

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY THE 19TH DAY OF JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/3085/22

BETWEEN:

YUSUF WALI.....CLAIMANT/RESPONDENT

AND

- 1. UNITED BANK FOR AFRICA PLC.....
DEFENDANT/RESPONDENT**
- 2. ECONOMIC AND FINANCIAL CRIME
COMMISSION..... THIRD PARTY/APPLICANT**

JUDGMENT

The claimant filed this case/action via an originating Summons, dated the 19th September, 2022 and filed the same date on it's application for the determination of the following questions:

- 1. Whether by virtue of the provision of section 34 of the Economic and Financial Crime commission (Establishment) Act 2004, the Defendant can in the absence of a court order and acting only on a letter/instructions of the Economic and Financial Crime, Commission freeze and suspend the claimant's account No: 1022497322 in the defendant Bank.**

- 2. Whether the freezing and/or suspension of the claimants account No: 1022497322 in the defendant Bank without due process of law to wit: a court order is reprehensive and cruel and an abuse of due process of law and equally a breach of contract of Bank customer relationship?**
- 3. If the answer to the above issues are answered against the defendant, whether the claimants is not entitle to damages high enough to be exemplary?**

The claimant seeks for the followings reliefs:

- a. A declaration that the suspension and freezing of the claimant's salary account No: 1022497322 without due process of law, to wit without a court order is not reprehensive, abuse of due process of law and a breach of contract of Banker customer relationship.**
- b. The sum of (N100,000.00) one hundred Million Naira as general damages for the acts of the defendant in suspending, freezing and looking out the claimant from the use of his salary(ies) from November, 2021 to August, 2022.**
- c. And any such further order/orders the court may deem necessary to make in the circumstance in this this case.**
- d. 10% interest on the Judgment sum from the date of Judgment till the Judgment sum is liquidated.**

Attached to the originating Summons is an affidavit of 2 pages of 18 paragraphs deposed to by one Mercy Samuel of No: 16, Mbabana Street Wuse Zone 6, Abuja and annexed to the affidavit are exhibit A-B and a written address in support of originating Summons of 11 pages. The defendants filed the defendant's counter affidavit in opposition to the originating summons, of 77 paragraph deposed to by Mayowa Wintokun a staff of United Bank for Africa Plc of No: 18 Ademola Adetokunbo Crescent Wuse of Abuja, and annexed to it are exhibits marked exhibit A, B, and written address in support of the Defendant counter affidavit of 9 pages. The Defendant also filed a third party Notice of two pages.

The claimant counsel who adopted its written address as its oral submission, so also the Defendant counsel.

The claimant in its written address argued the issues together while the Defendant counsel formulate a sole issue for determination to wit:

“whether from the totality of the peculiar circumstances and facts of the case, the Defendant acted in an unlawful manner in restricting or placing a post no debit (PND) order on the account of the claimant in compliance with the order and directives of the Economic and financial Crime Commission so as to entitle the claimant to the reliefs sought? This court will decide this case based on the submission of the claimant counsel and the issue formulated therein by the Defendants counsel together”

The fact of this case is that claimant case is built on the claimant affidavit in support of the originating summons. The case of the Claimant is that, he maintains account No: 1022497322 in his name with the Defendant, the said account is his Salary account and on or about November, 2021 that his account was frozen and suspended by the defendant and barred from any transaction on the account. He could no longer have access nor withdraw transfer money out of the account to meet his personal needs but despite this, the defendant continues to receive into the said account his salary from his employers.

Secondly, that the claimant suffered undue hardship because of the freezing, suspension of his salary account by the defendant which included borrowing and begging for money from friends and well-wishes to sustain his personal and family needs and maintain his staff and aids and relatives who depend on him for sustenance. That the Defendant did not inform him the reason for their action, the Applicant’s counsel then wrote exhibit A to the Defendants demanding an explanation for their action to unfreeze his account by the letter of this Defendant he had suffered severe loss and damages and what the defendant act of freezing/suspending his salary account was a breach of contract and amounted to abuse of the rule of law and high handedness and that they did not act pursuant to any court order.

In response, it is the contention of the Defendant that the action of the Defendant in placing a post no debit registration on the account of the claimant is not illegal unlawful or ultra vires as it was carried out pursuant to an order from the Economic and Financial Crime Commission (EFCC) and in compliance with the directives of the EFCC. He went further to pose a question thus: is the validity of the action of the Defendants done in compliance with the extent laws that mandated compliance with the directive of the EFCC.

Before I proceed, I will first of all torch light the power of EFCC in freezing an account.

Here the power of EFCC to place a stop order or freeze an account suspected to be involved in in Financial Crime for 72 hours without a court order, effect of where the freezing exceeds 72 hours without a court order.

