

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

DATED THIS THURSDAY 1ST DECEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/3088/2022

BETWEEN:

HOPE EGBABORAPPLICANT

AND

- 1. THE NIGERIA POLICE FORCE**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. STANBIC IBTC BANK PLCRESPONDENTS**

JUDGMENT

This is an originating motion on notice brought pursuant to order 6(6)(b),13 and section 46 of the constitution of the Federal Republic of Nigeria 1999 (as amended) and order 2 rule 1 of the Fundamental Human rights (Enforcement Procedure) Rules 2009 and inherent Jurisdiction of this court. The Application is dated 13th day of September, 2022 and filed on the 19th day of September, 2022.

The reliefs sought in the statement accompanying the application are as follows:

- 1. A DECLARATION that the Applicant's right to dignity of human persons, personal liberty, dignity of his person, movement, fair hearing, rights to own moveable and immovable properties are guaranteed and enforceable in section 34, 35, 36, 41, 44 & 46 of the Constitution of the Federal Republic of Nigeria.**

- 2. A DECLARATION that the purported order, request, or directive, or instruction from the 1st & 2nd Respondents or their agents, servants, or any other person acting on their instruction or authority obtained and issued to the 3rd respondent without a pending proceedings or notice to the applicant to defend himself in freezing, restricting, or putting a place no debit on the applicant's Account No:0007103385 violates the Applicant's Fundamental Human rights to fair hearing and rights to own moveable properties/Assets guaranteed in section 36 and 44 of the Constitution of Federal Republic of Nigeria 1999 as amended.**
- 3. A DECLARATION that the purported order, request, directive, or instruction from the 1st & 2nd respondents or their agents, servants, or any other person acting on their instruction or authority obtained and issued to the 3rd respondent without a pending proceedings or notice to the applicant to defend himself in freezing, restricting, or putting a place no debit on the applicant's Account No: 0007103385 was illegally obtained and issued in breach of section 36 and 44 of the Constitution of Federal Republic of Nigeria 1999 as amended therefore null and void.**
- 4. A DECLARATION that the Applicant's rights to dignity of human person, personal liberty, dignity of his person, movement, fair hearing, rights to own moveable and immoveable properties guaranteed and enforceable in section 34, 35, 36, 41, 44 & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) has been, and is being threatened by 1st & 2nd respondent request directive, or instruction to the 3rd respondent to freeze the account of the applicant and get him arrested.**
- 5. AN order of this Honourable court unfreezing the applicant's Bank Account 0007103385 with the 3rd respondent forthwith.**

6. AN ORDER of this Honourable Court restraining the respondent, their officers, subordinates, or other persons acting on their instruction, powers, or authority from further violating or threatening to violate the applicant's Fundamental Human right to own, movement, and dignity of his person , fair hearing, right to own property/assets and from recovering debt under a civil contract and to restrain the respondent from threatening to arrest or detain the applicant outside their constitutional and statutory powers.

7. The sum of N50, 000,000.00 as compensation for unlawful restriction on the operation of the applicant's business account with the 3rd respondent being Account No: 0007103385 which caused untold hardship and embarrassment to the applicant.

In support of the motion in notice the applicant filed an affidavit of 21 paragraphs deposed to by one Hope Egabor of C/O Ademolaw. Suit 112 Jinifa Plaza CBD Abuja, as attached to the said affidavit are exhibit marked exhibit A and B and the statement and grounds upon which the application is brought are as follows:

1. Seeking 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that anybody who alleges that any of the provision of chapter 4 has been, is being or likely to be contravened in relation to him may apply to court for redress.

2. The applicant's rights to dignity of human persons, personal liberty, movement, fair hearing and right to own movable properties are guaranteed in sections 34, 35, 36, 41, 44 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

3. By section I (i) of the constitution of the Federal Republic of Nigeria 1999 (as amended) in relation to the applicant's prayers under no circumstance should anybody be allowed to breach the provisions of the constitution in order words the court must restrain the respondent from further breaching sections 34, 35, 36, 37, 41 and 44 of the constitution of the Federal republic of Nigeria 1999 (as amended) in relation to the applicant.

4. It is not within the constitutional and statutory powers of the 1st and 2nd respondent

to recover civil debts or dabble into contractual relationships of parties.

5. Section 8 (2) of the ACJA 2015 provides that "A suspect shall not be arrested merely on a civil wrong or breach of contract " hence the respondent has no business interfering with the Applicants business or contract of pool construction.

