

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE GWAGWALADA JUDICIAL DIVISION

HOLDEN AT GWAGWALADA- ABUJA

THIS TUESDAY THE 13TH DAY OF DECEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

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

BETWEEN:

YUSUF WALI.....CLAIMANT

AND

UNITED BANK FOR AFRICA PLC..... DEFENDANT

JUDGEMENT

The claimant filed this action via an originating summons, dated the 19th September, 2022 filed the same date. On its application for the determination of the following:

- 1. Whether by virtue of the provisions 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/instruction of the Economic & 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 claimant's account No:1022497322 in the Defendant Bank without due process of law to wit- a court order is reprehensible cruel and an abuse of due process**

of law and equally a breach of contract of Banker customer relationship.

- 3. If the answer to the above issues are answered against the defendants, whether the claimants is not entitled to damages high enough to be exemplary?**

The claimant seeks for the following reliefs:

- 1. 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 reprehensible, abuse of due process of law and a breach of contract of banker customer relationship.**
- 2. The sum of N100,000,000.00 (One Hundred Million Naira) of general damages for the acts of the defendants in suspending, freezing and locking out the claimant from the use of his salary (ies) from November, 2021 to August, 2022.**
- 3. And any such further order/orders the court may deem necessary to make in the circumstance in this case.**
- 4. 10% interest on the judgement sum from the date of judgement till the Judgement 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 Mbabane Street Wuse Zone 6, Abuja and annexes to the affidavit are exhibit A, & B and a written address in support of originating summons of 11 pages and the 12th page being the pre-action counselling certificate attached thereto:

The processes were served on the defendant proof of service dated the 24-10-2022 received at 1.55 pm by the CRO processes of the United Bank for Africa Plc Wuse 3 B10.

Before I proceed to the merit of this suit, I have to comment on the need of failure of the Defendants to file a counter affidavit having been duly served with all processes in this suit.

Here in this suit, the defendant United Bank for Africa Plc was served with the processes, in this case by the bailiff of this court dated the 24-10-2022 by 1.55 pm received by CRO processed of United Bank for Africa Plc on being served the bailiff of the court deposed to certificate of service in accordance to order 7

Rules 7 (1) and 13(1) of the High Court of the Federal Court of the Federal Capital Territory (civil procedures) rules 2018 the order provides thus:

Order 7 (1)(1) S

Service of originating process shall be made by a sheriff, deputy sheriff, bailiff, special Marshall, or other officers of the court ---, in this case the bailiff.

Order 7 rule 13(1) provides thus:

“The process server shall after serving any process promptly depose to and file an affidavit setting out the fact, date, place and made of service describing the process served and shall exhibit the acknowledgement of services.

This order which the claimant has compiled with as stated in this judgement.

Upon service of the originating summons, the defendant did not file any counter affidavit in opposition to the claimant originating summons.

It is trite law, that a party who fails to file a counter affidavit is by operation of law deemed to have accepted the facts deposed in the affidavit and such unchallenged facts are treated as having been established before the court. Likewise, where the supporting affidavit to an application is not countered, it must be deemed to be true and correct.

However, for such unchallenged evidence to be accepted and relied upon by the court, it must be both credible and reliable.

Having said so I shall address on the need to serve process on the defendant.

Service of court process is a pre-condition to the exercise of Jurisdiction by the court, such service of process on a party to a proceeding is crucial and Judgemental, because it is a means of summoning parties to court and also foist Jurisdiction on the court to hear a suit, it equally essential to ensure that a party is put on notice of the pending litigation and what stage it is services a defendant 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 claimed against him See Guda V Kitta (1990) 12 NWLR (PT. 629) 21. I stop here.

Now to the main issue for determination and the claim of the Application. This the claimant counsel argued that, 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 and family needs, that despite this he continues to receive into the said account his salary from his employers. That the claimant suffered undue hardship because of the freezing/suspension of his salary account by the - defendant which include borrowing and begging for money from friends and well-wishers to sustain his personal and family needs.

That the defendant did not inform him the reason for their action and it took his solicitors letter- exhibit A to the defendant demanding an explanation for their action to unfreeze his account. That by the time of unfreezing his account by the letter of the defendant he had suffered severe loss and damages and that the defendant action 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.

That the defendant wrote exhibit B in reply to exhibit A acted on the letter/instruction of the economic Financial Crimes Commission who were purporting to be investigating a case of fraud over the account see annexure 1 of the defendant's letter.

Question: - is whether the defendant by virtue of section 34 of the Economic and Financial Crime Commission (Establishment Act 2004. Can in the absence of a court order and acting on the letter, instruction of the Economic and Financial Crime Commission Freeze and suspend the claimant account No: 1022497322 in the defendant Bank? This Question boils down to the interpretation of section 34 of the Economic and Financial Crime Commission (Establishment Act. 2004) the section provides thus:

34(1) Notwithstanding anything contained in any other enactment or law, where any person is arrested under this act, the chairman of the commission may if he is satisfied that the money in the account of an arrested person is made through the commission of an offence, under this Act, and or any of the enactment specified under section 7 (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 to issue an order as specified in 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.