Section 6 (5) (b) of the money laundering Act provides:

“notwithstanding the provision of paragraph (a) of this subsection, the chairman of the Economic and Financial Crime Commission or his authorized representatives shall place a stop order not exceeding 72 hours on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any crime” by the provisions of section 6 (7), where it is not possible to ascertain the origin of the funds within the period of stoppage of the transaction the Federal High Court may, at the request of the Commission, or other persons or authority duly authorized in that behalf, order that the funds accounts or securities referred to in report be blocked.

Section6(8) States that:

“an order made by the Federal High Court under Sub-Section (7) of this section shall be enforce forthwith.

By this provision it is not in doubt that the third party being EFCC has the power to place a stop order or freeze an account suspected to be involved in financial crime for 72 hours without a court order. Upon the expiration of the 72 hours, and where the commission is not done with its activities in respect of the account, a court order has to be obtained to extend the life of the order freezing the account. Where the required court order is not made available the stop order or freezing the account lapse and the Financial Institutions is obliged to unfreeze the account.

From Exhibit A being a letter from EFCC to the MD of UBA Plc attention Chief Compliance officer dated the 23rd November, 2021 on investigation activities Account Name: Yusuf Wali Account Number: 213952991, 1022497322 and acting under section 6(c) of the EFCC (Establishment) Act 2009 as amended and section 21 of the money laundering (prohibition) Act

2011 as amended to place No: Debit on the said account and exhibit B, being a letter from EFCC dated the 18th August, 2022 addressed to MD United Bank for Africa Plc to lift the post no debit status placed on the account to allow normal transaction to continue.

Based on exhibit A & B the claimant account domiciled with the third party have been frozen by the defendant since the 23rd November, 2021 and exhibit B lifted on the 18th August, 2022. The 72 hours have long lapsed.

The claimant counsel submitted that whether the Defendant by virtue of section 34 of the EFCC (Establishment) Act 2004, can in the absence of a court order and acting only on the letter/instructions of the EFCC freeze and suspend the claimants account No: 1022497322 in the Defendant Bank?

That defendant counter affidavit paragraph 8 in response to paragraph 2 to 18 of the affidavit in support of the originating summon stated thus.

- a. That the EFCC by a letter dated 24th November, 2021 wrote to the MD of the Defendant stating that the EFCC was investigating the account of the claimant in financial crime related offences.**
- b. That vide the said letter of 24th November, 2021 which was written pursuant to section 38 of the EFCC Act, the EFCC demanded the Defendant to place the account of the Applicant on a post No debit status in view of the ongoing investigation Annexed exhibit A.**
- c. That the Defendant being a law abiding corporate citizen proceeded to place the claimant account “post no debit status as Directed and demanded by the EFCC via their letter of 24th November, 2021.**

Paragraph 9. The defendant in placing the account of the claimant on post No: debit Status did not act out of its own whimsical volition but was only carrying out a lawful Directives of the EFCC being an agency of the Federal Government charged with.

- a. An investigation of all financial crimes including advanced fee fraud, money laundering, counter feiting illegal charge transfer, futures market fraud, fraudulent encashment of negotiable instrument, computer credit card fraud, contract scam e.t.c.**

- b. The coordination and enforcement of all Economic and Financial Crime Laws and enforcement function conferred on any other person or authority.**
- c. The adoption of measures to eradicate the commission of Economic and Financial crime.**
- d. The examination and investigation of all reported cases of Economic and Financial Crime with a view to identifying individuals, corporation bodies or groups involved.**
- e. The collection of all reports relating to suspicious Financial transactions analysis and dissemination of all relevant Government agencies- among other function.**

Paragraph 13:

That the defendant subsequently received another letter dated 18th August, 2022 from the EFCC directing it to lift the post no debit placed on the account of the claimant and the defendant immediately removed the restriction on the account of the claimant exhibit B

Paragraph 14:

That the defendant was only acting in accordance with its civic/statutory obligations under extant laws, notably the EFCC (Establishment) Act 2004, which mandates compliance with the EFCC and its agent in the exercise of its powers, Banks and other Financial Institution Act (BOFIA) and the Central Bank of Nigeria Act 2007 (CBN ACT) which enjoins the defendant to comply with any regulations, secular directives or other instructions from the central Bank of Nigeria (CBN) with attendant sanctions including revocation of banking license and or winding up for noncompliance.

On this referred the court to the case of Pulseline Services LTD V Equitorial Trust Bank LTD (2010) LPELR-4886 CA where the Court of Appeal opined thus:

“In the Circumstance of this case, I agree with the submission of learned counsel for the Respondent that the directives

contained in the Central Bank of Nigeria letter of 8th April, 1999 which was effectively copied to the appellant, the respondent has no choice in the matter and that the said letter amounts to prostration of contract. The directives of the Central Bank of Nigeria, the regulatory body of the respondent contained in its letter of 8th April, 1999 cannot be disregarded by the respondent so as not to attract penal sanctions by the CBN in line with the provision of section 15 BOFIA of 1991 and section 39 (1) (c) and section 39 (7) of the Central Bank of Nigeria Act no.24 of 1991”

To further buttress its argument, he referred this court to section 14 (1) (a) of the EFCC Act, which provides thus:

“14(1) A person who being an officer of a bank or other financial institution,

- a. Fails or neglects to secure compliance with the provision of the Act, commits an offence is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine of fifty thousand Naira or to both such imprisonment and fine.**

Assuming but not conceding as it was stated in the judgment, the question that boils the mind of this court is that does the EFCC have the right to “place No Debit” on account of the defendant without the lawful order of the court? The answer is No, that EFCC can only do that for 72 hours in accordance with the extent law.

