IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 16TH DAY OF JANUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/244/2023

BETWEEN:

1. ANNGOOD GLOBAL INVESTMENT LIMITED
2. FOUNTAIN OF KNOWLEDGE INT'L ACADEMY **APPLICANTS**

AND

POLARIS BANK PLC **RESPONDENT**

JUDGMENT

This Judgment is on the application for the enforcement of the fundamental rights of the Applicants.

By an originating Motion on Notice dated and originally filed on the 17th of November, 2023 but amended subsequently on the 12th day of March, 2024 by an Order of this Honourable Court made on the self-same 12th day of March, 2024 pursuant to a Motion *Ex Parte* dated the 14th day of December, 2024 but filed on the 18th day of December, 2024, the Applicants seek the following reliefs from this Honourable Court:-

1. *A Declaration that the action of the Respondent to unlawfully freeze the account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants domiciled*

and operated with the Respondent is unconstitutional, unlawful, null and void and of no effect whatsoever.

2. *A Declaration that the act of placing a Post No Debit and thereby freezing the Polaris Bank Ltd bank account of the Applicants with Account Numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 without a due process of law or a valid court order from a court of competent jurisdiction is unconstitutional, illegal and a violation of the Applicants' right to own properties as enshrined under the provisions of section 44(1) of the Constitution of the Federal Republic of Nigeria (as amended), Article 17 of the United Nations Declaration of Human Rights and Article 14 of the African Charter of Human and People's Rights.*
3. *An Order of this Honourable Court directing the Respondent and its servants, agents, or privies to immediately lift the restriction placed on the both Applicants' Polaris Bank Account Numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 domiciled and operated with the Respondent.*
4. *An Order of perpetual injunction restraining the Respondent whereby themselves, their agents, privies or servants from interfering and or further interfering with account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 belonging to the*

Applicants domiciled and operated with the Respondent without due process of law.

5. *An Order of this Honourable Court mandating the Respondent to pay to the Applicant the sum of ₦5,000,000,000,000.00 (Five Billion Naira only) as general damages for the unlawful freezing of account numbers 4010000620, 17711453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants domiciled and operated with the Respondent.*
6. *An Order of this Honourable Court mandating the Respondent to pay to the Applicant the sum of ₦500,000,000.00 (Five Hundred Million Naira only) as punitive, compensatory and exemplary damages for the psychological trauma and hardship suffered by the Applicants for the unlawful freezing of their account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 domiciled and operated with the Respondent.*
7. *An Order of this Honourable Court mandating the Respondent to pay to the Applicant the sum of ₦3,000,000.00 (Three Million Naira only) as cost of this suit.*
8. *And for such Orders as this Honourable Court may deem fit to grant in the circumstance*.

The amended originating Motion on Notice was accompanied with the Statement in support of the application, the Affidavit setting out the facts in support of the application and the Written Address in support of the application.

The original Originating Motion on Notice was served on the Respondent on the 17th of May, 2024. On the 21st day of May, 2024, the Respondent filed its Memorandum of Appearance and its Counter-Affidavit. Both processes were dated the same day it was filed. The two processes were served on the Applicants through their Counsel on the 24th of May, 2024. The Applicants, on the 29th of May, 2024, filed their Further Affidavit in support of the application and in answer to the Counter-Affidavit of the Respondent. The processes were served on the Respondent on the same 29th of May, 2024. Further to this Further Affidavit, the Applicants also filed a Further and Better Affidavit in support of the application for the enforcement of the fundamental rights of the Applicants.

On the 26th of November, 2024, the parties adopted their processes for and against the application for the enforcement of the fundamental rights of the Applicants. Thereafter, the Court adjourned for Judgment.

It was the case of the Applicants as gleaned from the Affidavit in support of the originating application for the enforcement of the fundamental rights

of the Applicants, the Further Affidavit filed in response to the Respondent's Counter-Affidavit and in support of the originating application as well as the Further and Better Affidavit filed in support of the originating application that the Applicants are customers of the Respondent, having and operating five bank accounts domiciled with the Respondents. The bank account numbers are given in the processes filed in this Court as 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325.