(2) the chairman of the commission or any officer authorised by him or by an order issued under subsection (1) of this section,

direct the Bank, other Financial Institution or designated non-Financial Institution to supply any information and produce Banks and documents relating to the account and to stop all outward payment, operation or transaction including any bill of exchanged in respect of the account of the person.

(3) the Manager or any other person in control of the Financial Institution shall take necessary steps to comply with the requirements of the order made pursuant to subsection (2) of this section.

In determining the context in which the provision of a statute are used, a court will not explain the meaning of the statute in a manner which will defeat the intention and purpose of the law makers. The court should instead adopt a holistic approach and interpret the provision dealing with a subject matter together so as to give the true intention of the law makers. **SeeGana VSDP & ors (2019) LPELR- 47153SC at 43.**

(2) GTB PLC V Adedamola (2019) NWLR(PT.1664) 30 at 43. where the court stated as follows:

“before freezing customer account or placing any form of restriction 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 Bank to freeze the account of a customer without an order of court, so doing constitute a flagrant disregard and violation of the right of a customer.

The EFCC may by an order issue by the court direct the freezing of the account. The Bank shall then take necessary steps to comply with the requirements of the order. Order rings a loud bell in both subsection 2 (3) of the said section 34of the EFCC Act. This is not surprising because the freezing of the account of a person with be done if the money is reasonably subjected by the court to have been made through the commission of an offence. It is then 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 Financial Institution cannot freeze the account of any person. The order of the court is the basis for any other actions under the section as allegation that money is made through the commission of an offence is a serious allegation. It is for the 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.

Here in this case, there was a letter written by the EFCC directly to the managing Director UBAPLC, Attention:

Chief Compliance Officer:

Investigation activities

Account Name: Yusuf Wali

Account Number: 2139523991

022497322

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

2. in view of the above and pursuant to the provisions of the CBN regulation dated 11-June, 2015 to the deposit money Banks, switches and payment service provides (see attached copy) and the provision of section 6 (c) of the EFCC (Establishment Act 2004, as amended and section 21 of money laundering (prohibition) Act, 2011 as amended, you are hereby alerted of the said fraud for your prompt necessary action.

3. you are further requested to apprehend the account holder when seen and inform this office through the following phone number: 08064864079 and 08066205712 or take him/her to the nearest police station.

4. your cooperation in this regard is highly solicited please.

Signed: A CEII Ahmed M. Gadi.

This letter by EFCC to the defendant (UBA) was the crux of this matter.

And in response when the action has been taken, the defence counsel to the claimant (Yusuf) Wali) wrote a letter to the Regional Legal Officer/Head Legal Service of UBA dated the 13-July, 2022 the letter reads:

Re- Account No: 1022497322-Yudsuf Wali

We act as solicitors to Mr. Yusuf Wali hereafter referred to as our client and on whose behalf and we write you.

Our client is a customer is a customer of your bank and maintains the above account in your Bank. The said accounts in his salary account and he informed us that he cannot operate his account as same is froze and/or blocked by the Bank.

We have instruction of our client to demand a written response on the reason for his inability to operate the account and/or freezing the said account, particularly the powers under which you acted. The response must show whether you acted in pursuant of a court order or not.

You are kindly requested to furnish us with the above response within 7 days of receipt of this letter.

Obi C.NwakorEsq.

In response to the above letter, the UBA write a letter addressed to Messrs: Obi C. Nwakor& Co dated the August, 19th 2022. The letter caption:

Re-Account No: 1022497322 Yusuf Wali we refer to your-letter dated July, 13, 2022 in respect of the above subject matter and the issues raised therein:

We have caused as thorough investigation into your claim and we wish to advise that by a letter dated 23, November, 2021, the EFCC alerted the Bank of Suspicious and fraudulent activities that took place on your client's account. Please find Attached a copy of the referenced letter from the EFCC marked as Annexure1. the referenced letter was written pursuant to the provisions of a CBN circular marked as annexure 2. Annexure 1 also made referenced to the provisions of section 6(c) of the EFCC (Establishment) Act5 2004, as amended and section 21 of the money laundering (prohibition) Act, 2011 as amended.

Paragraph 3 of annexure 2 specifically provides that deposit money Bank shall block and/or place no debit restriction on account upon receipt of fraud complaints. It is in light of the above that your clients account was restricted pending the outcome of the investigation of fraudulent transactions which the commission claimed transpired on your clients account. However, we can confirm that the restriction has since been lifted and your client can access his account unhindered.

Kindly advise you're that he may proceed with the normal/ operation of his account. Please accept our warm professional regard.

OpeyemiLakange&AdebowaleAdeyemo (legal Officer) to UBA.