6. The 1st and 2nd respondent don't have the right power under section 4 of the police Act or any other law to examine or inspect the applicants account under whatsoever guise without a pending proceedings and do not have power to freeze the applicants bank account without fair hearing under whatever guise.

In addition, the applicant filed a written address of 15 pages where three issues were distilled for determination to with:

1. Whether the respondent have rights or power under police Act or any other law to inspect or freeze the applicants bank account No: 0007103385 with 3rd respondent without a pending court case or a notice to the applicant to afford the applicant fair hearing as guaranteed by section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

2. Whether it is not unlawful for the 1st and the 2nd respondent who have not invited the applicant or intimate him with any allegation against him to threaten to arrest the applicant or interfere in the civil contract or business of the applicant with any of his customers or to engage in debt recovery between the applicant and any of his customers who is yet to be disclosed to the applicant?

3. Whether the applicant is entitled to orders being sought for the protection of his human rights in view of section 36 (5), 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

This matter was assigned to court 49 dated the 13th day of October, 2022 and upon the receipt of the case, counsel to the Applicant mobilized the bailiff of the court to effect service on the respondents. prove of service on the 1st, 2nd and 3rd respondents dated the 31-10-2022 and upon service the 8/11/2022 was set aside for mention.

On the 8/11/2022 when this matter came up for mention the Applicant counsel one Ademola Oyedokan Esq who appeared in court informed the court that under the rules of fundamental human rights and the rules of the court under order 2 rule 6 a

defendant who intend to defend is enjoined to file his counter affidavit within 5 days and also order 4 rule 1 of the FREP rules 2009 the application to be ripe for hearing within 7 days of from the date of hearing and that in this instant case the respondent were served on the 31/10/2022 hence the motion is ripe for hearing and therefore he urge this court to move which the court granted him to be moved.

Before I proceed I will highlight the importance of service of process, service of court process is a pre-condition to the exercise of jurisdiction by the court, where there is no service to be sent the proceedings are nulliy ab inctio. This is based on the principles of law that there is a suit against him so he can prepare a defense.

The service of process is essential to ensure that a party is put on notice of the pending litigation and what stage it is. Service on the defendants or any party is for him to know the claims against him so that he may be aware of, and be able to resist if he so desires, that which is claimed against him.

See UBA plc v J.M & CO (NG) LTD (2016) 5 NWCR (PT1504) P.171. also Kida V Ogunmola (2006)13NWCR (PT997)377.

I said because from the records the respondents were dully served with the process and have all the opportunity to respond but choose not to but stay away in defense of this suit.

It is therefore Trite law that it is not the duty of the court to wait for a party who is duly served with the processes of court and fails to show up. The court is free to begin hearing any matter when it is satisfied that the parties to the case were duly served with hearing notice. See Nyamati Ent. LTD v N.D.I.C (2006) ALL FWLR (PT293) 350. This is exactly what happened in this matter that the Applicant was granted to proceed to hearing having complied with all the laws.

Now to the substance of the main case.

I have carefully considered the motion papers the affidavit attached therein and the written address, it is the law that he who alleges must prove. The Applicant has a duty to establish that his fundamental right has been breached by placing credible and cogent evidence before the court. It is the law that the burden of proof lies on the applicant who has alleged breach of his fundamental rights and same can be proved or established by cogent or credible evidence. See page 131-133 of the evidence Act,

which states the fundamental of such proof.

“Section 131: (1) Whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person

“Section.132. The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.

“Section.132 (1) in civil cases the burden first proving the existence of a fact lies on the party against whom the judgment of the court would be given if no evidence is provided on either side, regard being had to any presumption that may arise on the pleadings see Fay Emmekeon VS commercial Bank(NG) LTD & Anor (2009) LPELR-1231 SC.

The Applicant has asked the court to declare the purported order to request or directions or instructions from the 1st and 2nd Respondent or their agents, servants or any other persons acting on their instructions or authority obtained and issued to the 3rd Respondent without a pending proceeding or a notice on the applicant to defend himself in freezing restricting or putting a place no debit on the applicants account No. 0007103385 violates the applicants fundamental human rights to fair hearing and rights to own movable properties/assets guaranteed in section 36 & 44 of the Constitution of the Federal Republic OF Nigeria 1999(as amended) it is deposed in the affidavit in support paragraphs 4, 8, 9, 10, 11, 12 13, 14 & 15 which said paragraphs will be produced below:

Paragraph. 4.