The deponent of the affidavits, one Ms. OnyinyechiDuru who described herself as a director of the two Applicants swore that she found out about the restrictions placed on the accounts of the two Applicants when she was conducting routine financial transactions on the accounts. Upon inquiry from the Respondent, she was informed that the Nigerian Police instructed the Respondent to freeze the accounts of the Applicants because the deponent was under investigation. She averred that she was not shown any Order of Court directing that restrictions be placed on the accounts when she visited the bank to lodge a complaint.

It was this state of affairs that led the Applicants to brief their Solicitors who proceeded to write to the Respondent demanding that the restriction on the bank accounts of the Applicants be lifted. This letter was attached

to the affidavit in support of the application as **Exhibit A**. The deponent averred further that the Applicants have not been able to execute their assignments and fulfil their obligations following the unlawful freezing of their accounts.

In the Further Affidavit, the deponent, the same OnyinyechiDuru, swore that the Counter-Affidavit the Respondent filed contained falsehood calculated to mislead the Court, adding that the Court Order upon which the Respondent proceeded to act upon was issued by a Chief Magistrate Court sitting in Nasarawa State. The Applicants through the deponent contended that the Magistrate Court was not a court of competent jurisdiction since it lacked the powers to adjudicate over banking matters. She attached as **Exhibits A and B** Judgments of this Honourable Court *coram*Adepoju, J. and Onwuegbuzie, J. where the Court held that the Magistrate Court lacked jurisdiction over banking matters to issue a freezing order. She iterated that the actions of the Respondent had occasioned grave hardship and embarrassment on the Applicants as they were unable to meet up with their financial obligations.

In the Further and Better Affidavit which was deposed to by one Festus Kaunan, a Litigation Assistant in the law firm of Ezenwafor& Co., the Counsel briefed by the Applicants to represent them in this suit, it was

sworn that the order which was obtained from the Chief Magistrate Court sitting in Nasarawa State was an interim order which was eventually set aside on the 11th day of December, 2023 following an application to that effect. The Order vacating that earlier order was attached as **Exhibit FBA1**. The deponent added that notwithstanding the service of this order on the Respondent, it has continued to sustain the Post no Debit restriction it had placed on the accounts of the Applicants.

In the Written Address in support of the Originating Motion on Notice, learned Counsel for the Applicants nominated three issues for determination. These are: "*(1) Whether the act of freezing the Applicants' bank account numbers 4010000620, 1771453562, 4120006347, 177136127 and 1140021325 demanded (sic) and operated with the Respondent was lawful and followed due process of the law; (2) Whether the freezing of the Applicants' account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 demanded (sic) and operated with the Respondent by the said Respondent is a breach and violation of the Applicants' right to own movable property provided for under section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) [and] Article 14 of the African Charter of Human and People's Rights; and (3) Whether the Applicant is not entitled to the payment of punitive, compensation and exemplary damages by the*

Respondents as a result of the violation of the Applicants' Fundamental Right."

Arguing the first issue, learned Counsel submitted that the existence of a valid court order is a prerequisite to the placing of a restriction on the account of any customer of a bank. He added that the Respondent owed the Applicants a duty of care in the management of the funds in the accounts of the Applicants domiciled with the Respondent. He maintained that the restriction placed on the account of the Applicants was unlawful as the Respondent did not act in accordance with the dictates of the law. He cited and relied on the case of ***GTB v. Adedamola (2019) 5 NWLR (Pt. 1664) 30 at 45***.

On the second issue, learned Counsel submitted that since money, or funds, is a movable property within the meaning of section 44 of the Constitution of the Federal Republic of Nigeria, 1999, the Respondent having dealt with the bank accounts of the Respondents in a manner not sanctioned by the law, have breached the fundamental rights of the Applicants to own movable property. Highlighting the irreducible nature of fundamental rights, as well as their supremacy and sanctity, Counsel urged the Court to resolve the second issue in favour of the Applicants. In support of his arguments on the second issue, learned Counsel cited and

relied on the cases of ***Chief (Mrs) OlufunmilayoRansome-Kuti& Others v. Attorney-General of the Federation (1985) 2 NWLR (Pt. 6) 211 at 229, paras H-B, Eze v. Governor, Abia State (2010) 15 NWLR (Pt. 1216) 324, AG Abia State v. AG Federation (2006) 16 NWLR (Pt. 1005) 265 (SC), Oladele& Others v. Nigerian Army (2006) 17 NWLR (Pt. 796) 412*** among other cases to that effect as well as section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 and Article 14 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.

