IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 24 WUSE ZONE 2ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 3RD DAY OF MARCH, 2022

SUIT NO: FCT/HC/CV/652/2021

BETWEEN:
RODRIGO INTERNATIONAL SERVICES LTD ----------APPLICANT
AND

1. **ECONOMICS AND FINANCIAL CRIMES COMMISSION (EFCC)**
2. **GUARANTY TRUST BANK PLC.** **……. RESPONDENTS**

AISOSA OGBORO for the applicant

PETER ONUH for the 2nd respondent(GTB PLC.)

JUDGMENT

This is an action for the enforcement of fundamental rights of the applicant brought pursuant to Section 34(1)(b), 35(1), (4), 36(1), (5), 37, 43, 44(1) and 46(1) of the 1999 Constitution, Section 1(1), (2), 31(1), 32(1), (2), (3) and 314 of the Administration of Criminal Justice Act 2015, Articles 2, 3(1) (2), 5, 6, 7(1), (3)(b),(d), 12 (1) 14 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004, Orders 2 Rule 1, 2, 3, 4 and 5 of the Fundamental Rights Enforcement Procedure Rule 2009 and the inherent jurisdiction of this Honourable Court

as enshrined in Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria as altered.

The application in the main seeks for the following reliefs:

1. A declaration that the act of the 2nd respondent in placing the account of the applicant on a post no debit (PND) since 24th November, 2020, till date on directives of the 1st respondent, without a valid court order nor affording the applicant the opportunity to be heard is illegal, wrongful, unlawful and constitutes a blatant violation of the applicant's fundamental rights to fair hearing, presumption of innocence, right to own movable and immovable property anywhere in Nigeria as enshrined in Sections 36 (1), 36 (5) 43 and 44 of the 1999 Constitution of the Federal Republic of Nigeria as altered; Section 1 (1) and (2) of the Administrative of Criminal Justice Act, 2015 and Articles 2, 3 (2), 4 and 7 (2) of the African Charter on Human and Peoples' Rights Rectification and Enforcement Act Cap A9 Laws of the Federation of Nigeria, 2004.
2. A declaration that the continued confiscation and continued freezing of the applicant's account till date by the 2nd respondent on directives of the operatives and officers of the 1st respondent, on directives of the operatives and officers of the 1st respondent, on the frivolous grounds of an illegal Whatsapp message, exchanged between one Emmanuel and his mother Mrs. Oyo-ita where the said Emmanuel told his mother that one of the Applicant's Director had given the said

Emmanuel the sum of N25,000,000.00 (Twenty Five Million Naira) only, for facilitating the applicant's payment for job executed for the Ministry of Works and Housing, is illegal, wrongful, unlawful and constitutes a blatant violation of the applicant's fundamental rights as enshrined in Sections 35 (1), (3), and 41(1) of the 1999 Constitution of the Federal Republic of Nigeria as altered; Section 1 (1), (2) and 30 (1), (2), 32(1), (2) and (3) of the Administrative of Criminal Justice Act, 2015 and Articles 6 and 12 of the African Charter on Human and Peoples' Rights Rectification and Enforcement Act Cap A9 Laws of the Federation of Nigeria, 2004.

3. A declaration that the applicant is entitled to a public apology and adequate compensation from the respondents jointly and severally as provided for in Sections 35 (6) and 46(2) of the 1999 Constitution of the Federal Republic of Nigeria as altered; Section 314(1) and 323(1) and (2) of the Administrative of Criminal Justice Act, 2015 for the blatant violation of the applicant's rights without following the due process of law.
4. An Order directing the 2nd respondent to remove forthwith the applicants account from a post-no-debit.
5. An Order of this Honourable Court directing the respondents to tender a public apology in at least three National Dailies to the applicant for the blatant violation of his fundamental rights without following the due process of law.

6. An Order of perpetual injunction restraining the 1st and 2nd Respondents whether by themselves, agents, employees, operatives, detectives, servants, privies and investigating officer(s), or however and by whatever name called, from further placing the Applicant's Corporate Account on Post-no-debit without first charging the Applicant to court for any offence known in law (if any) in line with the provisions of Section 35 of the Constitution, on the basis of the fact and circumstances of this matter.
7. An Order of this honourable court directing the respondents to jointly and severally to pay to the applicant the sum of **₦500,000,000.00 (Five Hundred Million Naira)**, only as general and exemplary damages for the wanton and grave violation of the Applicant's rights without following the due process of law.
8. And for such further or other orders as the honourable court may deem fit to make in the circumstance.

