

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.

ON THE 7TH DAY OF MARCH, 2021

SUIT NO: FCT/HC/CV/2893/18

BETWEEN:

CITYVIEW ESTATE LIMITED-----PLAINTIFF/RESPONDENT

AND

ECOBANK NIGERIA PLC.DEFENDANT/APPLICANT.

CASHMIR .C. IGWE for the plaintiff.

U.C.NDUBUSI for the defendant

JUDGMENT

The plaintiff is in the business of estate development and marketing. It maintains an account with the defendant, Ecobank Nigeria Plc. With a credit balance of N48, 634, 112,54(Forty Eight Million Six Hundred and Thirty Four Thousand, One Hundred and Twelve naira, Fifty Four kobo.) as at late August 2015, even till date.

The plaintiff owed its several contractors and suppliers working in the site for much instruction for payment were issued to the defendant on account no. 0312004010 on 26/08/2015 but defendant refused to honour them.

In October 8, 2015, the defendant equally wrote to the plaintiff stating that it refused to honour the plaintiff's instruction relying on a letter dated the 6th January, 2020 by Federal Mortgage

Bank of Nigeria directing them to suspend withdrawals from the plaintiff's account. The plaintiff specifically instructed the defendant to transfer part of its funds standing to their credit to satisfy the following obligation;

1. N9,750,000 to account no. 4010694751 to a ASK Nigeria Survey Limited Fidelity Bank.
2. N7,120,000.00 to account no.5600165255 in favour of Business and Leisure Network Limited Fidelity Bank.
3. N6,500,000 to account no. 002689289 in favour of Syquest Global Ventures Limited Diamond Bank Plc.

The plaintiff therefore prays the Honourable Court to determine the following;

1. Whether the action of the defendant by not honoring the plaintiff's instruction with regards to their account withholding the plaintiff's funds and not amount to breach of contract and /or her obligation to the plaintiff.
2. Whether in view of the letter dated 6th January, 2020 purportedly from Federal Mortgage Bank of Nigeria, the plaintiffs account could be suspended or freeze by the Federal Mortgage Bank of Nigeria especially when there is no court Order, lien or dispute as to the ownership of the fund or account.
3. Whether in view of the purported letter dated 6th January, 2010 from Federal Mortgage Bank of Nigeria the defendant is right to freeze the plaintiff's account and or withhold the plaintiff's fund without a court order.
4. Whether the action of the defendant by not honoring the plaintiff's several instructions in their duly opened and maintained account with the defendant bank have not so

badly affected the image of the and integrity of the plaintiff.

5. Whether the withholding of the plaintiff's fund in their account no. 0312004010 with defendant by the defendant's bank has not adversely affected the plaintiff's operations, Rights, integrity, image and entitlements.

The plaintiff prays the Honorable Court for the following reliefs:

1. A declaration that the defendant was in breach of here duly and obligation to the plaintiff by her failure to honor the plaintiff's instruction by not transferring the funds as specifically instructed by the plaintiff's vide their instruction letter dated 26/08/2015 of which more than the said amounts is still standing in credit in the plaintiff's account no 0312004010 with the defendant bank.
2. A declaration that the defendant was in breach of its duty obligation to the plaintiff by unlawfully withholding the plaintiff's funds since 2010 till date without a court order.
3. A declaration that the defendants action by withholding the plaintiff's fund and constant refusal to fulfill here obligations to the plaintiff without any lawful order of court of competent jurisdiction is illegal, unlawful, unjustifiable, null and void.
4. An Order of the Honourable Court directing and/or mandating the defendant to honour all the plaintiff's instructions as the customers on account no. 0312004010.
5. An Order of the Honourable Court directing and/or mandating the defendant to honour/implement the plaintiff's instruction dated 26/08/2015 by transferring the

various funds in the said account no. 0312004010 with the defendant bank immediately to the various account to wit;

- i. N9,750,000 to account no. 4010694751 to a ASK Nigeria Survey Limited Fidelity Bank.
- ii. N7,120,000.00 to account no.5600165255 in favour of Business and Leisure Network Limited Fidelity Bank.
- iii. N6,500,000 to account no. 002689289 in favour of Syquest Global Ventures Limited Diamond Bank Plc.