On the third issue he formulated, learned Counsel submitted that having established the abridgement of their fundamental rights, the Applicants were entitled to the payment of punitive, compensatory and exemplary damages. He cited the cases of ***Okonkwo v. Ogbowo (1996) 5 NWLR (Pt. 499) 420, Jaja v. C.O.P. Rivers State (2005) 1 N.H.R.L.R. 256 at 273*** among other cases to the same effect that a litigant who has established that their fundamental rights have been breached was entitled to the award of damages. He urged the Court to resolve the third issue in favour of the Applicants.

In their Reply on Points of Law, the Applicants through their Counsel distilled one issue for determination, to wit: "*Whether the order of the*

Chief Magistrate Court Nasarawa State dated 7th day of November, 2023 is an order of Court of competent jurisdiction to validly freeze the Applicants' bank accounts as per ***Exhibit P1*** *attached to the Respondent's Counter-Affidavit?*"

Submitting on this sole issue, learned Counsel for the Applicants maintained the issue of jurisdiction was cardinal to competent adjudication. He cited the case of ***Madukolu v. Nkemdilim (1962) LPELR-24023 (SC)***. He added that the Magistrate Court lacked the jurisdiction to adjudicate on matters relating to banking or dispute arising from a banker-customer relationship. He submitted that the only courts vested with jurisdiction in this regard were the Federal High Court and the High Court of the States or that of the Federal Capital Territory. For this submission, he cited and relied on ***NDIC V. Okem Enterprise Ltd & Anor (2004) LPELR-1999 (SC)*** as well as sections 251(1) and 272(1) of the Constitution of the Federal Republic of Nigeria, 1999.

Counsel further contended that **Exhibit P1** attached to the Counter-Affidavit was inadmissible, the said document being a public document according to section 102 of the Evidence Act, 2011 was not certified as required by sections 104 and 105 of the Evidence Act, 2011. He cited the cases of ***Ikyaanenge& Others v. Utsaha& Others (2021) LPELR-54765,***

Nasarawa State Government & Others v. J. M. Technologies Ltd (2019) LPELR-48082 (CA) and Bala v. Chairman of EFCC (2021) LPELR-56469 (CA) in support of his arguments and urged the Court to discountenance the said **Exhibit P1**.

For its part, the Respondent in their Counter-Affidavit deposed to by one Benedicta Ako, a legal practitioner in the law firm of Chinwem C. Onwumere& Company, the Solicitors of the Respondent, denied liability. It claimed that it placed a Post No Debit restriction on the accounts of the Applicants following a letter from the office of the Inspector-General of Police to that effect, which letter was accompanied by an enrolled order of court. The letter and the order were attached to the Counter-Affidavit as **Exhibit P1**. It averred that the accounts were subject of investigation by the Nigerian Police Force following a complaint from one Victor Onukogu, a customer of the Respondent who claimed funds amounting to ₦16,500,000.00 (Sixteen Million, Five Hundred Thousand Naira only) were transferred fraudulently from his account to the accounts of the Applicants.

It was its case that it received a letter from the law firm of Ezenwafor& Co., Solicitors to the Applicants on the 8th day of November, 2023 demanding that the Respondent remove the restriction from the accounts

of the Applicants. It added that it received another letter from the Applicants' Solicitors notifying it of the pendency of an action for the enforcement of the fundamental rights of the Applicants in relation to the freezing of their bank accounts. The Respondent through its deponent averred that it could not revoke a lien placed on an account by an order of court as doing same would amount to contempt of court especially where there was no order of court removing the lien or setting aside the prior order emplacing the lien. It urged the Court to dismiss the originating application for the enforcement of the fundamental rights of the Applicants.

In the written address in support of the Counter-Affidavit, the learned Counsel for the Respondent formulated two issues for determination, that is, *"(1) whether or not the Respondent has a duty to obey Court orders; and (2) Whether or not the fundamental rights of the Applicants were violated by the Respondent*."