Pursuant to the provision of Order 2 Rule 3 of the Fundamental Rights Procedure Rules 2009, the applicant filed its statement in support of the application for enforcement of his fundamental right. In addition one of the Directors in the applicant's company Muzan Bruno Aspeni deposed to a 20 paragraph affidavit in support of the application wherein he averred that on the 24th day of November 2020 at about 3pm, he attempted making a transfer from the applicant's account with the 2nd respondent with account No. 0212112222 but the transaction failed. He became worried as to what

the problem could be and immediately contacted the applicant's account officer and was reliably informed that the account has been placed on a post no debit (PND) on the directives of the 1st respondent without any prior court order. And upon further enquiry it was discovered that the applicant's account was said to be placed on a post no debit on alleged investigation that involved him, and is ongoing with over an alleged whatsapp message the officers of the 1st respondent claimed to have seen in one Mrs. Oyo-Ita's phone between herself and her son, Emmanuel where the said Emmanuel told his mother that the Director of the applicant had given him the sum of **₦25,000,000 (Twenty Five Million Naira)** only to facilitate the applicant's payment for contract executed for the Federal Ministry of Works and Housing.

He further averred that all attempts to get the 1st respondents to restore the account from post no debit flag proved abortive. He issued a cheque to one Mr. Daniel Omenka on the 5th January 2021 which was dishonoured because of the post no debit placed on its account. He also issued another cheque of **₦3,000,000 (Three Million Naira)** only to one Mr. Bruno Muzan which was equally dishonoured as a result of the post no debit flag on the account. The cheques issued by the applicant are attached and marked as Exhibit A and B. And a letter written by the applicant's counsel seeking to know the status of the applicant's account is attached as Exhibit C. The applicant seeks an urgent intervention of this Honourable Court as the respondent he claimed have vowed that they will continue to infringe on his fundamental rights.

In accordance with the rules governing the Fundamental Right Procedure the Learned Counsel to the applicant filed a written address wherein a sole issue was formulated for determination of this court to wit:

"Whether the applicant's fundamental rights have been breached, are being breached, and will likely be breached by the conducts and actions of the respondents such as will entitle the applicant to the grant of the reliefs sought from this Honourable Court."

The 1st respondent Economic and Financial Crimes Commission filed a 16 paragraph counter-affidavit deposed to by one Mubarak Isa, one of the Investigating Officers. And attached to the counter-affidavit are five documents marked as Exhibit EFCC1 – 5 namely; Statement of Account, of Methan Integrated Ltd showing funds transfer from Brumajic Ltd, the Statement of the applicant, Exh EFCC2, the extra judicial statement of the Emmanuel Orok-Oyo-Ita Exh EFCC3, a further statement of Emmanuel Oyo-Ita and the statement of account of Muzan Bruno Aspeni, Exh EFCC 4a and 4b, certified true copy of the Order of Court Exh EFCC5, a forwarding letter of the copy of the freezing court order to Guaranty Trust Bank Exh EFCC6.

The deponent averred that sometimes in 2019, the 1st respondent received intelligence that Mrs. Oyo-ita Winifred who was the former Head of Service of the Federation and a former Permanent Secretary with the Ministry of Special Duties and Inter-Governmental affairs had laundered public funds with her various bank accounts in Nigeria through various fronts including

the applicant. That the intelligence report was assigned to the Executive Chairman Monitory Unit of the 1st respondent to carry out discrete investigation into the allegation contained therein. And that the investigation revealed that Mrs. Oyo-ita Winifred received several sum of money from the applicant through her son Emmanuel Orok Oyo-ita and Methan Integrated Services (a company belonging to his son and daughter in law).

That investigation also revealed that the applicant's Chief Executive Officer Chairman, Muzan Bruno Aspeni is acquainted to Emmanuel Orok Oyo-ita. And Mr. Muzan Bruno Aspeni is the alter-ego of Brumajic Limited. That Brumajic Limited deposited the total sum of **₦22,572,000** into the account of Methan Integrated Services as Kick-back/bribery for Mrs. Winifred Oyo-ita, a copy of the statement of account of Methan Integrated Ltd showing funds transferred from Brumajic Limited is attached as Exhibit EFCC1. And that the applicant executed several public projects running into millions of naira during the tenure of Mrs. Oyo-ita Winifred. And also that sequel to the intelligence, the 1st respondent invited the applicant through its Chairman, Muzan Bruno Aspeni on 19th September 2019 to its Abuja office where he voluntarily made extra judicial statement on 19th, 24th, 26th September 2019 and on the 15th of November 2019. The statements are attached as Exhibit EFCC2. Also the said Mr. Bruno Muzan admitted at page 7 of the extra judicial statement dated 26th September 2019 that; *'I approached Emmanuel Oyo-ita to help me secure the initial mobilization payment of 15% by talking*