On this the claimant counsel referred the court to the case of GANA V SDP & Anor (2019) LPELR. 47153 SC at 43. In GTB Plc V Adedamola (2019) NWLR (Pt.1664)30 at 43. Where the court stated as follows:

“Before freezing customers account or placing any form of restrain on any bank account, a bank must be satisfied that there is an order of court. By the provision of section 34(1) of the EFCC Act 2004, the EFCC has no power to give direct instruction to banks to freeze the account of a customer without an order of court, so doing constitute a flagrant disregard and violation of the rights of a customer. I must add that, the judiciary has an onerous duty of preserving and

protecting the rule of law, the principle of the rule of law are that both the governor and the governed are subject to rule of law, no one is above the law. Whenever there is brazen violation of the right of a citizen the court in the discharge of their responsibility to the society must rise to the occasion and speak, frown and condemn arrogant display of power by an arm of government. It is in the interest of both government and citizens that laws are respected, as respect for the rule of law promotes order, peace and decency in all societies, we are not an exception. For financial institutions must not be complacent, reticent and toothless in the face of brazen and reckless violence to the rights of their customers. Where there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed.”

In *Sofekun V Akinyemi & 4ors* (1980) LPELR-3091 SC, Aneogolu JSC had expressed a similar opinion wherein he stated thus:

“That it is essential in a democracy as we have in this country the rights of citizens be protected in order to check arbitrary use of power by the executive or its agencies.”

Learned counsel for the Appellant argued strenuously that section 34(3) of the EFCC Act reproduced above should have been interpreted separately. He even invited this court to do so. With respect to the learned counsel for the appellant that is unacceptable. That type of interpretation will defeat the intention and purpose of law. Section 34 of the EFCC Act which deals with freezing of account of customers in bank and other financial institutions must be read together in order to get the true intention of the law makers. It is clear from a reading of the entire section 34 of the EFCC Act, that the commission is satisfied with money in the account of any person is made through the commission of an offence may apply to the court expert for the power to freeze the account. The EFCC may by an order issued by the court direct the freezing of the account. The bank shall then take necessary steps to comply with the requirement of the order. Order rings a bell loud Bell in both sub sections (2) and (3) of the said section 34 of the EFCC Act. This is not surprising because the freezing of the account of a person will be done if the money is reasonably suspected by the court to have been made through the commission of an offence. It is then that the court makes the order sought by the EFCC. Without

that order, the EFCC cannot direct the freezing of the account of any person. without the order, the bank or any other financial institution cannot freeze the account of any person. The order of the court is the basis for any other action under the section as allegation that money is made through the commission of an offense is a serious allegation. It is for this reason that the bank must ensure that there is an order of court before it proceeds to freeze the account of any person. That is what section 34(3) means by the bank taking necessary steps to comply with the order.

In my view, a bank fails to enquire whether or not EFCC had obtained an order of court at its peril. I agree with the learned counsel to the Respondent that the procedure set out in section 34 of the EFCC Act must be followed by the EFCC and the bank or other financial institutions.” The learned justice went ahead to further hold “... I do not agree with learned counsel for the appellant that the appellant was being punished for the sin of EFCC and that the Act did not give the Appellant the option of disobeying EFCC. With respect to learned counsel for the appellant.

The appellant had no business obeying an unlawful directive of the EFCC. The Appellant is only expected to comply with a lawful directive of the EFCC otherwise the rights of customers to their money in the bank would be contrary to the safeguards provided for under section 34 of the EFCC Act. Section 34 of the EFCC Act is intended to prevent the EFCC from interfering arbitrary with the right of customers of the banks or other financial institution to their funds. That purpose will not be achieved if the bank aid the EFCC as in this matter to illegally get their customer account frozen through the back door. I agree entirely with the learned counsel for the respondent that the respondent was entitled to damages for failure of the appellant to ensure that the provision of the EFCC were complied with before freezing the respondents account. I agree with the learned counsel for the respondent that if the appellant kept the EFCC company in its breach of the law, the appellant cannot escape liability for the illegal freezing of the account of the respondent.