Now from the letter dated the 23/11/2021 from EFCC, addressed to the managing Director of UBA, on the investigation activities and the letter from OBI C. Nwakor& Co dated the 13th July, 2022 address to the Regional Legal Officer/Head Legal Services of UBA as the Response from the Regional Legal Officer addressed to Messrs-Obi C. Nwakor& Co dated the 19th August, 2022. There is nothing to show that, the letter from EFCC to the Bank to place No:

debit alert on the claimant Account was backed by a court order, it is only instruction to the Bank.

This is where, the Bank fails in its duty of Bankers customer relationship. As the law is clear, as stated in this judgement, that, no agency has the power to freeze and/or place no debit on customer account without first obtaining an order from the court, to so act. Acting on either the CBN Directive, or money laundry act without the court order ordering same is breach of contract of banker customer relationship. See Guaranty Trust Bank Vs Dievdonne (2017) LPELR- 43559 (CA, where the principles of Banker customer relationship was detailed. The principle

“the law is well settled that the relationship between a Banker and its customer is that debtor and creditor as well as principal and agent, such that once a customer pays money into his account with the banker, the Bank becomes his debtor, while the customer becomes the creditor to the Bank.

A bank is also an agent of its customer who in turn becomes the principal and the Bank is thus bound in law and under a duty to carry out the instruction’ of its customer within the ambit of the law that governs their Bankers customer relationship. This duty, I must reiterate is one that carries with it a duty of care and which must therefore be diligently exercised by the Bank since the predominant business of the Bank is banking, which in the main consist of receipt of monies on deposits on Account of its customers and the payment of cheques paid in by its customer.

In the instant case, it is not indispute as it is clearly stated in this judgement that the EFCC letter to the Bank (UBA) dated the 23 November, 2021 authorising the Bank to freeze and/or place No debit alert on account No: 2139523991, 1022497322 of one Yusuf Wali, without a court order ordering same is a breach of contract of Banker customer relationship.

What this order intel’s is that, before an action been taken by EFCC there must be an order of a competent court ordering the freezing and/or place no debit alert on the customer account before an action of freezing and/or place no debit alert will be honoured by the Bank. The Bank acting blindly on an order of the EFCC without first seeing the order of the court is where the Bank went wrong, as such the claimant deserves an award of damages as the acts of the defendant in suspending, freezing and locking out the claimant from the use of his salary (ies) account from November, 2021 to August, 2022, as the Bank, has failed in

its duty under its contract with the claimant to exercise reasonable care and skill with regards to the request of the EFCC, the bank would have enquired and found out from EFCC if there was an order of court authorizing the freezing and or suspension of the claimant's account.

Indeed, this is the least a reasonable Bank would be expected to have done in respect of the account of its customer, with whom it has a contract but which care and skill the defendant had been shown to have thrown into the dustbin.

The claimant counsel in its written address draw the attention of the court in the case of Union Bank of Nigeria Plc V Chimaeze (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 word, damages are the sum of money which a person wrong is entitled to receive from the wrong doer as compensation for the wrong.

And in N.C.C. V Motophone Ltd(2019) 14 NWLR (PT. 1691) 1 the supreme court held that:

“in action for breach of contract, the measure of damages is the loss flowing naturally from the breach and incurred in direct consequence of the breach. Once it has been found by a 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.

It is the submission of the counsel to the claimant, that the direct consequence of the breach by the defendant in locking out the claimant from his salary can best be imagined. And to rub insult to injury, despite the freezing of the claimant to take money therefrom the defendant was receiving the same salaries into the account and using same to run their businesses for their own benefit. That the acts of the defendant without any semblance of law or due process of law is a gross and reprehensive and cruel act and s 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 the instance case the claimant claimed the sum of N100,000,000.00 (One Hundred Million) Naira only as general damages and 10% interest on the judgement sum from the date of judgement till the judgement sum is liquidated.

In summation hold that the claimed has proven his case on the preponderance of evidence against the defendant as all issue canvased in this case are in the claimant favour. Hence I shall resolve and give judgement to the claimant.

Hence judgement id given to the claimant against the defendant with the following order/declaration.

- 1. That the action of the defendant in suspension and freezing of the claimant salary account No:1022497322 without due process of law is a breach of contract of banker and customer relationship.**
- 2. On the claim of damages, I shall award the of N6,000,000.00 (Six Million) Naira only to the claimant against the defendant.**
- 3. On the 10% percent interest sum from the date of judgement till the judgement sum is liquidated this is based on order 39 rule 4 of the High Court Rule of the FCT, civil procedure Rules 2018 which provides thus:**

“the court at the time of making any judgement or order or at any time afterwards, may direct the time within which the payment is to be made or other act is to be done, recons from the date of the judgement or order or from some other point of time, as the court may deem fit and may order interest at the rate not less than 10% per annual to be paid upon any Judgement.

Base on the above I hereby order the defendant to pay to the claimant the 10% interest from the date of delivery of the Judgement.

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HON. JUSTICE A. Y. SHAFI

APPEARANCE:

1. Obi C. Nwakor with AdeizeEdefi for the claimant