"That the 1st respondent is the police authority in Nigeria established by the Constitution Federal Republic of Nigeria

while the 2nd respondent is the head of the 1st respondent on whose instruction and behalf all policemen in Nigeria carry out their duties.

Paragraph 8.

“That on the 8th September, 2022, I attempted to use my account with the 3rd Respondent through my mobile device, unfortunately, i was unable to access any account electronically and it was obvious that the account has been frozen/restricted.

Paragraph 9.

“Two of my customers who had given me jobs called to inform me that they had deposited money into my account to enable me carry out their work, but unfortunately, I could not access the monies deposited by my customers thus I was greatly ashamed and disgraced before the customers.

Paragraph 10.

“I called my account officer named Joshua Ojomah who is of course a staff of the 3rd respondent to know what has happened to my account, particularly to know why I was unable to access my account, I was informed on phone on the 7th September 2022 of about 12:00pm and I verily believe him as of follows:

- i. That the 1st and 2nd Respondent through their agents or subordinates have placed a no debit order on my account with the 3rd respondent through a purported "Bank order"**
- ii. That the 1st t and 2nd are calling for my arrest whenever I show up in the premises of the 3rd respondents.**
- iii. That the third Respondent through him as the account officer is not obliged to avail me a copy of the order, instructions or directions received from the 1st and 2nd respondent for freezing my account.**

Paragraph 11.

“That by revelation from the 3rd respondent through my account officer, having no knowledge or any criminal complaint against me having not received any intimation from police or law enforcement department coupled with the arbitrary freezing my account. I know my liberty, freedom of movement, dignity of my person are in danger.

Paragraph 12.

“I also know that my right to fair hearing has been breached by the 1st and 2ⁿ respondent who clandestinely obtained order freezing my accounting my account in my absence and without any notice to me for me defend myself before whichever court granted that order.

Paragraph 13.

“That I approached my solicitors of Ademolaw Toye law firm on the 12th of September, 2022 and instructed the law firm to demand for reasons for freezing my account, copies of such order, and to be granted immediate access to my account. A copy of my solicitor’s letter received by the third Respondent is exhibit A.

Paragraph 14.

“The third respondent who received and acknowledge the letter refused and neglected to reply, and my account remained frozen which has endangered my reputation with numerous customers who deposited money into the account because I am unable to perform my obligation for which they paid into my account.

Paragraph,15.

“The freezing of my account has brought untold hardship to me and my family because I have to depend on families and

friends to feed myself and immediate family.

Now to the issues distilled for determination.

On issue one,

“Whether the respondent have rights or powers under police Act or any other law to inspect and freeze the Applicant's bank account No.0007103385 with the 3rd respondent without a pending court case or a notice to the applicant to afford the applicant fair hearing as guaranteed by section 36 of the constitution?”

The applicant counsel submitted that section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the rights of citizens to hold interest in movable properties and by this provision of section 44 (i) money in a person's Bank account constitute his property, interest in movable property for that matter, this he referred the court to the case of Dangabarn V Federal Republic of Nigeria (2014)12 NWLR (PT1422) 575 CA. In this case the court of Appeal while examining what constitutes property held thus.

“On whether bank account qualifies as assets under section 28 of the Economic Financial Crime Commission (Establishment) Act 2004.

Where a bank account and the money in the account belong to an accused person charged under section 28 of the EFCC (establishment) Act 2004. In this case the money in the applicant frozen bank account, which are alleged to be proceeds of crime qualifies as assets and properties under section 28 of the EFCC (Established) Act 2004 pp610-611 paragraph HC.

On this the counsel submitted that the money on the applicant in his account being his movable assets/properties, it has been forcibly taken away from him by the restriction placed on the said property without following the due process of the law.

On the exhibit A & B referred to by the Applicant counsel he submitted that in line with the decision in the case of Clement Elue Osemene & 5 ORS V GT Bank and 6 ORS (unreported) Suit No: LD/196/GCM/2017, and the case of Onagorowa &1 OR

V Inspector General of Police and 5 ORS (1991) 5 NWCR (PT.193) 593 CA, Where the court of Appeal described the abuse of power by the 1st & 2nd respondent being police authorities in Nigeria by showing them that they have no power to freeze the citizens account under section 4 of the police Act or any other law, even under the Bankers Book evidence Act of 1879 which empowers them to inspect the Bankers book only in any pending proceeding, and submitted that, in the instant case there is no pending proceeding, and there is no invitation in respect of an investigation extended to the applicant, thus the court of Appeal held in holding of Onagoruwa's case that such act is in breach of section 33 the Constitution of the Federal Republic of Nigeria 1979 which is impari material with section 36 of the operative 1999 (As amended) which guarantees the citizens right. This he referred to the following sections of the Banker Book of 1879.