Also in GTB Plc V Adedamola (2019) 5 NWLR (Pt.1664)30 of 43, paragraph E-F where then court of Appeal clearly and unequivocally laid down the position of the law as followed in GTB V Joshua (Supra) that,

“Before freezing customers account or placing any form of restrain on any bank account, a bank must be satisfied that

there is an order of court. By the provision of section 34(1) of the EFCC Act 2004, the EFCC has no power to give direct instructions to banks to freeze the account of a customer without an order of court...”

The claimant counsel went further to state that, exhibit B cited reliance on CBN circular, section 6(c) of the EFCC (establishment) Act 2011 as amended as the basis of the action of the respondent. That it must be noted and respected for emphasis, that section 34(1) of the EFCC Act uses the word:

“Notwithstanding anything contained in any other enactment or law, 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 offence under the act and or any of the enactments specified under section 2(2)- (a)-(f) of the Act apply to the court expert for power to issue or instruct a bank examiner or such other appropriate regulatory authority issue an order as specified in form 3 B of the schedule of the Act addressed to the manager of the bank or any person in control of the financial institution to freeze the account.”

That from the foregoing it is absolutely clear that, exhibit B and its annexures is a mere after thought which does not avail any defense. That it is equally instructive to note that, section 13(1) of the money laundering (Prohibition) Act 2011 that repealed the Act of 2004, has a similar provision to section 34 of the EFCC Act (through one of the enactment envisaged by section 7(2)-(a)-(f) of the Act when it provided that.

“The commission, Agency, Central bank of Nigeria or other regulatory authority pursuant to an order of the Federal High Court obtained upon exparte application supported by a sworn declaration made by the chairman of the commission or authorized officer of the CBN or other regulatory authorities justifying the request may in order to identify and locate proceeds, property, objects or other things related to the commission of an offence under the act, the EFCC (Establishment) Act or any other law, (a) place any bank

account or any other account comparable to a bank account under surveillance”

The claimant submitted that the defendant failed in its duty in ensuring that there was an order of court empowering it to freeze/restrain the claimant account, its letter exhibit B, show that the freezing of the Claimant account was actuated by the letter of the EFCC directed to the Bank.

This brings us to the duties that Bank owes to the Customer. Generally, the Bank owes the customer a duty of care meaning that the Bank must use reasonable care meaning that the Bank must use reasonable care and skill while conducting business concerning the customer. Examples of the duties owed by the bank includes duty to honour cheque, duty to secrecy, duty to keep multiple account separated, duty to report forged cheques to customer, duty to give notice before closing account, duty to collect cash on customer’s behalf, duty to keep customers account accurate.

In this instant matter it is the duty of the Bank to give notice to the claimant before closing its account.

It is the duty of the Bank to provide truthful and honest information to their customers to enable them to make informed decisions and failure of the Bank to inform the customer or disclose the customer information before freezing its account is a breach of the Bank and customer’s relationship. In the relationship between a Bank and the customer, the former owes a duty of care towards the latter. It was determined that the extent of care imposed on the Bank is to take all precautions which a reasonable Bank would have taken under the circumstances.

On this the claimant counsel referred the court to the case of *Agbanelo V UBN* (2000) 233 at 243 where the SC held that,

“the defendant’s duty to exercise reasonable care and skill in regard to its customer’s affairs is undoubted”

The law is stated thus:

“A Bank has a duty under it’s contract with it’s customer to exercise reasonable care and skill in carrying out it’s part with regard to operations within it’s contract with its customers. The duty to exercise reasonable care and skill extends over the

whole range of banking business within the contract with customer.

It is therefore the submission of the claimant counsel that it is not in doubt that the Defendant failed in its duty under its contract with the claimant to exercise reasonable care and skill in carrying out its part with regards to the operations of the claimant's account.

And that had it exercised that reasonable care and skill towards the claimant it would have first found out as held in GTBPLC V Adedamola (supra) that,

“before freezing customers account or placing any form of restraint on any Bank account, a bank must be satisfied that there is an order of court.

The 5th Defendant after closing his case and adoption of its written address brought an application for leave to issue third party notice, the motion dated 4th March, 2023, argued on the 6-03-2023 and the order granted, upon service on the 3rd party, the 3rd party being EFCC file a memorandum of Appearance dated the 19-04-2023 filed on the 16-05-2023 together with a motion on notice, which seeks for the following reliefs.

- i. An order for extension of time within which the 3rd party/Applicant can enter appearance and file its counter affidavit and written address in opposition to the defendant 's claim in this case.**
- ii. An order deeming the 3rd party/Applicant memorandum of Appearance, counter affidavit and written address in opposition to the defendant claim separately filed and served.**
- iii. An order setting aside the order of the Honourable court adjourning this suit for judgment**
- iv. An order re-opening the case so as to enable the 3rd party/Applicant enter a defence to the Defendant's claims.**

The motion was moved and the order sought was granted, since there was no counter file by both the claimant and the defendant counsel,

On the 3rd party counter affidavit in opposition to the 3rd party notice paragraph 4 (b, c, d, e & f) which I will reproduce below.

