

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

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT:28

DATE: 26TH OCTOBER, 2022

FCT/HC/CV/2244/20

BETWEEN:-

**1. SANI BOOKS NIGERIA LIMITED
2. ACHIGILI FARMS PROJECTS LIMITED
3. DR. SHAIBU SANI TEIDI** } **CLAIMANTS**

AND

FIRST BANK OF NIGERIA----- DEFENDANT

JUDGMENT

This suit was commenced by an originating summons dated the 22nd July, 2020 but filed on the 21st July, 2020 wherein the Applicants are seeking the following reliefs:-

1. A declaration that the Defendant cannot without an order of Court validly place a post no debit (PND) and or any other restriction(s) on account Number: 2027400669 domiciliary account number: 2033004475 and account number :2005493782 belonging respectively to the Claimants or any other account domiciled with the Defendant.
2. A declaration that the post no debit (PND) or any other restriction(s) without an order of Court placed on account

number 2027400669, domiciliary account number:2033004475 and account number: 2005493782 belonging respectively to the Claimants domiciled with the Defendant bank, is a breach of the customer- bank contract between the Claimants and the Defendant bank.

3. A declaration that the post no debit (PND) and or any other restriction on account number: 2027400669, domiciliary account:2033004475 and account number 2005493782 belonging respectively to the Claimants domiciled with the Defendant bank is a breach of the Claimant's fundamental rights to non compulsory acquisition of the Claimants property.
4. An order directing that the post no debit (PND) and other restriction placed on the Claimant's account domiciled with the Defendant without an order of Court be removed forthwith.
5. The sum of ₦300,000,000.00 (Three Hundred Million Naira only) in damages against the Defendant for breach of customer- banker contract between it and the Claimants.
6. An order of Court restraining the Defendant from placing any further post no debit (PND) or other restrictions on account number : 2027400669, domiciliary account number 2033004475 and account number: 2005493782 belonging respectively to the Claimants or any other account of the Claimants domiciled with the Defendant bank without a valid Court order.
7. The sum of ₦500,000,000.00 (Five Hundred Million Naira) only against the Defendant as general and exemplary damages suffered by the Claimants, as a result of the breach of their fundamental rights by the post no debit (PND) or any other

restrictions placed on account numbers belonging respectively to the Claimants domiciled with the Defendant bank without a valid Court order

8. The cost of this suit assessed at ₦5,000,000.00(Five Million Naira) only
9. 10% interest on the judgment sum per month until final liquidation of same.
10. And for such further or other orders as the Honourable Court may deem fit to make in the circumstances of this case.

The facts averred in the affidavit in support of this application deposed to by the 3rd Claimant Dr. Shaibu Sani Teidi are as follows:-

1. That the account number:2027400669, domiciliary account number: 2033004475 and account number:2005493782 belonging respectively to the Claimants domiciled with the Defendant bank was placed on post No debit sometime in the year 2018 which was not communicated to the claimants until the claimants transaction to their embarrassment was dishonoured by the Defendant.
2. That upon realizing that a post no debit (PND) was placed on their accounts by the Defendant, the Claimants made a demand for same to be lifted from their accounts domiciled with the Defendant bank consequent upon which they got a response from the Defendant bank by a letter dated 10th December,2018 that the post no debit (PND) placed on their accounts was in compliance with the directives of the Central Bank of Nigeria, made pursuant to the Presidential Executive Order No. 6 of 2018 in respect of the preservation of suspicious

assets connected with corruption and other relevant offences. A copy of the said letter is annexed and marked as exhibit "A".

3. That also, the defendant bank in their said correspondence did not dispute the long standing banker- customer relationship between itself and the Claimants but however stated that it could not lift the post no debit (PND) on the Claimant's account as it would amount to a circumvention of the Presidential executive Order No. 6.
4. That the Defendant further stated that it is obliged to maintain the post no debit (PND) on the Claimant's accounts until receipt of further directives from the Central Bank of Nigeria and/or an order of Court directing otherwise before same could be lifted.
5. That pursuant to the Claimants frantic efforts to get the Defendant to remove the post no debit (PND) on their accounts all to no avail, the Claimants had to engage the service of their solicitors who then wrote a letter dated 2nd July, 2020 to the Defendant and again demanded for the immediate removal of the PND. A copy of the said letter written is hereby annexed and marked as exhibit "B"
6. That despite the said letter being received by the Defendant, the Defendant has failed, neglected and or refused to remove the said post no debit (PND) place on the accounts of the Claimants.
7. That there is no Court order mandating the Defendant to place restriction on the accounts.
8. That owing to the restrictions placed on the accounts, the Claimants have suffered untold hardship and loss of dignity as it has been impossible for them to transact business, and the

Claimant's business has also suffered tremendous setback as books in their manuscript have been with publishers without a headway at being published because of lack of funds due to the action of the Defendant.

