities and investment is the exclusive preserve of the Investment and Securities Tribunal.

25. That the order granted by the Federal High Court is an attempt to usurp the powers of the investment and securities Tribunal under the control of the Securities and Exchange Commission which is the 3rd Respondent in suit No FHC/PH/CS/131/2021.
26. That the Federal High Court did not have the powers to grant the orders it made at the time the order was made.
27. That it would in the interest of justice to grant the reliefs sought in my motion on notice as the counter affidavit of the Respondent is a diversionary therapy.

In the final written address attach to the counter affidavit dated 20th February, 2022 the Respondent raised issues for determination to wit:-

1. Whether by virtue of exhibit GTB 1 the Respondent was bound to comply with the order of Court in placing a restriction on the Applicant's account domiciled with the Respondent.

3.0. Legal argument.

Whether by virtue of exhibit GTB 1 the Respondent was bound to comply with the order of Court in placing a restriction on the Applicant's account domiciled with the Respondent.

3.1. It is trite that a competent order of Court is binding on parties and must be fully complied with unless such order is set aside by the Court that made same or on appeal.

3.2 We refer to the case of ***ATTORNEY GENERAL OF ANAMBRA STATE V ATTORNEY GENERAL OF THE***

FEDERATION (2005) ALLNLR PAGE 90, where the supreme Court held thus:-

"It is the unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged and this is more so, where the person affected by the order believes it to be irregular or void. In so far as the order exists, it must be obeyed to the letter." Bold emphasis supplied.

3.3 The Court went further to state that:-

An order of Court, no matter the fundamental vice attached thereto remains legally binding until set aside by the process of law"

3.4 Respectfully we submit that the Respondent simply acted in line with its duties and obligations as a bank. The Respondent in paragraphs 4 (d) and (e) stated that it was served with an order of Court and wherein, the Honourable judge of the Federal High Court ordered a stay of all debit transaction on the Applicant's account.

3.5 For the sole purpose of clarity, we seek Courts kind permission to reproduce the said order of Court at page 9. The said order reads thus:-

"That it is hereby ordered that the order to show cause shall operate as a stay of all debit

transactions on all bank accounts held by or linked to the 4th , 5th ,6th , 7th , 8th , 10th , 11th , and 12th , respondents in the 13th -23rd Respondents/banks pending the show of cause or the determination of the motion on notice to be filed upon the grant of the motion on notice to be filed upon the grant of leave as sought in this application.

3.6. The Respondent is bound by law to comply with the order of the Honourable Court until it is set aside by the Court that made the order or an appellate Court. This fact was made clear by the Respondent in paragraph 4 (h) of its counter affidavit, wherein the respondent stated:-

" In response to paragraph 20 of the Applicant's affidavit, the Respondent only acted in line with the valid order of Court served on it. The App....."

*3.7. We refer to the case of **IALIMS NIG LTD VS U.B.A PLC (2007) ALL FWLR (Pt347) page 971 @ 981** wherein the Court held thus:-*

" A judgment or order of a Court of competent jurisdiction remains valid and binding unless and until it is set aside by an Appellate Court or by the lower Court itself. The rational is that to hold otherwise

would be to cloth a party against whom a judgment or order is given with the discretion to decide in his own wisdom whether a judgment or order is invalid and not binding on him, a situation which rightly has been described as amounting to an invitation to anarchy”

3.8. Where a party chooses not to obey the clear and precise order of Court, or when a party chooses to cherry pick which of the order (s) it will obey, then it will lead to anarchy and a pure ridicule of the hallowed halls of justice. This, the Honourable Court is mandated to prevent.