On pre-condition for invoking section 7 of the Bankers Book Evidence Act. 1879.-"that before that section is invoked there must be a legal proceeding within the meaning of section 10 of the ACT. In other words, before a judge can give an order under the section, there must be in existing legal proceeding, which must be commenced in accordance with the High court rules or any other enabling rules such as the fundamental rights, (Enforcement procedures) rules 1999. and that the same section 7 of the Banker Book vest the judge discretionary power and in order to enable a judge exercise his discretionary power under this section an applicant must present before him sufficient materials. This can be done in way of affidavit with relevant exhibits if need be. A bare application without proof cannot meet the adjectival requirements of the section 7 procedure. Where such is the case a judge is entitled to hold that an applicant has not discharged the burden placed on him and therefore section 7 of the Bankers Book Evidence Act 1879 has no enabling provision which enjoys or empowers the freezing of accounts.

Hon. Justice Tobi JCA in that case of page 637 paragraph E to H stated thus:

"Learned counsel also cited the case of Perry V the Phosphorous Co LTD. In Perry affidavit was filed. But in this case affidavit was not filed."

Lindley C.J. said in the case:

"the court would be reluctant to throw open to inspections a party's account in the bank kept by his bankers unless a strong case were made out for doing so. But if a special case is made for the exercise of the judge's discretion then it is different"

Two issues are involved in the above statement of Lindley C.J quoted in the brief of 1st, 2nd and 3rd Respondent. the first one is the caution that the court should be reluctant to throw open to inspection a party's account in the Bank. The rationale behind this is to protect the secrecy of communication between a bank and its customers particularly in relation to the account.

The second one is that the secrecy can be disturbed if a strong and special case is made----- . That it entails in the circumstance of this case, affidavit evidence which should show "strong and special case" there was no such evidence and so the 6th respondent could not have been satisfied to order the inspection of the accounts not to talk of freezing them.

In view of the above hold that the respondent who has not brought any pending proceedings to the notice of the applicant has no power to inspect his account and assuming without conceding that the 1st and 2nd respondent could apply ex-parte to inspect the account of the applicant, there is no provision for freezing of the account of the applicant. Reference to holding 7, 8, 9 and 10 of the Onagoruwa's case. as such submitted that, the 1st and 2nd respondents have facilitated the breach of applicants right of fair hearing as well as guaranteed rights to own movable properties, and therefore urge this court to hold that the respondent have no right to inspect and freeze the account of the applicant in the circumstance and that the respondents are liable to remedy the wrongs.

On issue Two

Whether it is not unlawful for the 1st and 2nd Respondents who have not invited the Applicant or intimate him with any allegation against him to threaten to arrest the

Applicant or interfere in the civil contract or business of the Applicant with any of his customers or to engage in debt recovery between the applicant and any of his customers who is yet to be disclosed to the Applicant.

On this the applicant counsel submitted in line with section 46 of the 1999 constitution of the Federal Republic of Nigeria (as amended) which provides thus:

"(i) Any person who alleges that any of the provision of this chapter has been, is being, is likely to be contravened in any state in relation to him may apply to High Court in that state for redress"

On this the counsel emphasis is on the words are "has been, is being, or likely to be contravened and in relation to him" and submitted that the Applicant's application aptly falls under these categories and therefore pray to the court to come to the applicant's rescue. Further submitted that, applying the objective test the applicant who has not been informed of any crime against him, and does no business than his pool construction business with his numerous customers is entitled to his fundamental human rights to be free from illegal arrest since the threat is obviously viable from the 1st & 2nd Respondents who have illegally frozen his accounts without any reason communicated to him and that is any of the Applicant customer here issues with him regarding any contract, the best thing is to approach the court and not to b use police to enforce contractual rights and the police should also not make themselves for abuse by leaving their statutory duties to pursue civil debt, contracts and all what not.