9. That over 4,000 professional books are with spectron books, Ibadan ready for publishing but cannot be published because of the actions of the Defendant.
10. That the 2nd Claimant had before this incident acquired farmland running into several hectares within the River Niger boundary and set to go into farming of rice and other farm products grown within swampy area but could not because of the post no debit (PND).
11. That the claimant has personally suffered degrading incidents due to the action and inaction of the Defendant as he has faced so many financial embarrassing situations sometimes down to feeding his dependents which has not only reduced his esteem and dignity but has also made him the subject of mockery, ridicule and public odium.

In Claimant's written address two issues were formulated for determination to wit:-

1. Whether by the provisions of the Bank and other Financial Institutions Act (BOFIA) or any other extant law, the Defendant can validly place a post no debit (PND) or any other restriction(s) on accounts number:2027400669, domiciliary account number: 2033004475 and account number 2005493782 belonging respectively to the Claimants domiciled with the Defendant bank without a valid order of Court authorizing same? ; and

2. Whether the Defendant actions in the circumstances does not amount to a breach of the customer- banker relationship between the Claimants and the Defendant as well as a breach of the Claimants fundamental rights to non- compulsory acquisition of their property.

Claimants submit on the above issue that the law is settled that expropriatory statutes which encroach on a person proprietary rights must be construed fortisumo contra preferates, that is strictly against the acquiring authority but sympathetically in favour of the citizen whose proprietary rights are being deprived. Consequently as against the acquiring authority, there must be strict adherence to the formalities prescribed for the acquisition. Claimants cite ***OBIKOYA V GOVERNOR OF LAGOS STATE 91987) I NWLR (pt50) 385.***

Claimants further submit that the constitution has expressly provided for the non- compulsory acquisition or deprivation of a citizen of his property. Claimants referred to ***OLAGUNJU V EFCC (2019)LPELR – 48461 (CA).***

Claimants then submit that the only valid way any restriction can be placed on the account of any customer by the bank, is by a valid order of Court, and cited ***GUARANTY TRUST BANK PLC V MR. AKINSIKU ADEDAMOLA AND 20RS (2019) 5 NWLR (pt 1664)P 32; AND ESAI DANGABAR V FEDERAL REPUBLIC OF NIGERIA (2012) LPELR – 19723 (CA).***

Claimant also submit that the Defendant being a banker to the Claimants, there is a customer- banker relationship between the Claimants and the Defendant bank terms of which the bank is

obliged to keep, and referred to ***WUWA MOHAMMED MAI V STANDARD TRUST BANK LTD AND FIDELITY BANK PLC V CHIEF EMMANUEL EZE ONWUKA (2017)LPELR- 42839 (CA).***

Claimants further submits that the Courts have held that where a banker breaches the contractual banker- customer relationship, in such a circumstances, he is liable to the customer and the customer is entitled to sue for damages for injury to his credit. Claimants referred to ***DIAMOND BANK LTD V PRINCE ALFRED AMOBI UGOCHUKWU (2007) LPELR – 8093 (CA) P. 19 paragraphs F-G AND YESUFU V ACB LTD (3) 1976-1984) 3 NBLR P.607, (1976) 1 ALL NLR (pt.1) 328.***

In opposition to the originating summons, Defendant filed a counter affidavit, 5 exhibits and a written address. The 10 paragraph counter affidavit was deposed to by Emeka Ibeneme and contains among others the following facts.

That sometimes in November, 2018, the bank received a letter from the Central Bank of Nigeria (CBN) dated 23rd November, 2018 with reference no. ref. BSD/GSB/CON/MDD/01/048 (the CBN letter) directing it to place a post no debit (PND)on a number of accounts listed in the letter which accounts belong to person listed in the Presidential Executive Order No. 6 of 2018 on the Preservation of suspicious Assets connected with corruption and other relevant offence (the order). The letter from the CBN was issued pursuant to the order. A copy of the order and letter are hereby attached and marked as exhibit 1 and 2 respectively.

That account number 2005493782 and 2027400669 belonging to the 3rd and 2027400669 belonging to the 3rd and 1st Claimants were mentioned in the said Central Bank of Nigeria letter.