3.9. We refer to the case of **MILITARY GOVERNOR OF LAGOS STATE V OJUKWU & ANOR (1986) 1 NSCC page 3014** where the Court held as follows:-

“ The Court system cannot be maintained without the willingness of parties to abide by the findings and orders of a competent Court until reversed on appeal”

3.10. Also in the case of **VICTOR OLUROTIMI V FELICIA IGE (1993) 10 SCNJ page 1** the Supreme Court held thus:-

"Where an order is wrongly drawn up a party who thinks that it is wrong and wishes to have it altered, the party may in the ordinary way apply to have it corrected or appeal against it as the case may be. Until the order is corrected it remains provisionally effective"

3.11. We also submit that where a party against whom an order of Court was made is not pleased with the said order, there are provisions in the Rules of Court that allows the said aggrieved party to apply to that Court for a variation or discharging of the said order. We refer to the case of **PROVISIONAL LIQUIDATOR OF TAP INDUSTRIES LIMITED VS TAP INDUSTRIES LIMITED & 7 ORS (1995- 1995) AU. NLR page 253** where the Court state thus:-

"Where a party is not pleased with an order made, provision are provided in the rules to apply for a variation or discharge of the order made."

3.12. The crux of the Applicant's case is that the Respondent unlawfully placed a restriction on his account. We submit that going by exhibit GTB1 the Respondent has placed before this Honourable Court cogent facts and argument to show that its actions were not unlawful, rather, it was in obedience of a valid order of Court.

3.13. We respectfully submit that the Applicant have not made out any clear case against the Respondent that will warrant the institution of the fundamental right suit against the Respondent, as there has not

been any clear infringement of the Applicant's right by the Respondent.

We submit on the totality of the foregoing authorities that, the respondent acted in compliance with a Court order and cannot be penalized for being law-abiding. It is in the light of the foregoing, that we respectfully urge on the Court to dismiss the case of the Applicant with cost.

In the written address filed by the Applicant, the Applicant formulated two issues for determination:-

" Whether the unlawful freezing of the Applicant's Guaranty Trust Bank account is not a violation of the Applicant's fundamental Right against compulsory acquisition of his interest in moveable and immoveable property as guaranteed under section 44(1) of the Constitution of the Federal of Nigeria 1999(as amended)

1SSUE TWO

If issue one is answered in the affirmative what remedy is available to the Applicant?

ARGUMENT IN SUPPORT OF ISSUED RAISED

ISSUE ONE

Whether the unlawful freezing of the Applicant's Guaranty Trust Bank account is not a violation of the Applicant's fundamental right against compulsory acquisition of his interest in moveable and immoveable property as guaranteed under section 44(1) of the Constitution of the Federal of Nigeria 1999(as amended)

Pursuant to the provision of section 44(1) of the Constitution of the Federal of Nigeria 1999(as amended)

No moveable property or any interest in an immoveable property shall be taken possession of compulsorily except in accordance with the provision of the law. Money in the bank account of the Claimant is "moveable property within the context of under section 44(1) of the 1999 Constitution (as amended). The only circumstance under which the moveable property of the Applicant (which in this case is the money in his bank account domiciled with the Respondent) can be frozen is there is an order of forfeiture in a criminal trial. The Applicant did not commit any crime and neither is there any criminal case against him.

Denying the Applicant access to his bank account is an infringement on his fundamental right. In the words of the Applicant states in paragraphs 4,5 and 6 of the Applicant's affidavit in support of the motion on notice he says that:-

Paragraph 4..... That I tried to make use of the GTB (Guaranty

Trust Bank) short Code which *737# to buy airtime and also pay for products I was to order for but I discovered that I could not.

Paragraph 5.....That I tried call the customer care officers of the Respondent through the Respondent's GT Connect helpline but the network was poor.

Paragraph 6..... That I decided to get into the banking hall of the nearest Guaranty Trust Bank Plc on Gado Nasko Way, Kubwa, Abuja to complain about my inability to carry out transactions or withdraw funds from my Guaranty Trust Bank Account, but on getting there, I was told by a female customer case staff that there was a restriction on the account and she would assist me to see what's wrong.

The direct consequence of a denial of account of the Applicant to his money in his Guaranty Trust Account with account Number: 0110778131 which was frozen by the Respondent unlawfully since September, 2021 is that the Respondent has constructively restricted the movement of the Applicant in violation of the Applicant's right to personal liberty and right to associate freely as guaranteed under sections 35(1) and 40(1) of the 1999 Constitution of the Federal republic of Nigeria (as amended). Section 40(1) provides that every person shall be entitled to assemble freely and associate with other

persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. In other words its violation has become a double jeopardy for the Applicant. Exhibit AA1 and exhibit AA2 shows that the Applicant sent email to the Respondent's complaint channels but there was no response.