“4(b) that the commission is not liable to the claims of the claimant or the defendant in any manner whatsoever.

(C) that the commission has not acted in any manner to make her liable either to the Defendant or to the claimant.

(D) that the letter of the commission to the Defendant dated 24th of November, 2021 was an investigation letter with a limited life span.

(E) that it is the law that such letter lapses after 72 hours if not backed up with an order of court.

(F) that the decision not to allow the claimant access to his account after 72 hours of the receipt of the commissioner letter of the 24th November, 2021 is not that of the commission but purely that of the Defendant.

On this in its written address formulated a sole issue for determination to with.

“whether from the facts and circumstance of this case, the Defendant is Justified in causing to issue a third party notice against the Economic and Financial Crime Commission?”

The third party submitted that the case of the Defendant is that the refusal to allow the claimant operate his account with them is based on the letter of the commission directing them to place the account of the claimant on post No debit in other words freeze the account of the Claimant with the Bank, this he referred to the Defendant to the Defendants counter affidavit in paragraphs are reproduced below:

12: that it was in the lawful exercise of it’s power and in order to further its investigation activities that the EFCC directed the defendant to place a post no debit restriction on the account of the claimant, a directive which the defendant promptly complied with.

13: that the defendant subsequently received a letter dated the 18th of August, 2022 from the EFCC directing it to lift the post no debit placed on the account of the claimant and the Defendant immediately removed the restrictions on the account of the claimant. A copy of the letter dated the 8th of august, 2022 is hereby attached as exhibit B.

14: That I know as a fact that at all material times, the Defendant was only acting in accordance with its civil/ statutory obligation

under the existing laws notable the Economic and Financial Crimes Commission (Establishment) Act, (EFCC Act) which Mandated compliance with EFCC and its agent in the exercise of its power. Banks and other Financial Institutions Act 2007 (CBN Act) which enjoins the Defendant to comply with any regulations, circular, directives or other instructions from the Central Bank of Nigeria (CBN) with attendant sanctions (including revocation of Banking license and/or winding up for non-compliance.

15: that the Defendant is statutorily obligated to assist the EFCC and not to interfere with any investigation being carried out by the EFCC, being mindful of the penal sanction under the law. These are the basis of which the defendant has taken a third party notice against the EFCC.

It is the contention of the third party that the defendant does not have a cause against them and anchor on the position of the law to the effect that where the Commission by letter instructs a Bank to post no Debit on account such instructions lapses after 72 hours if a court order is not providing to back up the instruction.

Now, let's look at the letter from EFCC to the managing director, of UBA Plc dated the 23 November, 2021, the said letter reads

Investigation activities:

Account Name: YUSUF WALI

ACCOUNT NUMBER: 213923991, 10224997322.

This commission is investigating an alleged case of conspiracy, obtaining goods under false pretense and diversion of funds in which the above mentioned accounts featured. Preliminary investigation revealed that suspicious and fraudulent transactions took place in the said accounts.

In view of the above and pursuant to the provision of the central Bank of Nigeria (CBN) Regulation dated 11th June, 2015 to the Deposit money Banks. Switches and payment services providers (see attached copy) and the provision of section 6 (c) of the Economic and Financial Crime Commission (Establishment) Act 2004 as amended and section 21 of the money laundering

(prohibition) Act 2011 as amended) you are hereby alerted of the said fraud for your prompt necessary action.

You are further requested to apprehend the account holders when seen and inform this office through the following phone Number: 08064564029 and 08066205712 or take him/her to the nearest police station.

Your cooperation in this regard is hereby highly solicited please.

Upon this letter the defendant acted and the Bank placed a post No: Debit on the two accounts as listed above.

On the 13th July, 2022, Barrister Obi C Nwakor wrote a letter to the Defendant acting under the instruction of his client Yusuf Wali informing the Defendant to know why the said salary account of his client was frozen/or blocked by the Bank, and demanded a written response on the reason for his inability to operate the account and/or freezing the said account, particularly the powers under which the Defendant acted, and that the response must show whether the Defendant acted pursuant to a court order or not.

In response to the lawyer's letter, the Defendant on the 19th August, 2022, wrote to Messir Obi C. Nwakor the letter reads.

“---we have caused a thorough investigation into your claim and we wish to advise by a letter dated 22nd November, 2021 the EFCC alerted the Bank of suspicious and fraudulent activities that took place on your clients account please find attached a copy of the referenced letter from the EFCC marked as annexure I. that reference letter was written pursuant to the provisions of a CBN circular on the establishment of industry fraud desks dated 11th June, 2015, directed to all Deposit Money Banks. Please find attached a copy of the referenced and CBN circular marked as Annexure, also made reference to the provisions of section 6 (c) of the EFCC (establishment Act, 2011 as amended.

Paragraph 3 of the annexure specifically provides that deposit money Banks shall block and/or place no Debit restriction on accounts upon receipt of grand complaints.