Hence, the bank complied with the directives which were issued pursuant to the order by placing a post no debit (PND) on the aforementioned accounts.

Copies of the account opening form of the 1st Claimant in respect of the above account number are hereby attached and marked as exhibit 3.

That account number 2033004475 was not mentioned in the Central Bank of Nigeria letter, hence no post no debit (PND) was placed on the account. At no time did the bank place post no debit (PND) or any form of restriction on account number 2033004475. A copy of the statement of account and certificate of authentication evidencing same is attached and marked as exhibit 4 and 5 respectively.

That pursuant to the Central Bank of Nigeria (CBN) Act and the banks and other financial institutions Act (BOFIA), the bank is bound to comply with the directives of the Central Bank of Nigeria.

In their written address, Defendant Adopted the issue for determination formulated by the Claimant and averred that even though the Claimants contend that by the provisions of extant laws that the bank must be authorized to place a No debit order on the customers' account vide a valid order of Court, the Claimants did not cite any such law which stipulates that the bank

must be so authorized. The Claimants only cited decided cases which decided on the legality of the bank placing a post no debit (PND) on the directives of the Economic and Financial Crimes Commission (EFCC). Defendant points out that all those decisions determined the provisions of the Economic and Financial Crimes Commission (EFCC) Act which provides that Economic and Financial Crimes Commission (EFCC) must obtain a Court order before they place a post no debit (PND) On a customer's account and referred the Court to section 34 (1) of the Economic and Financial Crimes Commission (EFCC) Act. Also referred ***GUARANTY TRUST BANK V MR. AKINWIKUN ADEDAMOLA (2019) 5 NWLR @ PG 30; and ESAI DANGABAR VFEDERAL REPUBLIC OF NIGERIA (2012) LPELR – 19732(CA), also cited by the Claimant .***

Defendant also submits that it is trite that cases are authorities only for what they determined. That the cases cited by the claimant are not applicable because the post no debit (PND) instruction was not given to the bank by the Economic and Financial Crimes Commission (EFCC) rather the instruction was given by the Central Bank of Nigeria Governor. It is the Defendant's contention that the fact that the directives to issue the post no debit (PND) came from the Central bank distinguishes the present case from the cases cited by the Claimants in 2 ways firstly, the primary legislation for the regulation of bank in Nigeria is Bank and Other Financial Institutions Act Cap (BOFIA) which, the Central Bank of Nigeria (establishment) Act| 2007 gives the Central Bank of Nigeria powers to supervise and regulate banks and other financial institutions in Nigeria. Defendant cited section

61 of the BOFIA. Secondly, under the BOFIA, the Central Bank is responsible for granting banking licences to carry on the business of banking and for supervising and regulating banks and other financial institutions. Defendant opined that the same relationship does not exist between the Economic and Financial Crimes Commission (EFCC) and banks in the sense that banks are not regulated by the Economic and Financial Crimes Commission (EFCC). Defendant. States that the bank is bound to comply with any directives issued to it by its regulator and Bank and Other Financial Institutions Act Cap (BOFIA) requires that all banks must comply with all directives issued by the Central Bank. Defendants referred to section 64 of the Bank and Other Financial Institutions Act Cap (BOFIA).

On the second issue, Claimants alleged that the Defendant breached the customers banker relationship between her and the Claimants when they placed the post no debit (PND) order on Claimant's accounts. Defendant referred the Court to the contract between the two parties and also the company mandate executed by the Claimants. See exhibit 3 (clause 8 of mandate)

Defendant averred that the general principle of law is that parties are bound by their agreements. As such a document evidencing an agreement between parties must be construed in its ordinary meaning. Thus where a document is clear and unambiguous, a Court of law has only the duty of giving strength to the plain words used. Defendant referred to ***ANASON FARMS LTD V NAL MERCHANT BANK LTD (1994) 3 NWLR (PT 331) P. 241; and ADIELE IHUNSO V JOHNSON IHUNWO & ORS (2013) LEPELR 2008 4 (SC).***

Defendant averred that they informed the Claimants that the Post no Debit (PND) directive from Central Bank of Nigeria was pursuant to an executive order made by the President of the Federal Republic of Nigeria. Defendant referred to section 5 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which vests executive powers of the Federation in the President which powers shall be exercised by him either directly or through the Vice – President and Ministers of the Government of the Federation or officers in the public service of the Federation.