to his mother to beacon the Minister of Power, Works and Housing Mr. Babatunde Raji Fashola to assist us in facilitating payments.' That Mr. Bruno further admitted at page 7 of his extra judicial statement dated 26th September 2019 that: *'In January 2012, I received a payment of* ***₦71 Million Naira*** *as part payment, I paid the sum of* ***₦25,000,000*** *to Emmanuel Oyo-ita through the company of his wife, Methan Integrated Services.*' The deponent also averred that the 1st respondent invited Mr. Emmanuel Orok Oyo-ita on 12th November 2019 where he made extra judicial statement stating at page 2 thus: *'I know the company by name of Rodrigo International Services Limited owed by Mr. Bruno Muzan. He is the husband of my wife's friend. I have had some transactions with Mr. Bruno Muzan.'* Exhibit EFCC3 in the statement attached. That the said Emmanuel Oyo-ita also admitted in his extra judicial statement dated 13th November 2019 that; *'I wish to state that I introduced the companies Rodrigo International Services and Emka International Services to my mother for assistance of contracts. I wish to also state that I received Twenty Five Million Naira only over a period of months as my share from Mr. Bruno Muzan. I recognise that I erred in this, and I am willing to refund this money.'* His written statement and the statement of account of Muzan Bruno Aspeni are attached as Exhibits EFCC 4a and 4b. That investigation revealed that the applicant was awarded three contracts by the Ministry of Power, Works and Housing as follows:

1. Construction of Rural Road at Out-Ekun Village, Opume from Ogbia LGA of Bayelsa State at the sum of **₦150,000,000 (One Hundred and Fifty Million Naira)**.
2. Installation of Six No. Sinages (Lot 94) at the sum of **₦9,999,259 (Nine Million Nine Hundred and Ninety Nine Thousand Two Hundred and Fifty Nine Naira)**.
3. Construction of 3 Class room blocks in Awka Ibom State at the sum of **₦52,000,000 (Fifty Two Million Naira)**.

And that the applicant received several sums of money from the Federal Government through GTB account No. 0212112222 for contract executed in paragraph (M) above. And investigation revealed that the account number was used to confer corrupt benefit to a public officer (Mrs. Winifred Oyo-ita) and her son Emmanuel Oyo-ita on account of favour shown to the applicant in securing the award of the contract and payments thereafter. And that sequel to the findings, the 1st respondent approached the Federal High Court in Suit No. FHC/ABJ/CS/1202/2020 via an exparte originating motion seeking an order freezing amongst others, the account numbers 0212112222 of the applicant domiciled in GTB pending the conclusion of criminal trial in charge No. FHC/ABJ/CR/60/2020 and FHC/ABJ/CR/61/2020 that exparte application was granted on 14th day of October 2021 Per Hon. Justice F. O. G. Ogunbayo, freezing the account number 0212112222 amongst others of the applicant with Guaranty Trust Bank Plc pending the

conclusion of the on-going criminal trial. The Certified True Copy of Order is attached as Exhibit EFCC5,

And that the 1st respondent through the Acting Head, Chairman Monitoring Unit (Abuja Zone) forwarded a copy of the freezing order to Guaranty Trust Bank Plc via a letter dated 16th November 2020 and same was acknowledged on 16th November 2020. The forwarding letter is marked as Exh EFCC6. And that contrary to paragraph 3 and 4 of the applicant's affidavit in support of the application, the 1st respondent had obtained and communicated the freezing order against the account of the applicant before 24th November 2020. He maintained that the fundamental rights of the applicant have not been breached by the 1st respondent or any of its officers, servants, privies. The 1st respondent also accompanied the counter-affidavit with a written submission dated 28th day of June 2021 wherein a sole issue was formulated for determination to wit:

"Whether the applicant has made out a case for the enforcement of his fundamental rights?"

Similarly the 2nd respondent filed a five (5) paragraph counter-affidavit deposed to by one Idaye X. O. Imbu, a legal practitioner in the law firm of Steve Adehi SAN & Co counsel to the 2nd respondent. He averred that the applicant maintained four (4) accounts including account No. 0212112222 with the 2nd respondent. And that on the 18th November 2020, the 2nd respondent received from the 1st respondent a letter dated 16th November

2020 with reference No.CR3000/EFCC/ABJ/ZN/CMU/TA/02-18 VOL-178 and a court order issued on 19th October 2020 by Justice F. O. G. Ogunbayo in suit No. FHC/ABJ/CS/1202/2020. That the said order of the Federal High Court mandated the 2nd respondent to freeze the applicant's four (4) accounts including account No. 0212112222 pending the conclusion of the trial in FHC/ABJ/CR/60/2020 and FHC/ABJ/CR/61/2020. The letter and the court order are attached as Exhibits GTB1 and 2 respectively. The said order was confirmed at the registry of the Federal High Court and was complied with by placing a restriction on the four (4) accounts belonging to the applicant including account No. 0212112222 and contacted the applicant through its account officer of the restriction placed on the accounts. That the order is still subsisting as same has not been set aside nor varied and the 2nd respondent has not received any further or contrary directive from the court on the order till date. The deponent urged the court to dismiss the applicant's claim.