The question to ask at this stage have established that there was actually a breach of the Applicant's fundamental rights is " what remedy is available to the Applicant" the answer to the question finds expression in the dictum of Nwodo JCA (of Blessed memory) in the case of ***AGU V OKPOKO(2009) LPELR*** where he stated thus:-

" The law is trite, that the law presumes that damages flow, naturally, from the injury suffered by the victimized as a result of infraction of its (sic) fundamental rights even if the Applicant has not sought any damages the law presumes that damages, flow naturally from the injury suffered and should be awarded.

Having reproduced substantially the position of both sides for and against by the two respective Counsel. It is important to state clearly from the affidavit in support of the application filed by the Applicant that whether same is entitled to the relief sought. I seek at this juncture to ask myself is the application not only properly brought

before this Court but whether this Court can easily grant the reliefs. The answer in my opinion is no. This is because from the affidavit evidence contained in some of the paragraph the Applicant also agreed that the account No. 011778131 belongs to him but that his name was not at all being mentioned in the order granted by the Federal High Court sitting at Port- Harcourt River State. This alone create a serious doubt in the mind of this Court. The Applicant went further to add that the Federal High Court that granted the order freezing my account has no jurisdiction to handle matter relating to investment and securities. He went further to add that matter touching on securities and investment is the exclusive preserve jurisdiction of the Investment and Securities Tribunal. These and many more made me not to grant this application. It is pertinent to note that this Court is sitting principally and properly as trial Court not a Court of Appeal the issues contained in this application gave the Applicant some action which can easily operate as a remedy to his problem. The Applicant should either apply before the Federal High Court for the variation of the order or even setting aside of same or alternatively to proceed on appeal against the said order this Court if ordinarily granted this order this might cause a conflict of orders granted by two different Courts. From the facts and circumstance of this case the application cannot be granted by this Court. See the case of ***OBLA VS EFCC (2019) ALLFWLR (PT 991)pg 41Q p56.***

The Court of Appeal held in considering how question of infringement of Fundamental Right is determines held thus:-

The question of the infringement of Fundamental Right is largely a question of facts and does not so much depend on the dexterous submission from the forensic arsenal of Counsel on the law. It is the fact of the matter as disclosed in the processes filed that are examined analyzed and evaluated to see if the Fundamental right of an Applicant were eviscerated or otherwise dealt with in a manner that is contrary to the constitution and other provision of the Fundamental Right of an individual.

From the above question the Applicant to have his relief granted or not shall do the needful by filing his application before the Court. The Respondent in this case is bound by law to comply with the order of the Court until it is set aside by the Court that made it or an Appellate Court. See ***ALIMS NIG LTD VS UBA PLC (2007)ALLFWLR (pt347) page 971 Q 981.***

" A judgment or order of a Court of competent jurisdiction remains valid and binding and until it is set aside by an Appellate Court or by the lower Court itself. The rational is that to hold otherwise would be to cloth a party against whom a judgment or order is given with the discretion to decide in his own wisdom whether a judgment or order is invalid and not binding

on him, a situation which rightly has been describe as amounting to an invitation to anarchy"

Also in ***VICTOR OOUROTIMI VS FELICIA IGE (1993) 10 SENJ page 1 SC .***

"Where an order is wrongly drawn up a party who thinks that it is wrong and wishes to have it altered the party may ordinary apply to have it corrected or appeal against it as the case may be. Until the order is corrected it remains provisional effective -----"

By and large I would not delved into the matter substantially whether the application is meritorious or not but to heavily rely on the fact that the Applicants account's number was initially also affected by the order granted by the Federal High Court sitting at Port- Harcourt Rivers State. Consequently for the above reasons this application cannot be granted and therefore same is hereby dismissed.

**HON. JUSTICE M.S IDRIS
(Presiding Judge)**

APPEARANCE

O. H Okene:- For the Applicant.

Kingsley Odey:- For the Respondent