However, section 4 of the police Act Cap P19 Law of the Federation 2004 only specify the powers and duties of the 1st, 2nd and 3rd defendants thus:

4. General duties of the police.

"The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as required of them by or under the authority of this or any other

Act"

That the above provision of the above act has been judicially interpreted to exclude debt recovery. On this he referred this court to the case of Kure VS C.O.P (2020) 9 NWLR (PT.1729) 296 at 326 paragraph B-G. where the court held as follows.

9 On whether breach of agreement parse is an offence can result in criminal charge"

There is no known law where a breach of an agreement between two parties which has no element of criminality can result in a criminal charge and subsequently conviction. At best it can be a breach of contractual relationship which the criminal law lacks legal capacity or competence to enforce and punish. In this instance case, the 3.5 million naira was clearly a consideration for the contract between the parties which had wholly collapsed. The remedy laid in civil litigation. Onogoruwa VS State (1993) 7 NWCR (PT.303) P.322. Paragraph A-G. Per Kekers Ekun JSC at pages 323-324 paragraph H-B'

The crux of this appeal is whether the facts narrated above gave rise to a civil claim or whether the commission of criminal offences was disclosed my learned brother has given a thorough consideration of this issue in the lead judgment. I am in complete agreement with him that what the facts disclose as a civil complaint of breach of contract. The sum of 3.5million naira was paid to the applicant in furtherance of the contract between the parties. The failure to deliver the calf giraffe meant that the consideration for the contract wholly failed. The remedy for the nominal complainant was in a civil suit for damages for breach of contract for an order for specific performance. it was the duty of the police to advise her accordingly and decline to proceed with the complaint.

The supreme court went further in the case of Kure V COP (SUPRA) on section 4 of the police Act thus:

"The primary duty of the police by section 4 of the police Act is the prevention of crime, investigation and detection of crimes and

prosecution of offenders."

Also the case of Obiyeye V Gold (2012) All FWLR (PT659) 1074, the police is not a debt recovery agency and has no business to dabble into contractual disputes between parties arising from purely civil transactions. Also in the case of McLaren V Jennings (2003) FWLR (PT.154) 528,

When as in the circumstance of this action a purely civil matter is reported to the police such a person cannot go scot free as the report ought not to be made at all since it is not within the purview of the police duties. It is a report made malifada is made they may file and he will be equally liable for the action taken by the police irrespective of whether he actively instigated them or not, since he had no business involving the police in a purely civil matter in the first place. Such conduct which portrays disregard of the law and is aimed at using the coercive powers of the state to punish a contracting party in purely civil matter ought to be malifada in exemplary damages. See Okarfor & Anor V AIG Police Zone II Onikan & ORS (2019) LPELR-46505 Mrs Sokari Davies being an enlightened person knows that reporting such a matter to the police, instead of going to court to seek for enforcement of the said contract or damages for breach of same wickedness, malifada. The charges for cheating and criminal breach of trust cannot have a place against the appellant let alone proving it to a conviction. The appellant is hereby discharged and acquitted. He in fact deserves an unreserved apology from Mrs Sokari Davies who set unjustly and malifada the criminal stone rolling against the appellant. The counsel then submitted that based on the above forgoing, the report and complaint that might have been made by any undisclosed customers of the applicant in respect of any pool construction in other contract was made malifiada. The 1st and 2nd respondent should not convert their office to a debt recovery outfit which conduct is decried by the supreme court in the case of Jim Jaja VS COP Rivers state & ORS (2012) LPELR -20621 (SC) confirms the above decision when the Appeal Court Per Mohammad JSC reasoned so and thus in page 13

"The above facts were not disputed nor can it be said the appellant was arrested and detained on the allegation of forged certificate of occupancy. His arrest and detention was predicated on his failure to repay the loan he obtained from the 3rd Respondent. If the appellant's arrest and detention resulted from the allegation of

forgery which is a crime, the appellant could not have been released on bail on a mere undertaking to repay the loan, a civil matter. This claim by the 3rd respondent is in conflict with the facts stated in the 3rd respondents brief. The criminal allegation is a ploy by the respondents to settle a purely civil matter-, recovery of the loan obtained from the 3rd respondent by the appellant it is unfortunate that the 1st and 2nd respondents at the instance of the 3rd respondent on the pretext of investigating a case of forgery, converted their office to a debt recovery outfit"

The appellant counsel therefore submitted that the 1st & 2nd Respondent to engage in such conduct is despicable unwarranted illegal and outside the statutory duties of the Police. thus he referred the court to the case of Nnoruga & ORS V Enidwo (2015) LPELR-24275- Abiriyi JCA held as follows:

As I have stated above, no law in this country gives the police the power to dabble into purely civil transactions between parties.