6. Special general damages in the sum of N500,000.00(Five Hundred Million Naira only) against the defendant and in favour of the plaintiff for the illegal and unlawful withholding of the plaintiff's funds for over Eight(8) years constant and flagrant dishonoring of the plaintiff's instruction on their account/funds, loss of integrity, exposure to creditors and cost of this suit.

Application is supported by a 16 paragraphs affidavit deposed to by one Roseline Ekeleme a legal administrator in the plaintiff's company anddocument attached and marked as Exhibits A-\$ and a further affidavit of Ten(10) paragraphs deposed to by Ngozi Cashmir Igwe, counsel in the law firm of Igwe & Igwe Attorneys, Solicitors to the plaintiff's company with three Exhibits F-I. The applicant also filed a written submission which was adopted as oral arguments in support of the application on 13th December, 2019.

In opposition, the defendant filed 27 paragraphs counter affidavit dated 17th February, 2019 which was deemed as properly filed on 13th November, 2019. The counter affidavit was

adopted to by Jinjiri Salusi, a relationship Manager in the employment of the defendant with Four documents marked as Exhibits A1,A2, A3 and A4 attached. Also filed along with the counter-affidavit is the defendants' counsel written address adopted as oral argument by counsel. Also the defendant placed reliance on the further affidavit of 5 paragraphs deposed to by one Stella Ukwuoma with one Exhibit attached in urging the court to dismiss the claim of the plaintiff. In addition to the counter-affidavit, the defendant also filed a notice of preliminary objection seeking for a dismissal of the plaintiff's claim in limine on the following grounds;

- (a) That the suit is statute barred.
- (b) That the suit is an abuse of court processes in support of the preliminary objection is a 4 paragraphs affidavit deposed to by one Stella Ukwuoma with four Exhibits attached. Filed along the affidavit is a written address of the learned counsel to the defendant/applicant. Also relied on a further affidavit of 6 paragraphs deposed to by Stella Ukwuoma.

Contra wise the plaintiff/respondent filed and relied on a 16 paragraphs counter-affidavit deposed to by one Ngozi Igwe Esq. and the written address in opposition to the preliminary objection. In the affidavit in support of exhibit1 that is the motion on notice praying for the order of Mareva injunction, attached to the counter-affidavit in opposition to the originating motion. The plaintiff is said to have been offered a development loan of N502,519,402.30 (Five Hundred and Two Million Five Hundred and Nineteen Thousand, Four Hundred and Two naira Thirty kobo) vide a letter dated 24th June 2004

that part of the condition for disbursement of the loan is to provide a bank guarantee for the loan and to divide the disbursement of the loan into installments. That the plaintiff was said to have brought a bank guarantee from All State Trust Bank now in liquidation. And that the first installment of two Hundred and One Million, Seven Thousand Seven Hundred and Fifty naira, ninety kobo (N201,007,760.90) was disbursed to the plaintiff through a Guarantee Trust Bank cheque no 4550852 dated 6th August 2004 in the name of both All State Trust Bank and the then plaintiff MODULAR LIMITED NOW City View Estate Limited. And that when the plaintiff seems not to be utilizing the loan for the purpose for which it was meant, the 1st defendant/applicant i.e. Federal Mortgage Bank of Nigeria call in the loan and guarantee thereby demanding the immediate repayment of the said unutilized disbursed amount together with interest from both the plaintiff and their guarantor. And shortly after the All State Trust Bank, guarantor of the entire loan was wind-up by the Court and Nigeria Deposit Insurance Corporation(NIDC) was appointed the receiver and liquidator,. That the disbursed sum of over N201,000,000 is in the plaintiff's account in the said All State Trust Bank in liquidation that it was upon the demand of the loan by the Federal Mortgage Bank and on realization of the plaintiff of the plaintiff that it may be reported to the EFCC, the plaintiff resorted to file suit no. Federal High Court/ABJ/CS/495/2008 to restrain the Federal Mortgage Bank and or seeking to wind up the company. All the accounts of transaction of customers of All State Trust Bank including the Estate Development Loan account of the

plaintiff in which the sum of N201,000,000 was said were transferred to Ecobank the defendant in the instant suit.