It is in light of the above that your client's account was restricted pending the outcome of the investigation of fraudulent transaction which the commission claimed transpired on your client's account. However, we can confirm that the restriction has since been lifted, your client can access his account unhindered.

Kindly advise your client that he may proceed with the normal operation of his account please accept our warm professional regards.

The question that comes to the mind of the court is in respect of annexure marked exhibit B paragraph 4 where it reads.

----- however, we can confirm that the restriction has since been lifted and your client can access his account unhindered-----”

From the date EFCC wrote a letter to Bank dated the 23rd November, 2022 and the date the counsel wrote a letter to the Defendant dated the 13th July, 2022 and the date when the Defendant responded to the claimant counsel letter dated August, 19th 2022, is almost about 9 months' difference. (2) where is the result of this investigation carried out by the EFCC, why was it not attached to the letter or why was there no explanation as to why the account was frozen? These are questions that the Defendant failed to answer, hence he decided to file a third party notice.

The third party in it's response stated that the Defendant does not have a cause of action against her, why because where the commission by a letter instructs the Bank to place a no Debit on an account, such instruction lapses after 72 hours of a court order is not provided to back up the instruction. On this he referred to the money laundering (prohibition) Act 2011 (as amended) section 6(5) (b) of the Act which provides thus.

“notwithstanding the provisions of paragraph (a) of this subsection the chairman of the Economic and Financial Crime Commission or his authorized representative shall place a stop order not exceeding 72 hours on any account or transaction if it is discovered in the course of there duties that such account or transaction is suspected to be involved in any Crime.

Section 6 (7) of the same Act goes onto provide thus:

“by the provision of section 7 (7) where it is not possible to ascertain the origin of the funds within the period of stoppage

of the transaction, the EFCC may at the request of commission or other person or authority duly authorized in that behalf, order that the funds, account, or securities referred to in the report be blocked.

Next is on the issue of section 6 (5) b of the money laundering law, can the Defendant claim ignorance of this provisions of the law? The answer is no, the defendant is fully aware of this provision of the law, which mandate is for 72 hours and after 72 hours, the defendant is no more to act on the letter from EFCC i.e. exhibit marked annexure A. the law is trite that ignorance of the law is not excuse.

The latin maxim (Ignorantia Juris non exausantr) or ignorantia Juris neminem exausat” (meaning ignorance of the law excuses no one). This the defendant in trying to justify this action in it’s counter affidavit in opposition to the originating summons in paragraph 12, 13, 14, & 15 reproduced below:

12, that it was in the lawful exercise of its power and in order to further it’s investigative activities that the EFCC directed the defendant to place “post No Debit restriction on the account of the claimant, a directive which the defendant promptly complied with.

13, that the defendant subsequently received another letter dated the 18th August, 2022 from the EFCC directing it to lift the post no Debit placed on the account of the claimant and the Defendant immediately removed the restriction on the claimant. A copy of the letter dated the 18th August, 2022 annexures as exhibit B.

14, that I know as a fact that at all material times, the Defendant was only acting in accordance with its civic/ statutory obligations under extant laws, notably the Economic and Financial Crime Commission (Establishment) Act? (EFCC Act) which mandates compliance with the EFCC and it’s agents in the exercise of it’s powers, Banks and other Financial Institutions Act (BAFIA) and central Bank of Nigeria Act, 2007 (CBN ACT) which enjoins the Defendant to comply with any regulation, circular, directors or other regulations from the central Bank of Nigeria (CBN) with attendant Sanction (including renovation of banking licensee and/ or winding up) for non-compliance obliged to assist the EFCC and not to interface with any investigation being carried out by the EFCC, being mindful of the penal section under the law.

The letter dated the 18th August, 2022 reads addressed to the managing Director UBA. Attention Chief Compliance officer.

Investigation activities Yusuf Wali:

2139523991 & 1022497322. We refer to our letter reference CR/3000/EFCC/LS/CTG/PS/09/21/VOL 4380 and dated 23rd November, 2021 on the above subject.

2. in view of the above, you are further requested to kindly lift the post No Debit status placed on the accounts to allow normal transaction to continue:

Based on the above, the defendant authored a letter dated the 19th day of August, 2022 addressed to the claimant, after 9 months of the letter to the defendant dated the 23rd November, 2021.

The Defendant in it's written address submitted that, while the defendant admits the placement of the PND restriction on the account, of the applicant, denied that it acted wrongfully, negligently or unlawfully as it acted in compliance with its civil/statutory obligations under extent laws, notably the Economic and Financial Crime Commission (Establishment) Act (EFCC ACT) which mandates compliance with the EFCC and it agents in the exercise of its powers, Bank and other Financial institution, Act (BOFIA) and the central Bank of Nigeria Act 2007 (CBN ACT) which enjoins the Defendant to comply with any regulation circular, directive or other instruction, from the Central Bank of Nigeria (CBN) with Attendant sanctions (including revocation of Banking license and/or winding up/ for non-compliance.