This decision of the court of appeal is intandem with section 8 (2) of the ACJA. 2015 which provides thus:

"A suspect shall not be arrested merely on a civil wrong or breach of contract"

Therefore, he urged the court to declare that the applicant who is an innocent business man against whom no genuine criminal allegation has been made by any of his customers should be protected from threat of being unlawfully arrested because the police have no role to play in the enforcement of the civil contract whatsoever under section 4 of the Police Act. And therefore submitted that the threat or arrest and continuous threat to the freedom of the applicant is illegal and unconstitutional and therefore urge this court to resolve issue 2 in favour of the applicant. Thus refers to paragraphs 5, 6 & 7 of the affidavit of the applicant which provides thus:

Paragraph 5:

That I have numerous customers some of whom are owing me various sums of money while I am indebted to some suppliers from whom I buy materials with which I do my business.

Paragraph 6:

That I have never been involved in any criminal activity and no criminal proceedings is ongoing against me.

Paragraph 7:

That I have never received any invitation from the 1st and 2nd respondents regarding investigation of any crime whatsoever.

On the third issue:

“Whether the applicant is entitled to orders being sought for the protection of his fundamental human rights in view of section 36 (5), 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)?

The applicant posed a question as to whether the applicant is entitled to orders being sought for the protection of their fundamental human rights in view of section 35 (5) & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on this, the applicant counsel submitted that section 49 of CFRN 1999 as amended is relevant and the principle of ubi Jus, Ibi remedium the section provides thus:

46 (1) "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.

(2) Subject to the provision of this Constitution, a High court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that state of any right to which the person who makes the application may be entitled under this chapter"

On this the Applicant counsel submitted that the applicant’s rights to fair hearing is breached in getting the purported order to freeze the account of the applicant, his rights to own movable property is tampered with. And these are all clear breaches of section of section 36 and 44 of the Constitution of the Federal Republic of Nigeria

1999 (as amended) as it relates to the applicant which is enforceable and should be remedied under section 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and that the Applicant is also entitled to protection from the threat to his freedom of movement, liberty, dignity of his person, especially when there is no crime alleged against him to his knowledge.

That in this case the applicant is unlawfully being threatened with arrest over a civil transaction or allegation that is not yet known to him and it follows that he is entitled to such orders as the court may deem fit under section 46 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

On order 7 dealing with compensation thus the applicant counsel referred this court to the provisions of section 35 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). which provides thus:

"Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology"

That a community reading of section 35 (6) & 46 (2) of the Constitution of the Federal Republic of Nigeria, will give effect to the principle of Ubi Jus Ubi remedium by section 35 & 46 of the Constitution of the Federal Republic of Nigeria, Fundamental rights matters are placed on a higher pedestal than ordinary civil matters in which a claim for damages resulting from proven injury has to be made specifically and proved. Once the appellant proved the violation of his Fundamental right by the responding damage in form of compensation and even apology should have followed: referred to Jim Jaja VS Commissioner of Police (supra). That having held that the fundamental human rights of the applicant were violated by the respondent the court below was wrong to have denied from damages by relegating him to the status of a punch and her approaching the court for a handout"

Submitted that the unlawful threat of arrest and detention of the applicant is a fragrant breach of his fundamental human rights to dignity of human persons constitutionally guaranteed and he is entitled to redress. That the applicant is also entitled to compensation being claimed as general of damages in the sum of N50,000,000 (Fifty Million Naira) on this referred to section 46 (2) as the basis of the claim.

Section 46(2)

“subject to the provisions of this Constitution, a High Court shall have original Jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such order, issue such writs and to give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this Chapter.

It is on this note that I would like to put forward the essence of the enforcement of fundamental human rights:

"The true essence or importance of the proceedings under the fundamental rights enforcement procedures rules for the protection and enforcement of the fundamental rights of the citizens was specifically promulgated to protect the Nigerian fundamental rights from abuse and violation by authorities and persons. When the breach of the rights is proved the person is entitled to compensation even if no specific amount is claimed. See *Georgewills JCA, IGP & ORS V Ikpila & Anor (2015) LPELR-40630 (CA)*.