In the same vein the 2nd respondent filed a written address wherein two issues were formulated for determination by the court namely:

1. ***Whether the applicant claims are competent to be heard and determined under Fundamental Rights (Enforcement Procedure) Rules.***
2. ***Whether the applicant is entitled to any of the reliefs sought against the 2nd respondent.***

In further reply to the counter-affidavit of the 1st and 2nd respondents the applicant filed a further affidavit while the 2nd respondent also filed a further and better counter-affidavit to the further affidavit of the applicant. And each of the processes was accompanied with a written address.

Upon a careful perusal of the processes filed by the respective parties, and the written arguments in support, and the issues distilled for determination by learned counsel for the parties, I hereby formulate a sole issue to wit: Whether there are material facts placed before the court, that constitute a breach of the fundamental right of the applicant and whether the applicant is entitled to the reliefs sought.

The learned counsel to the applicant Oluchi Vivian Uche, who settled the written address accompanying the Originating motion relied on the provision of Section 46(1) of the 1999 Constitution as amended which provides that; ***"Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress."*** And Order 11 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Article 7(1)(a) of the African Charter on Human and Peoples Right (Ratification and Enforcement) Act Cap A9 LFN 2004. She submitted that the respondents have serially infringed on and violated the fundamental right of the applicant as provided for and guaranteed by the Constitution and African Charter on Human and Peoples Right (Ratification and Enforcement)

Act. On the interpretation of Section 46 of the 1999 Constitution he relied on the authority of **FRN V IFEGWU (2003) 15 NWLR 113 @ 216- 217**.

That on the issue of placing the applicant's account on a post no debit (PND) since 24th of November 2020 till date without a valid subsisting court order and not according the applicant the right to be heard she stated constitutes a blatant violation of the applicant's fundamental right to fair hearing, presumption of innocence, right to own movable and immovable property anywhere in Nigeria as enshrined in Section 36(1), 36(5), 43 and 44 of the Constitution of the Federal Republic of Nigeria 1999 as amended. She cited the case of **CHIEF GANI FAWEHIMI V NIGERIAN BAR ASSOCIATION & 4 ORS NO. SC 229/1986 (1989), AGBA & ORS V JUBRIN (2019) LPELR 47189 CA** and submitted that principle of fair hearing is breached where parties are not given equal opportunity to be heard in the case before the court. He urged the court to hold that the respondent ought to have obtained a valid order and afford the applicant opportunity to be heard before attempting to place a corporate account on a PND and therefore causing the applicant to suffer untold hardship till date. The court was also referred to the decision of Court of Appeal in **GTB V ADEDAMOLA & ORS (2019) LPELR 47310 CA, OLAGUNJU V EFCC (2019) LPELR 48461 CA.**

Finally she submitted that this court has the inherent power to grant the prayers as sought in this action and set aside any act or conduct of the respondents which in itself is punitive and capable of eroding the fundamental rights of the applicant.

The 1st respondent on the other hand submitted that Section 6 and 7 of the EFCC Establishment Act 2004 empowers it to investigate all economic and financial crime reported to it, it also relied on the case of **FAWEHIMI V IGP (2000) NWLR (PT. 655) 481 @ 519 -521**, the Counsel also contended that the rights of the applicant under Section 34(1)(b), 35(1)(4), 36(1)(5), 37, 43, 44(1) and 46(1) of the 1999 Constitution are not absolute. He relied on the case of **UDEH V FRN. (2001) 5 NWLR (PT. 706) 312 PER M. D. MOHAMMED JCA, DANBABA V STATE (2000) 14 NWLR (PT. 687) 396 @ 398.** He also stated that sequel to the confession and the evidential proof in the GTB account No. 0212112222 of the applicant the 1st respondent acting within its powers in Section 28, 29 and 34 of the EFCC Act 2004 obtained a court order freezing the account of the applicant pending the conclusion of investigation or trial in the matter. And that through concrete evidence and confessional statement of the applicant, the 1st respondent was satisfied that money in the account of the applicant was made through the commission of corrupt offences under the EFCC Act and Corrupt Practices And other Related Offences Act 2000, which led to seeking a freezing order from the Federal High Court, Abuja as exhibited in the counter affidavit. He contended that the 1st responded has placed sufficient materials before this honourable court in the counter affidavit. And also that there was reasonable suspicion of the application having committed the alleged offence, and duly sought an order to freeze the account. He urged the court to refuse the application/orders /restrains sought by the applicant.

With respect to the argument of the 2nd respondent in the written address, the counsel submitted that the applicant's cause of action is a breach of contract and not a breach of Fundamental Rights as enshrined in chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 as amended. He argued that the application of the applicant is incompetent as the jurisdiction of this court cannot be properly exercised, and urged the court to so hold. He relied on the case of **AMINU ISHOLA INVESTMENT LTD V AFRIBANK NIG. PLC. (2013) LPELR 20624 SC,** where the Supreme Court held that the refusal by a banker to pay a customer's cheque when the customer has sufficient funds in his account to cover the amount on the cheque amount to breach of contract. He further referred to the case of **GTB PLC. VS. GODWIN SUNDAY OGBOJI (2019) 13 NWLR (PT.1688) 67 @ 87, ALHAJI ISOHODU AMALE VS. SOKOTO LOCAL GOVERNMENT & 20 ORS(2012) 5 NWLR PT. 1292, 181 @ 201.**