In his submission on the first issue, learned Counsel submitted that the Respondent, just like any law-abiding person or entity, was bound to obey an order of Court as long as the said order had not been set aside. Counsel further submitted that though financial institutions owed a duty of care to their customers, that duty of care was subordinate to any order of

court directing them to place a lien on the bank account of the customers. Citing the cases of ***C.O.P. v. Omanukwue (1999) 2 NWLR (Pt. 590) 190, Odon v. Barigha-Amange (2010) 12 NWLR (Pt. 1207) 13 and Polaris Bank Ltd v. Yayamu Global Services Ltd & Anor (2022) LPELR-57376(CA)***, learned Counsel urged this Court to answer the first issue in the affirmative in favour of the Respondent and to hold that the Respondent was duty-bound to comply with the order of the Chief Magistrate Court MararabaGurku, *coram* His Worship V. V. Manga Esq.

In his submission on the second issue he formulated, learned Counsel prefaced his arguments with a reference to the provision of section 44 of the Constitution of the Federal Republic of Nigeria, 1999. He contended that the limitations ensconced in section 44(2)(e) and (k) of the Constitution were applicable to the present case, as the restrictions on the accounts of the Applicants were made pursuant to an order of Court and in furtherance or, or in aid of an investigation into an allegation of a fraud against the Applicants. Learned Counsel, in support of his submissions on this second issue, cited and relied on the cases of ***La Wari Furniture and Baths Ltd v. FRN (2019) 9 NWLR (Pt. 1677) 262 and Dangabar v. FRN (2014) 12 NWLR (Pt. 1422) 575*** in urging the Court to resolve the second issue in favour of the Respondent and to hold that the fundamental rights of the Applicants were not breached by the Respondent in any way.

The above is the summary of the cases of the parties as captured in their respective processes. Two issues lend themselves for determination: ***(1) Whether the right of the Applicants protected under section 44 of the Constitution of the Federal Republic of Nigeria, 1999 has not been breached in relation to bank account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 domiciled with the Respondent; and (2) if the answer to Issue One (1) above is in the affirmative, whether the Applicants are not entitled to the ancillary reliefs of damages and injunction sought in this originating application for the enforcement of the fundamental rights of the Applicants.***" I shall proceed anon to the resolution of the two issues I have nominated for resolution.

Fundamental rights, by their very nature, are rights which enjoy special protection and elevation by virtue of their enshrinement in the Constitution of any nation. In Nigeria, these rights are protected under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999. They are termed 'fundamental rights' because they are antecedent to the existence of the society, are inherent in humankind and are inalienable. In***LivisterChijiokeMbaeyi v. Economic and Financial Crimes Commission &Ors (2022) LPELR-57515(CA) at 56-58, paras F-A***, the

Court of Appeal explained that "***Fundamental human rights are rights which stand above the ordinary laws of the land. The factum of their enshrinement in the Constitution of the Federal Republic of Nigeria, 1999 ("CFRN") which is the supreme law of the land, confers on them a preeminent status over and above other human rights. See UZOUKWU & ORS v EZEONU II &ORS. [1991] 6 NWLR (PT. 200) 700 at 761. Although the origin of fundamental rights is said to date back to the Magna Carta of 19th June 1215, these rights are in fact antecedent to the political society itself: they are "inherent in man because they are part of man". See F.R.N. v IFEGWU (20031 8 MJSC 36 at 701-102 (per Niki Tobi, JSC). In the words of Lord Cooke of Thorndon, they are "rights that are inherent and fundamental to democratic civilised society, (and) conventions, constitutions, bills of rights and the like merely respond by recognising rather than creating them". See REGINA v SECRETARY OF STATE FOR THE HOME DEPT, EX PARTE DALY (2007) 3 All ER 433, (2007) 1 AC 532. Thus, fundamental rights constitute 'the basic minimum standard for civilised humanity' enshrined in the Constitution so that they could be inalienable and immutable to the extent of the non-immutability of the Constitution itself. See RANSOME KUTI v A-G, FEDERATION (1985) 7 NWLR (PT. 6) 211 at 231 -per Eso JSC.***""

Similarly, in ***Gabriel v. Ukpabio (2022) 11 NWLR (Pt. 1841) 261 S.C. at 285-286, paras. F-A***, the apex court echoed similar sentiments when it held that "***The rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria,1999 (as amended) are termed fundamental for the simple reason that they are inalienable natural rights which stand above the ordinary laws of the land and are primary conditions to civilized existence. It is for their natural inalienability that the law prioritises their preservation against violation. It is for this reason that section 46(1) of the Constitution of the Federal Republic of Nigeria,1999 (as amended) grants any person who alleges that his fundamental right provided for in Chapter IV of the Constitution has been, is being or likely to be contravened in any state to apply to any High Court in that State for redress.***" Such is the nature of fundamental rights.