On this note I must say that I took the pain to reproduce some of the paragraphs of the affidavit because I have looked at the affidavit by the applicant and the averment were not denied since the respondent did not put forward any defense to the applicant's motion on notice to warrant this court to weigh between the two sides which one is heavier to decide on. Though from the affidavit of the applicant it is very clear that what transpired before this matter was brought before this court was a pure contractual transaction which situation was what impelled the applicant to seek recourse to the court in enforcement of his fundamental human rights upon the threats from the 1st and 2nd respondents their agents, servants and any other person acting on their instruction or authority obtained and issued to the 3rd respondent without a pending proceedings or notice to the applicant to defend himself in freezing restricting or putting a place no debit on the applicants account No: 0007103385. This action of the 1st & 2nd respondent are totally in breach of the

Applicant's fundamental rights guaranteed under section 34, 35, 36, 41, 44 & 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

It is to be noted that this action was brought under the fundamental rights (enforcement procedure) (FREPP) rules of 1979, that the application culminating in this case was brought pursuant to section 6 (6) (b), 13 and 46 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and order 2 rule which states thus:

"Any person who alleges that any of the fundamental rights provided for in the constitution and to which he is entitled, has been or is likely to be infringed may apply to the court in the state where the infringement occurs or likely to occur for redress"

Therefore with paragraphs 4-18 of the Applicants affidavit showing that the 1st and 2nd respondents have placed a no debit order on his account with the third respondent through a Bankers order therefore freezing his account No: 000713385 through the 3rd respondent without no pending proceedings before any court of law is an aberration of the applicants fundamental rights as the order of freezing the said account was outside the purview of the 1st & 2nd respondents powers as provided by section 4 of the police Act for clarity, I shall quote the deposition is the verifying affidavits as follows:

Paragraph 10, provides:

I called my account officer named Joshua Ojomah who is of course a staff of the 3rd respondent to know what has happened to my account, particularly to know why I was unable to access my account, I was informed on phone on the 7th September, 2022 at about 12:00pm and I verily believe him as of follows:

- i. That the 1st and 2nd Respondent through their agents or subordinates have placed a no debit order on my account with the 3rd respondent through a purported "Bankers order"
- ii. That the 1st and 2nd are calling for my arrest whenever I show up in the premises of the 3rd respondents.
- iii. That the 3rd Respondent through him as the account officer is not obliged

to avail me a copy of the order, instructions or directives received from the 1st and 2nd respondent for freezing my account.

In effect therefore the action of the 1st and 2nd respondent to the 3rd respondent to by posting a place no debit on the Applicants account No: 0007103385 violates the applicant's fundamental human rights, more also that there is no pending proceeding before any court of law in Nigeria against the applicant that would have warranted the 1st and 2nd respondent to take the action of putting no debit on the Applicant's account.

Be that as it may, there is no law known as the Bankers order ACT 1847 as the Bankers order in issue in this case was patently issued pursuant to a non-existent law and fortiori Null and Void ab initio and of no effect whatsoever.

Even under Bankers Books Evidence Act (supra) section 7 therefore provides,

"On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings"

An order under this section may be made either with or without summoning the bank or any other party shall be served on the bank three clear days before the same is to be obeyed; unless the court or judge otherwise directed.

In the interpretation section 10 of the law, legal proceedings is defined as

"any civil or criminal proceedings or any inquiry in which evidence is or may be given and includes arbitration"

Accordingly, therefore, properly construed an order under section 7 of the law (supra) can be made:

- a) On the application of a party to a legal proceeding
- b) To inspect and take copies of any entries in a banker's book.
- c) For any of the purposes of such proceedings
- d) Such order may be made ex-parte or on notice to the bank or any other party

e) Such order SHALL (meaning must) be served on the bank three clear days before the same is obeyed unless the court or judge otherwise directs.

All the above parameters must be present or fulfilled before an order can be validly made and complied with under that provision.