On whether the applicant is entitled to any of the reliefs sought; the learned counsel submitted that assuming the suit is competent and can be entertained by this court, the applicant is not entitled to the reliefs sought. He relied on Section 46(1) of the Constitution, and further submitted that throughout the 20 paragraph affidavits the applicant did not disclose any of the elements constituting the violation or likelihood of violation of his right to personal liberty, fair hearing or property as provided in the constitution. That the applicant did not prove the existence of any of the elements founded in Sections 35, 36, 37 and 42 of the 1999 Constitution. That the

applicant did not successfully prove that the 2nd respondent, unlawfully restricted its account and the restriction caused her injury. And that in order for the application to succeed in his claim for damages against the 2nd respondent it must establish loss or injury suffered as a result of the 2nd respondent's unlawful act or inactions. He stated that the 2nd respondent restricted the account of the applicant based on the order of the court attached to the counter affidavit as Exhibit GTB 2.

That it is mandatory for any financial institution including the 2nd respondent to comply with the Order obtained pursuant to Section 34(1) of the Act. The 2nd respondent relied on the provisions of Section 131(1) of the Evidence Act, case of **CENTRAL BANK OF NIGERIA VS. ARIBO (2018) AFWLR(PT925) 93 131** to support his argument that the applicant must prove that he suffered untold hardship and inconveniences as a result of the freezing of her account based on Exhibit GTB 2. The 2nd respondent relied to the authorities of **GUARANTY TRUST BANK VS. MR. AKINSIKU ADEDAMOLA & 2 ORS (2019) 5 NWLR PT. 1664301 o**n the power of the Chairman of the EFCC to apply to the court for a motion exparte if satisfied that the money in the account of a person is made through commission of an offence under the Act or any enactment specified under Section 6(2)(a-f) of the EFCC Act. And also the case of **RALPH UWAZURIKE & 6 ORS VS. A.G OF FEDERATION (2013) LPELR 20392 S.C.** On the position of the law that any person who is served with or seems aware of a valid Order of court should ensure to obey it until, failure of which may amount to unlawful breach and could lead to contempt

of proceedings with serious consequences. The court is urged by the 2nd respondent to hold that the instruction placed on the applicant's four (4) accounts including account No. 0212112222 by the 2nd respondent is lawfully.

On the claim of the 2nd respondent that the applicant failed to prove that he suffered any injury and thus not entitle to compensation, counsel relied on the authorities of **OKON ANSA ASBASI VS. EFITANGA ANWANA ESIN (2018) LPELR 45881, YAKUBU DAUDA ESQ. VS. ACCESS BANK PLC (2016) ALLFWLR (831) 14989. @ 15.** On the whole the 2nd respondent's counsel, **Peter Onuh Esq** submitted that the applicant is not entitled to any of the reliefs sought against the 2nd respondent as he failed to proved same.

In reply to the counter affidavit of the 1st respondent, Muzan Bruno Aspeni in the further affidavit denied ever meeting Mrs. Oyo-Ita Winifred nor transacted any business with her and was never at any time used as a front by the said Mrs. Oyo-Ita Winifred to launder public fund. He also asserted that the Chief Executive Officer(Chairman's wife) is a friend to the son of Mrs. Oyo-Ita Winifred; That Brumajic Company Limited has no affiliation whatsoever with execution of contracts with the Federal Government. That the deposit into the account of Methan Integrated Ltd on several occasions were friendly loans which were subsequently refunded, and that the reasons for the loans were captured in the bank statement of account and not associated to kick-back as allegedly claimed by the 1st respondent. The deponent further asserted that the applicant executed the contract that

were duly bided and won, and in total compliance with the law with no affiliations whatsoever with the said Oyo-Ita Winifred. And that the alleged court order purportedly obtained freezing the account of the applicant was obtained illegally in an abuse of court process hinged on forum shopping and as such cannot be said to be valid and binding on the applicant.

In addition the applicant also maintained that the alleged court order was issued by Hon. Justice Ogunbajo of Federal High Court sitting in Abuja was based on concealment of material fact by the 1st respondent, that the 1st respondent concealed the fact that the matter was already pending before my lord Coram Taiwo J. of the Federal High Court sitting in Abuja wherein the Charge has been read to the same defendants, plea taken, motion for bail moved and granted and a date fixed for prosecution to open their case. That Justice Taiwo of the Federal High Court Abuja Division, in a well considered ruling dated 3rd March 2021 reprimanded the 1st respondent for embarking on an abuse of court process by filing a fresh suit in another matter while the matter was pending before him and as such, adjourned the matter sine die pending when the 1st respondent do the needful by putting their house in order. The deponent referred to the attached order dated 3rd March 2021 and marked as Exhibit RIL1**.**