Defendant further referred to section 1(a) of the order and the first Schedule to the order which sets out the list of cases to be immediately affected by the order of which order No. 112 lists suit No.: FCT/ABJ/CR/82/2013 FRN V DR. SANI TEIDI SHAIBU & ORS as one.

The crux of the matter is whether the Defendant was right to place a Post no Debit (PND) on the Claimants account without a Court order. The Claimants had demanded the Defendant to release the Post no Debit (PND) but the Defendant informed the Claimants that the Post no Debit (PND) on their accounts was placed in compliance with the directives of the Central Bank of Nigeria made pursuant to the Presidential Executive order No. ^ in 2018 in respect of the preservation of suspicious assets connected with corruption and other relevant offences.

In determining the case, it is essential to look in to the bank and other Financial Institution Act and the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Section 1(1) of the BOFIA provides that the Central Bank of Nigeria shall have all the functions and power conferred and duties imposed on it by this Act.

The bank may authorized or instruct any officer of employee of the bank to perform any of its functions, exercised any of its powers or discharge any of its duties under this Act.

Section 56 (2) provides that.... The Governor may make rules and regulations for the operation and control of all institution under the supervision of the bank.

In addition section 60 (1) provides that:-

- (a) The bank shall supervise and regulate the activities of other financial institution and specialized banks.

It is evident from the above, that the bank does not requires a Court order to direct that a Post no Debit (PND) be placed on an account.

Secondly, the Claimants referred to the 1999 Constitution (as amended) section 44(1) in particular, which provides that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law....

Even though the constitution, expressly provides for the non-compulsory acquisition of a property, exceptions have also been applied section 44 (2) (k) provides that nothing in subsection (1)

of this section shall be construed as affecting any general law relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry. Subsection (e) further allows the temporary possession of property relating to the execution of judgments or orders of Court.

Claimants had referred to ***GUARANTY TRUST BANK V MR.AKINSIKU ADEDAMOLA (2019) 5 NWLR at paragraph30; and ESA DANGABAR V FEDERAL REPUBLIC OF NIGERIA (2012) LPELR -19732 (CA)*** where it was both held that a Court order must be obtained before a bank can freeze a customer's account. However, this directive was given to the Economic and Financial Crimes Commission (EFCC) and not the Central Bank of Nigeria. The difference here is that the Central Bank of Nigeria has the power to regulate and supervise the activities of other banks, per the banks and other Financial Institution Act, which the Economic and Financial Crimes Commission (EFCC) does not.

On whether the Defendant's action amount to a breach of the customers- banker relationship between the two parties, it is trite that the relationship between a banker and customer is essentially contractual. See ***WEMA BANK V OSILARU (2007) LPELR -8960 (CA) and BALOGUN v NATIONAL BANK OF NIGERIA LTD (1978)11 NSCC 35***, where there is a directives from a higher body, the bank is bound to comply with it.

However the general principle of our law notwithstanding the judicial authorities cited above. The most important element which is trite is that there must be an order before someone

account may be placed with Post no Debit (PND). It should be noted I have gone through all the processes filed by the Applicant that his account was placed on Post no Debit (PND) since 2018 a directives given by the Central Bank of Nigeria. Where there is such an order same must be in accordance with extant law. I have no doubt in my mind that this is a clear breach of the Applicant's fundamental right recognized by the law of the land in the Constitution of the Federal Republic of Nigeria 1999 (as amended). Consequently in view of the foregoing I have ordered that the Respondent shall do the needful by ensuring that whatever they intend to do as directed by the Central Bank of Nigeria must be done in accordance with the law. I have directed that the Respondent shall take step to do the needful equally failure to comply with the above directives, made me to further ordered that the Post no Debit (PND) placed on the said account must be removed immediately. In otherwords the Defendant shall charge the Applicant to Court through the instrumentality of the Central Bank of Nigeria as contained in the Respondent counter affidavit, that the Respondent has acted based on the order of the Central Bank of Nigeria Governor. The expiration period to act as ordered above accordingly will expire on the 30th November, 2022.

I hereby also grant prayer 1,2,3 and 4 ~~N~~ ₦5,000,000.00 awarded against the Defendant for the Post no Debit (PND) or other restriction

placed on the Claimant's account. All other reliefs with the exception of the reliefs mentioned above are hereby refused. Those reliefs mentioned above will only come into effect on the

1st December ,2022 where the Respondent failed to comply with above directives.

This order does not in any way affect the account No. 203304475.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

I. Musa:- For the Claimant.

Anita Obualepeorie Ubo:- For the Defendant.