This he referred to section 7 of the EFCC Act which provides thus.

- 1. The commission has power to**
 - a. cause investigation to be conducted as to whether any person has committed an offence under this Act and**
 - b. With a view to ascertain whether any person has committed an offence under this Act or in the proceeds of any such offences cause investigation to be conducted into the properties of any person if it appears to the commission that the person's lifestyle and extend of the properties are not justified by his source of income.**
- 2. The commission is charged with the responsibility of enforcing the provisions of**

- a. **The money laundering Act 1995.**
- b. **The Advance fee fraud and other fraud related offences Act 1995**
- c. **The failed Banks (Recovery of Debts) and Financial malpractices in Banks Act 1995, an amended.**
- d. **The Bank and other Financial Institution 1991 as amended.**
- e. **Any other law or regulation relating to economic and Financial Crime.**
- f. **He further submitted that the right of the Applicant as an account holder with the Defendants is therefore subject to the law and regulations of Nigeria and the operating policies of the 2nd Respondent (third party EFCC) both of which complete compliance with directives of the EFCC in the carrying out of its function. In the light of he above, submitted that, the Defendant is statutorily obliged to assist the EFCC and not to interfere with any investigation being carried out by the EFCC, being mindful of the Penal sanction contained in the aforementioned Section.**
- g. **Reference also to section 38 of the EFCC Act which provide as follows:**

A person who.

- a. **Willfully obstructs the commission or any authorized officer of the Commission in the exercise of any of the powers conferred on the commissions by this Act, or.**
- b. **Fails to comply with any lawful enquiring or requirement made by any authorized officer in accordance with the provisions of this Act commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine of Twenty Thousand Naira or to both such Imprisonment and fine.**

Based on the above provisions of the EFCC Act, submitted that, it is clear from the tenor of the legislation that the law envisages that the Defendant should comply with the directives of the EFCC as any willful obstruction of the commission or any authorized officer of the commission in the commission by the Act constitutes an offence which is punishable upon conviction by a term of

imprisonment not exceeding five years or to a fine of twenty thousand naira or to both such imprisonment and fine.

The learned defendant counsel went further to cite the case of pulse line service Ltd V Equatorial Trust Bank Ltd (2010) LPELR-4886 CA which emphasises on the duty of financial institutions to obey the direction of regulatory institutions thus.

“in the circumstance of this case, agree with the submission of learned counsel, for the respondent that the directive contained in the CBN letter of 8th April, 1999 which was effectively copied to the Appellant, the respondent had no choice in the matter and that the said letter amounts to frustration of contract. The directive of the CBN the regulatory body of the respondent contained in its letter of 8th April, 1999 cannot be disregarded by the respondent so as to not to attract penal sanctions by the CBN 15 (BOFID) of 1991 and section 39 (1) (c) and section 39 (2) of the CBN Act No 24 of the 1999”.

He Also referred to section 44(1) of the 1999 CFN (as amended), which is the ground norm that grant citizens the right to acquire and own property which terms include money in the Bank, but subject to section 44(2) (f) which places a restriction on the acquisition of the said, property which stated thus:

“Nothing shall be construed as affecting any general law-----

Relating to the temporary taking of possession of property for the purpose of any explanation, investigation or enquiry.

Submitted that, the defendant did not breach, the right of the Applicant but merely complied with the EFCC instruction as captured in section 13(1) (G) of the EFCC Act and section 14(1) (a) of the EFCC Act. Further that, the placement of the post no debit restriction in the account of the Applicant as instructed by EFCC was done by the Defendant in pursuance of its civic responsibilities and duty for investigation and not for the purpose of breaching the fundamental rights of the plaintiff and consequently the defendant ought not to be held culpable for carrying out its civic duty and also not to deprive the Applicant of its property but in order to pave way for proper investigation which is the duty of the EFCC.

It is also the contention of the Defendant that where the Defendant has complied with the directive of the EFCC in placing a PND restriction on the account of the Applicant, the Defendant cannot unilaterally lift the PND placed on the account unless it is advised that the investigation that led to the PND request has been resolved or closed and is therefore so authorized do.

This court has carefully gone through the arguments as canvassed by the defendant, and that of the clamant and the third party (EFCC), thus I have to agree with the submission of the Defendant in the sense that the Defendant cannot on it's own lift the post No Debit placed on the account unless it is advised that the investigation that led to the post No Debit request has been resolved and closed and therefore authorized to do.

Therefore, the argument posted by the 3rd Party (EFCC) by reference to the section 6 (5) b of the money laundering (prohibition) Act, 2011 does not aid the EFCC, reasons being that, if it defaults or fails to totally comply would have been deemed to have committed an offence Punishable under

Section 38 (b) of the EFCC Act as stated in this judgment.