The point of law raised in the accompanying written address, was firstly that the statement of the applicant which the 1st respondent placed a heavy reliance on is a public documents and ought to be certified in accordance with the law before any probative value will be placed on same by this court

and that without certification, it is a worthless paper and of no evidential value. Counsel cited some authorities amongst which are **IMOH V. IMOH (2013) AFWLR (pt 659) 1114 @ 1138-1139 par B-C, MERKIDI & ORS V. ADAIPHNAC (2021) LPELR 54772 CA. , IJIFE VS. STATE (2019) LPELR 49101 CA.**

Let me quickly answer the poser on whether the statement obtained from the applicant in the cause of investigation by the 1st respondent is a public document and thus needs to be certified. I will start by defining what a public document is in accordance with Section 102 Evidence Act, Section 102 of the Evidence Act **which states.**

Evidence Act states "The following documents are public documents

(a) Averment forming the official acts or records of the official e.g

i. The sovereign authorities.

ii. Official bodies and or

iii. Public officers, legislature, judicial and executive whether of Nigeria or elsewhere and

(b) Public record kept in Nigeria of private documents. "Section 103 of the Evidence Act further states. documents other than public documents are private documents". See **NAFDAC VS. REAGAN REMEDIES 2019 LPELR 47563 CA. EXECUTIVE GOVERNOR OF KWARA STATE & ORS VS. ALHAJI MUHAMMED LAWAL & ORS(2007) 13 NWLR pt. 1051, 342 @ 381-382 per OGUNWUMEJI JCA(**as she then was) stated. "For what is a public document. See Section 109 of the Evidence Act Cap 112 Laws of the Federation 1990. What makes a document a public document?. The test was stated in the case of **MAYERS & DIRECTOR PUBLIC PROSECUTION(1964) 48 CRAPPR OHL, 348 @ pg 364** where Lord Reid said "Public record are prima facie evidence of the facts which they contain but it is quite clear that a record is

not a public record within the scope of that rule unless it is open to inspection by at least a section of the public".

A public document is therefore a document that is brought into existence for the purpose of the public or for the use of the public for enquiries or reference in the case of judicial or quasi judicial duties.

In my view, the statement of the applicant or any statement taken by an investigating agency the record of which are kept form part of the official acts of the public officers, in this instance the investigating officer in the cause of investigating an alleged crime or an offence.

On this premise I agree with the learned counsel to the applicant that the statements of applicant are public document. The second leg of the arguments is, do the 1st respondent need to certify the statement of the applicant? I do not think so, and the reason is that these statements are coming from the custody of the 1st respondent who are the repository of the statement of the applicant's that are in their possession in the course of the investigation activities.

After all the whole essence of certification is to contradict the documents vis-à-vis the original. See **KASSIM VS. STATE(2017) LPELR 42586 SC.**

The only reason why this certificate will not lend any weight to the said statement for the reason of non-certification, is if the applicant has an original documents which is different from what is attached to the 1st defendant's counter-affidavit. The photocopies of the statements attached to the counter-affidavit are evidence before the court, and this is because the applicant's action was commenced by way of originating summons, the facts that the statements of the applicant are uncertified public documents are of no moment this is different from an action that was commenced by way of writ of summon, where documents are frontloaded and viva voce evidence is needed when tendering the documents in court. See the case of

IRIMIGHA VS. BROWN (2018) LPELR 44025 CA. Per Jumbo Ofo JCA where the court held that "……."

On the whole I hold that the photocopies of uncertified public documents attached to an affidavit is an originating summons is admissible and the court can ascribing probative value to it.

In the same vein, the applicant replied on point of law to the 2nd respondent's counter affidavit, that the ex parte Order attached to the counter-affidavit is a photocopies of a Certified True Copy which is not admissible.

The argument cannot also be sustained for reasons stated above and in the authority of **IRIMGHA VS. BROWN supra**. The case of **OGBURA VS. UDUAGHAN (2010) LPELR 3938 CA** where the applicant's counsel relied on law initiated by the writ of summons as against the originating summons for the enforcement of the fundamental rights of the applicant in the instant case. The authority cited by the learned counsel is therefore not applicable to the case at hand.

Now to the main issue for argument, it is not in doubt that the power of investigation vested on the Economics and Financial Crimes Commission(EFCC) is as enshrined in Section 7(1) of the EFCC Act thus "The Commission has the power to;

a. Cause investigation to be conducted as to whether any person, corporation body or organization has committed an offence under this Act or, other law relating to Economics and Financial crimes.
b. Cause investigation to be conducted under the property of any person if it appears to the Commission that the person lifestyle and existing of the …..are wrongful by his source of income.