I will also like to reinstate, and mention and indeed emphasis the point that, in so far as Banker's books are concerned, and if the application be under the Banker's Books evidence act, the court is limited to making an order for inspection and taking of copies of such entries only. The law does not empower the court to order freezing of any party account in whatever name called, and worse still an arrest of any operator of such account by the Bank (as those orders usually say on their faces). That is all I can say in respect of the Banker's order. –

Now going to the counter affidavit filed. I have carefully perused all the paragraph of the counter affidavit of the 3rd Respondent, paragraph is very germane which I will-reproduce same here:

Paragraph 6:

That the 3rd Respondent admit, the deposition contained in paragraph (10) (1) and (iii) of the affidavit in support of the applicant originating motion on notice only to the extent that I personally informed the applicant that a post No debit order has been placed on his Bank Account on the order of the Upper Area court of Nasarawa State. ---- that I informed the applicant that the order of the Upper Area Court was a Banker's Order" or a Purported Banker" Order. The 3rd Respondent denies that the order it received from the Upper Area court is a Banker Order"

From the said affidavit it is clear that the Bank acted on the order of the Upper Area court Nasarawa State to place No debit on the Applicant Account.

What then is the implication of the said order of Place No debit on the account of the Applicant.

Secondly does the Upper Area Court Nasarawa State has the Jurisdiction to even order the place No Debit on the Account of the Applicant? This are many Question that deserved an answered.

It is trite law that, the Bank can freeze a Bank Account for various reasons ranging from customer requests for the account to be frozen to present fraud or by order of the court served on the Bank through a law enforcement agency. These reasons is one of the ethical and popular reasons for a Bank Account to be frozen. Banks are obligated to act as instructed when issued an instruction to freeze an account under the court order through the police or any of the agencies of the law enforcements.

On the basis that, the account is under investigation only.

However, there bare circumstances where the court granted such, an order based on inaccurate information from a security agency.

In such an event, the effected account holder may seek the order of the court vacating the initial order freezing the account.

It is trite, that the law enforcement agencies or Banks lack the power to unilaterally freeze a customer account based on pending criminal investigation or commission of a crime without account order, this was the decision of the court in the case of Guaranty Trust Bank Plc Vs Adedamola & ORS (2019) LPELR-37310 (CA).

In this instance case the issue is different, as the order was obtained from the Uppers Area Court Nasarawa State, the Purported ordered by the Upper Area court Nasarawa State was obtained even out of the Jurisdiction of FCT Abuja, the order of post No debit, obtained from the Upper Area Court Nasarawa State and place on the account of the Applicant on the strength of none existing law was illegal null & void. To my mind there is no exiting Nigeria law or relevant foreign law empowering of an Upper Area court to make such an order for freezing of persons account therefore hold that the Bankers Order/order freezing and/or enabling the post No Debit on the account of the Applicant pursuant to non-existent/repeated Banker's order Act, 1847 and any other irrelevant foreign law. Hold therefore, that, the Upper Area court Nasarawa lacks the power to make Banker's order and/or order freezing or enabling a post No debit on Bank Account pursuant to non-existent/repelled section 7 of the Banker's order Act, 1847.

The provision of section 251(D) of the CFRN 1999 (as amended) are very dear, that any civil matter, relating to any dispute between an individual customer and his bank in respect of transactions between the individual customer and Bank shall fall within

the Jurisdiction of both the state, FHC. Hence the Upper Area Court Nasarawa State lacks the power to so order post a No debit.

In view of the above the purported order of post No Debit place on the Applicants Account by the order of the Upper Area Court Nasarawa State, is null and void, and the argument of the 3rd Respondent to strike out this suit cannot hold as the order of the Upper Area Court Nasarawa State was obtained without jurisdiction to so order. I so hold.

In effect, the case of the Applicant before this court has merit hence I shall grant the following order:

- 1. The third Respondent is hereby ordered to unfreeze the Applicant Bank Account No: 0007103385 forthwith and within one week.**

- 2. It is hereby ordered that, the 1st & 2nd Respondents, their officers, subordinate or other persons acting on their instruction, power, or authority from further violating or threatening to violate the applicant's Fundamental Human right to liberty, movement, and dignity of his person, fair hearing, right to own property/assets and from recovering debt under a civil contract and the 1st - 2nd Respondent are restraining from threatening to arrest and detained, the Applicant outside their constitutional and statutory powers.**

- 3. The sum of One Million Naira as cost is granted to the Applicant against the 2nd & 3rd Respondent as compensation for unlawful restriction on the operation of the Applicant Business Account with the 3rd Respondent being Account No: 0007103385.**

This is my Judgement.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

- 1. Ademola Oyedokun for the Applicant.**
- 2. W. R. Benemone for the 2nd Respondent.**
- 3. Marcellinus Osigbemhe for the 3rd Respondent.**