It was based on the Motion on Notice attached as exhibit 2 to the counter-affidavit of the defendant, served on it by the Federal Mortgage Bank of Nigeria seeking for an order Mareva injunction restraining the defendant from paying out the funds in the account of the plaintiff pending the determination of the substantive suit no. Federal High Court/ABJ/CS/639/2009 filed by the plaintiff that it acted on and refused to release the disputed funds for Mareva injunction loan dated 16/04/2010 but filed by the Federal Mortgage Bank on 20/04/2010. The motion is yet to be heard it is on record that the plaintiff maintains three accounts with the defendant. His contention is in respect of account no. 0312004010 with a credit balance of upward of about N48, 634, 112,54 (Forty Eight Million Six Hundred and Thirty Four Thousand, One Hundred and Twelve naira, Fifty Four kobo.). I have calmly considered all the facts put forward by the parties in their affidavit, counter affidavit and the documents attached.

I agree with the submission of learned counsel to the plaintiff that the relationship between a banker and a customer is contractual and when money is paid into a customer's account, the banker receives the money as a loan from the customer with a promise by the banker to honour the customers cheque or other orders of the customers see SANNI ABACHA FOUNDATION FOR PEACE AND UNITY & ORS. VS. UBA PLC 2010 LPELR 3002 (SC) ECOBANK VS. ANCHORAGE LEISURES LTD. & OR 2018 LPELR 45125 (SC) UBN

PLC VS. CHIMA EZE(2014) LPELR 22699. SC VS. ALLID BANK OF NIGERIA LTD VS. AKUBUEZE(1997) LPELR 429 SC. I also endorsed the plaintiff's counsel submission that the restriction placed on the account for the plaintiff base on Exhibit F, the letter dated 6th January 2010 emanating from the Federal Mortgage Bank is illegal and a breach of contract. The letter not being a court order or a referral letter from the Nigerian Police or any prosecuting agency lacks the force of law and therefore ought not to have been countenanced by the defendant in restricting transaction on the account of the claimant.

With respect to the defendant that it acted on an application for Mareva order filed by the Federal Mortgage Bank filed in suit no. Federal High Court/ABJ/CS/639/2009 wherein the plaintiff in the instant suit is also a plaintiff before the Federal High Court in the above suit.

The application was to restrain the plaintiff then known as **Modular Limited**, its directors, agent, servants, privies or otherwise howsoever called from withdrawing, transferring or otherwise dealing with any and all of the monies standing to its credit in its Bank account with Ecobank Nigeria Plc situated at plot 2306 Off Herbert Macaulay Way branch or any other branch of the bank wherever situated up to the amount of the defendant/applicant's claim of N301,000,000(Three Hundred and One Million naira) only pending the determination of the substantive suit. See Exhibit attached to the defendant's notice of preliminary objection.

In paragraph 3(1) & 11 of the affidavit in support of the preliminary objection the defendant argued as follows:

- (i) That the basis of the plaintiff/respondent's cause of action is a letter dated the 6th day of January, 2010, issued by the Federal Mortgage Bank of Nigeria, to the defendant/applicant, which letter, according to the plaintiff/respondent, was purportedly relied on by the latter, in dishonoring its instructions in respect of, and withholding, suspending or freezing the funds in its account maintained with the defendant/Applicant.
- (ii) That the defendant/applicant's basis on its part, for its commission of the acts complained of above, is a Motion on notice for an order of Mareva injunction filed by the Federal Mortgage Bank of Nigeria, against the plaintiff/respondent herein, and the defendant/applicant herein, in suit no. Federal High Court/ABJ/CS/639/2009: CITYVIEW ESTATE LIMITED V. FEDERAL MORTGAGE BANK OF NIGERIA & 2 ORS, wherein the plaintiff/respondent herein is also the plaintiff/respondent in the said Motion, while the defendant/applicant herein is the 3rd defendant /respondent in the said suit and/application, respectively.

The application for an order of Mareva injunction served on the defendant herein is a notice of the pendency of the said application before the Federal High Court against the account of the plaintiff with the defendant herein. It is not an order of the court for Mareva injunction restraining or restricting transaction on the account of the plaintiff with the defendant. The Motion on notice does not have a coercive force of the law.

It is a mere notice and cannot be construed as an order of the court until it is pronounced by the court.