2. In addition to the provision contained on the Commission by this Act, the Commission shall be the coordinating agency for the enforcement of the provision of;
   a. The Money Laundering Act 2004, 2003 no. 7 ACJ no. 13.

b. Advance Feed Fraud and other Related Offence Act 1995.
c. The Failed Bankers (Recovery of Debt and Financial Malpractices Banks Act) as amended.
d. The bank and other Financial Institutions Act 1991 as Amended.
e. Miscellanous
f. Any other law or regulations relating to Economics and Financial Crimes, including the Criminal Code and Penal code"

It is in pursuance of the above power that the 1st respondent averred to the investigation activities in paragraph ***2 a-m*** of its counter-affidavit. It is of utmost importance to note that the genesis of the investigation as an allegation of money laundering against the former Head of Service of the Federation and a former Secretary with the Ministry of special Duties and Inter Governmental Affairs, Mrs. Oyo-Ita Winifred. And the applicant is alleged to be one of the fronts used by the said former Head of Service, Mrs. Oyo-Ita Winifred.

In part c, the 1st respondent claimed that investigation revealed that Mrs. Oyo-Ita received several sum of money from the applicant through her son, Emmanuel Orole-Oyo-Ita, and Nauzam Integrated Services (a company belonging to her son and daughter in-law.

2(d) That investigation revealed that the applicant's Chief Executive officer 1, chairman Muzan Bruno Aspeni is acquainted to Emmanuel Orole- Oyo-Ita.

7(e) That Muzan Bruno Aspeni is the alter ego of Brumajic Limited.

7(f) That Brumajic Limited deposited the total sum of N22,572,000.00 into the account of Muzan Integrated Service as kick-back/bribery for Mrs. Winifred Oyo-Ita(Copy of the statement of account of Muzan Integrated Service Ltd showing funds transfer from Brumajic Limited is hereby attached and marked as Exhibit 1".

A critical analysis of the counter-affidavit of the 1st respondent reveals that the averments therein are contradictory. There is nothing in the counter –affidavit to show that the applicant's was used by the said Mrs. Winifred Oyo-Ita to launder money. The allegation of the 1st respondent as can be gleaned from paragraph (7 f) above is that another company belonging to the Director of the applicant,

Brumajic Limited deposited a total sum of N22,572,000.00 into the account of Muzan Integrated Service which belong to Mrs. Oyo-Ita's son and her daughter in-law.

Furthermore, the statement of account Exhibit '4B' that was attached to the counter-affidavit belongs to the said Brumajic Limited and not the applicant. In addition, paragraphs **2(i)(j), (k), (l), (m)** did not suggest that the account no. 0212112222 was used to counter any special or corrupt benefit on the former Head of Service of the Federation, Mrs. Oyo-Ita Winifred. In paragraph (7 m,) the 1st respondent admitted that the applicant Witness Statement on Oath awarded three contract by the Ministry of Power, works and Housing, and that the applicant received several sums of money from the GTB account no. 0212112222 for contract execution in paragraph(m) above.

Furthermore, Exhibit '**4b,'** another statement of account wherein the 1st respondent also dumped on the account belonging to Muzan Bruno Aspeni, the deponent to the affidavit in support of the originating summons and not to the applicant, and it is with a different account no. 5021574798.

The statement of Mr. Bruno Muzan Aspeni, and that of Emmanuel Oyo-Ita which the 1st respondent seeks to rely on in paragraphs 2(i)-(l) of their counter affidavit is of no moment because the 1st respondent failed to exhibit the statement of account No. 0212112222 belonging to the applicant to establish that the funds therein were proceeds from the Commission of offences, particularly the allegation of money laundering and counterring Corrupt benefit to a public officer. There is therefore no alignment between the Exhibits tendered and the averments of the 1st respondent.

The provisions of **Section 34** of the **EFCC Act, 2004** which the 1st respondent relied on provides thus: "(1) Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorize by him may if satisfies that the money in the account of a person is made through the Commission of an offence under the Act and or any of the enactment, specified under **Section and subsections 2(2)(a)-(f)** of this Act, may apply to the court Ex parte for power to issue an Order as specified in form B of the schedules

to this Act, addressed to the manager of the bank or any person in control of the Financial Institution, where the account is or believed by them to be on the head office of the bank, other financial Institutions or designated Non-financial Institution to freeze the account".

The power of the Chairman of the Commission or any officer authorize by him as conferred by **Sections 6, 7 and 34 of the EFCC Act** is not absolute; they are subject to the rights of a person to fair hearing resulting from thorough and discreet investigation of the alleged offence/offences.