Assuming but not conceding, that the defendant acted on the provision of section 6 (5) b of the money laundering (prohibition) Act by lifting the post No Debit on the account of the Defendant, definitely he will be liable under section 38 (b) of the EFCC Act to place safe the Defendant waiting until he received instruction from the same EFCC who authored the letter dated the 23rd November, 2021 to so authorize the same EFCC to authorize them to lift the POST No Debit on the account of the claimant.

This the EFCC did not do based on the provision of section 38(b) but waited till he received the letter from the same EFCC, the letter which the EFCC sent to the Defendant dated 18th August, 2022.

From the foregoing I am of the view that, there is a default of the Defendant for not acting promptly on section 6 ((a) (b) of the EFCC Act, 2011. The EFCC has 72 hours to instruct the Defendant to unfreeze the account of the claimant and failure to give such instructions within the 72 hours, is where I fault the EFCC, and therefore will hold EFCC liable. The EFCC cannot blow hot and cold, at the same time authorize the letter dated the 18th August, 2022 the third party EFCC counsel cited the case of EFCC and GT Bank& 2 ors Appeal No CAC MK172)

2019. I beg to disagree with his submission as this cited is quite different from the instant case at hand. the law is stated thus

---- where the required court order is not made available, to stop nor or the order freezing the account lapses and the financial Institutions is obliged to unfreeze the account. on the case lifted, the court in perusing of exhibit EFCC 5 (and) contained on pages 123-126, of the record of Appeal shows that the account of the 2nd respondent was frozen barely less than 72 hours in line with section 6 (5) (b) of the provisions of the money laundering prohibition Act 2011. In that case, exhibit EFCC5 the appellant requested the 3rd Respondent to post no Debit on the account of the 2nd Respondent, by a letter dated 7th August, 2018 received on same date and on the following day by a letter dated 8th August, 2018 received on the same date, the Appellant requested the 2nd respondent domicile with it, by a letter dated 6th August, 2018 and the appellant by another letter in exhibit EFCC 5c dated the 8th August, 2018 requested the 4th Respondent to lift the restriction and allow the 2nd Respondent to continue normal transactions.

In the instant case, the case is different in the sense that the defendant claimed that there was a letter authorizing them to lift the restriction on the said account of the claimant, as stated in exhibit EFCC B.

In view of the foregoing, I have to accept, the third party's counter affidavit in opposition to the 3rd party notice, accordingly we will hold that the Defendant is liable to the claimant for the continued post no Debit on the claimant's Account for a period of 9 months.

The Defendant's failure to Act on the provision of Section 6 (5) b of the money laundering (prohibition Act 2015 is the failure of it's case.

On claim 2, where the claimant claims the sum of N100,000,000.00 (One Hundred Million Naira) as general damages for the Acts of the Defendant in suspending, freezing and locking out the claimant from the use of his Salary(ies) from November, 2021 to August, 2022.

Here, the claimant counsel in it's written address drew the attention of the court to the case of Union Bank of Nigeria Plc V Chimeeze (2014) 4SC 111 at 139 where the supreme court held that:

“damages are money claimed by or ordered to be paid to a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrong doer as compensation for the wrong----”

Also in the case of N.C.C V Metephone Ltd (2019) t14 NWLR Ltd (1691) the supreme court held that:

“in action for breach of contract the measure of damages is loss flowing naturally from the breach and incurred indirect consequences of the breach. Once it has been found by the court that a party is liable for breach of contract, award of general damages would follow and such damages needs not be specifically pleaded, as they are not in the nature of general damages.

The claimant's counsel submits that the directing consequences of the breach by the Defendant in locking out the claimant from his salary can result to injury, despite the freezing of the account in not allowing the claimant to take money therefrom, the Defendant was receiving the same salaries into the account and using same to run their business for their own benefit. And that the act of the Defendant without any semblance of law or due process of law is a gross and reprehensive and cruel act and flagrant disregard of the law which commands itself to damages high enough to be exemplary and punitive to prevent the occurrence of the same act in future and to vindicate the potency of the law.

In this case I will hold the respondent liable for damages for failure of the respondent to ensure that the provisions of the EFCC Act were complied with before freezing the claimant's account. Accordingly, the Respondents cannot escape liability for illegal freezing of the account of the claimant.

In the final analysis, I have to hold the Defendants liable for the 1st Defendant not acting promptly based on the provision of section 6 (5) (b) of the money laundering Act, and the third party's failure to notify the Defendant of the outcome of their investigation and waiting for some months before authorizing

the Defendant to lift the order of place No Debit place placed on the claimant's account.

Accordingly, I shall grant relief (1) and relief No: 2 I award the sum of N5,000,000.00 against the Defendant and the third party accordingly as general damages in favour of the claimant for suspending, freezing and locking out of the claimant from the use of his salarie(s) from November, 2021 to August 2022.

This is my Judgment.

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HON JUSTICE A. Y. SHAFI

APPEARANCE:

1. Obi C. Nwakor for the Claimant
2. G. O. Maduka for the Defendants.