However it is imperative to state that a quick look at the claim of the plaintiff shows that it emanated from suit no FCH/HC/CS/631/2009 which was instituted against the Federal Mortgage Bank of Nigeria, Nigeria Deposit Insurance Bank and Ecobank at the Federal High Court to forestall the liquidation and winding up of the company.

The question now is: if it was true that the Federal Mortgage Bank filed a counter-claim upon which the application for Mareva injunction was anchored, and the counter-claim withdrawn by the Federal Mortgage Bank as claimed by the plaintiff, why did the plaintiff's not apply to the court to have the application for Mareva injunction filed by the Federal Mortgage Bank struck out? The institution of the instant action by the plaintiff in this court, I strongly believe and hold is an abuse of the process of court.

An abuse of court process comes in different facets, it is diverse and not limited to where the parties are the same or cause of action similar at same or at different.

See ASORA VS. SANNI (2015) LPERL 41895 CA where the court extensively described what constitute abuse of court process thus:

"Having stated the submissions of the parties, the question is what is the meaning of the term Abuse of Court process? in the Case of A.G. of Anambra State Vs. Uba (2005) 15 NWLR (Pt. 947) 44 the term, "abuse of Court" process was defined in the following words: An abuse of Court process has been defined in

CBN Vs. Ahmed.... Per Ogundare, J.S.C. Quoting Karibi - White, J.S.C. (of Blessed Memory) as (the concept of abuse of judicial process) is imprecise. It involved circumstances and situation of infinite variety and conditions. Its common feature is the improper use of the judicial process by a party in litigation to, interfere with the due administration of justice. It is recognised that the abuse of the process may lie in both proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse, when a party improperly uses judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue." Also in the Case of Arabo Vs. Aiyeye (1993) 3 NWLR. (Pt. 280) 126 at 142 & 46, "abuse of Court process" is defined simply to connote that the process of the Court has not been bonafide and properly. It also connotes the employment of judicial process by a party in improper use to the irritation and annoyance of his opponent and efficient and effective administration of Justice. The nature and characteristic of an abuse of Court processes were explicitly set out by this Court in the case of Saraki Vs. Kotoye (1992) 9 NWLR (Pt. 264) 156 at Page 188-189 where this Court stated:- "it is recognized the abuse of the processing lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient- and effective administration Justice. This will arise in

initiating a multiplicity of action on the same Subject matter against the same opponent on the same issues."

Per TSAMIYA ,J.C.A (Pp. 21-23, para. A)

See ABUBAKAR VS. BEBJI OIL AND ALLIED PRODUCTS LTD. & ORS. (2007) LPERL 53(SC) UMEH & ANOR VS. IWU & ORS.(2008)LPELR 3363(SC). EHCH VS. EDOHO & ANOR(2008) LPERL 8459 CA.

Furthermore the plaintiff have not placed material facts before this court, to show that the account which it contended was restricted by the defendant is not affected or included in the action at the Federal High Court. The danger of pronouncing on the legality or otherwise of the defendant's action by this court is the likelihood of frustration of the decision of the Federal High Court in respect of the subject matter pending before it.

All the issues relating to the account of the plaintiff with the Ecobank (3rd defendant) are better resolved at the Federal High Court in the pending action filed by the plaintiff.

In conclusion, I agree with the submission of the learned Counsel to the defendant that the instant action is an abuse of court process. The preliminary objection succeeds and the plaintiff's action is dismissed accordingly.

SIGNED

HON. JUDGE

07/03/2021.

U.C.NDUBUSI:- Since cost follows event, we shall be asking for N400,00.00(Four Hundred Thousand Naira) as cost.

CASHMIR .C. IGWE:- We oppose the application for cost. The court has discretion in the awarding of cost and such discretion should be applied judicially and judiciously. In this whole matter, it is the plaintiff that has suffered the most. The matter is an exercise of the constitutional right of the plaintiff. I know that the court is a court of justice and the application for cost did not meet the end of justice. It does not take away that the plaintiff has suffered injury in the hand of the defendant. We urge the court to discountenance and refuse the application for cost.

Court:- The sum of N50,000.000(Fifty Thousand Naira) is awarded as cost against the plaintiff.

SIGNED

HON. JUDGE

07/03/2021.