I endorse the submission of learned counsel to the applicant that the investigation powers conferred on the 1st respondent as an Institution by **Sections 6 and 7 of the EFCC Act,** is not absolute and must be discharged with utmost good faith clothed with due diligence to duty and respect to human right. I also adopt the ratio of the Court of Appeal in the case of ***IGP & ORS Vs. IKPILA & Anor(2015) LPELR*** 4630 CA which the applicant counsel cited at pg 11 of the address in support of the further affidavit, address and reply on point of law to the 1st respondent's counter-affidavit. See also the case of **GTB Vs. Adedamola** on the legality or otherwise of the Ex parte Order freezing the account of the applicant, there is no doubt that the said Order was illegally obtained on the 19th October, 2020. His Lordship the Honourable Justice Taiwo O. Taiwo berated the attitude of the 1st respondent. In his ruling dated 3rd March, 2020 while describing the said Order as an abuse of the process of court, and a product of forum shopping by the 1st respondent. His Lordship commented at page 3 paragraph (f) lines 3-9 of his ruling thus " There is no doubt that this matter had commenced, Charge read and reacted to, and applicant motion granted and proceedings have commenced before the learned prosecutor herein approached my learned sister's court to secure the freezing Orders in a case before me. The learned prosecutor files a fresh application which was assigned to another court". In addition, apart from the said order freezing the account of the applicant being an abuse of the process of the court, the applicant name did not appear as one of the defendants who were charged before Honourable Justice Taiwo O. Taiwo in suit no. FHC/ABJ/CR/60/2020.

There is therefore no reasonable cause shown for freezing of the contended account of the applicant. The freezing of the applicant s account no. 0212112222 is reckless and an abuse of power and flagrant breach of fair hearing.

The freezing of an account of a citizen must be an alternative of a discreet investigation and not on the whims and caprices of the 1st defendant or its agents. "The chairman of the Commission or any officer authorized by him may if satisfied that the money in the account of a person is made through the Commission of an offence under this Act applying to the court exparte for power to issue an Order specified Form of the schedule to this Act…" Before applying to court for an Order Ex parte , the 1st defendant must be satisfied that the money in the account sought to be frozen was a products of Commission of an offence . See the case of **GTB Vs. Adedamola(2019) 5NWLR pg 32**.

With respect to the legality of the freezing Order and the liability of the 2nd respondent the applicant's counsel argued prefiercely that the 2nd respondent was negligent because it did not verify the propriety or otherwise of the alleged court Order before placing a Post No Debit on the account of the applicant. This the applicant's counsel argued amount to a failure in the discharge of the duty of care caused the applicant.

In my own view, I am wondering if the 2nd defendant had any choice in placing the Post No Debit in the account of the 2nd defendant in the face of a court Order, while I agree totally with applicant's counsel that the 2nd respondent owes a duty of care to the applicant in respect of his account, I do not think the 2nd respondent has the vire to challenge the Order of the court whether validly or not valid for as long for as long as the Order is existing. The validity or otherwise can only be determined and challenged in a court of law by the customer(applicant). In my opinion, the best the bank(2nd respondent) can do is to bring it to the attention the customer the Order of the court. The allegation of negligence on the part of the bank as argued by the applicant counsel was not supported by evidence. A party alleging negligence must plead and proof the particulars of the act of negligence.

Furthermore, if the applicant was claiming that the 2nd respondent was negligent and or that there was a breach of duty, or breach of contract, this will definitely change the entire narration of the claim of the applicant. That the said claim will not be suited under the Fundamental Rights Procedure.

All the arguments of learned counsel to the applicant are mere counsel address not borne out of the averments contained in the affidavit in support of the originating summons. It is trite that counsel's address cannot take the place of hard facts or credible proven evidence before the court.

It is also my firm view with respect to the contention of the 2nd respondents contention that the applicant's ought to have Instituted the instant action by the writ of summons, that the main claim of the applicant was a breach of its Fundamental Right and not a breach of contract , as the affidavit evidence disclosed. On whether the 2nd respondent could be held liable for a breach of the applicant's rights, I don't think so, the 2nd respondent have acted on the Order Exhibit CTB2, and their act was lawful. They are therefore exonerated of any liability and I so hold. And in any event, the applicant have not proved that he suffered any obvious damages as a result of the action of the 2nd respondent in execution of the Order of the court.

In totality, it is my opinion that the 1st respondent have breached the fundamental Right of the applicant pursuant to Sections 43, 44, and 46(1) of the 1999 Constitution (as amended.) Consequently judgment is hereby entered in favour of the applicant in the following terms;

1. A declaration that the continually confiscation and freezing of the applicant's account till date by the 2nd respondent on direction of the operator and officers of the 1st respondent is illegal, unlawful and a clear violation of the applicant's right under Sections 43, 44 and 46(i) of the 1999 Constitution.
2. An Order directing the 2nd respondent to remove forthwith the applicant's account from a post no debit.
3. An Order of perpetual injunction restraining the 1st and 2nd respondents whether by themselves, agents, employees, operators, detective, servant's

privies and investigating officer(s) or however so called from further placing the applicant's account no. 0212112222 on post no debit without first charging the applicant to wit; for any known offence in law if any in the line with the provision of section 35 of the Constitution on the basis of facts and circumstances of this matter.

4. The 1st respondent is to pay to the applicant the sum of N10:000,000.00(Ten Million naira)only as general and exemplary damages for the wanton and grave violation of the applicant's right without following the due process of law.

Signed

Hon. Judge

03/03/2022.