The proceeding for the enforcement of the rights guaranteed under Chapter IV of the Constitution is no less special. In ***Traxys Europe SA v. Basem El Ali &Ors (2022) LPELR-57434(CA) at 19-20, paras E-D***, the Court noted that "***Interestingly, because actions for enforcement of fundamental rights are very special, due to the sacrosanct nature of the rights conferred by Chapter IV of the Constitution of Nigeria 1999 (as amended), which can only be derogated from as permitted by***

law, the procedure for enforcement of these rights are also somewhat sui generis, of their own special kind governed principally by the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009. A procedure which, in law, can only be used for the enforcement of the provisions of Chapter IV of the Constitution of Nigeria 1999 (as amended), and other domesticated provisions on international treaties on Human Rights and none other. In other words, if a claim is not for or touching on or concerning the securing and or enforcing of any of the provisions of Chapter IV of the Constitution of Nigeria 1999 (as amended), then such a claim is not one that is capable of being competently commenced under the provisions of the Fundamental Rights (Enforcement Procedure) Rules 2009."

In the instant case, the Applicants seek declaratory reliefs that the freezing of the bank accounts of the Applicants by the Respondents which bank accounts with account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 are domiciled with the Respondent is unlawful and therefore a breach of their right guaranteed and protected under section 44 of the Constitution of the Federal Republic of Nigeria, 1999. The Respondent, on the other hand, claimed that its action was premised on the order of the Chief Magistrate Court sitting at

MararabaGurku*coram* His Worship Honourable V. V. Manga which made the order placing a Post No Debit on the bank accounts of the Applicants.

It is important at this juncture to reproduce the provisions of section 44 of the Constitution of the Federal Republic of Nigeria, 1999. The section reads thus:-

"***(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –***

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law –

(a) for the imposition or enforcement of any tax, rate or duty;

(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;

(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;

(d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;

(e) relating to the execution of judgements or orders of court;

(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

(g) relating to enemy property;

(h) relating to trusts and trustees;

(i) relating to limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;

(l) providing for the carrying out of work on land for the purpose of soil-conservation; or

(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly."

The contention of the Applicants in this suit is that the actions of the Respondent in relation to the bank accounts of the Applicants with bank account numbers 4010000620, 1771453562, 4120006347, 1771366127

and 1140021325 constitute a breach of the right protected in section 44 (1) of the Constitution of the Federal Republic of Nigeria 1999. The Respondent, conversely, justified its actions by bringing same within the purview of the exception created in paragraph k of subsection 2 of section 44. The paragraph removed from the operation of the general provision of section 44 actions which proceed from "***any general law relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry***."

It is interesting to note that the parties in this suit are agreed that the bank owes a duty of care to its customers. Authorities have been cited in this regard by both parties. Indeed, in ***Haston (Nig.) Ltd. v. A.C.B. Plc (2002) 12 NWLR (Pt. 782) 623 S.C. at 646, paras B – C***, the court held that "***A banker/customer relationship is contractual in nature. It is that of debtor and creditor or principal and agent. Also, the banker owes its customer a duty of care.***" In ***Linton Ind. Trading Co. (Nig.) Ltd. v. C.B.N. (2015) 4 NWLR (Pt. 1448) 94 C.A. at 108, paras B – C***, the Court similarly held that "***The relationship that exists between a banker and a customer is one founded on a banker and customer contract. It involves a specie of contract with special usages with particular reference to monetary or commercial transactions***."

The Respondent however takes a lone trajectory after this general concession by arguing that the duty of care the Respondent owes its customers is not absolute, as same is subject to the laws of the land as well as orders of court that have been made validly.The Respondent is not without judicial company in this train of thought. In ***Edilcon Nig. Ltd. v. UBA Plc (2017) 18 NWLR (Pt. 1596) 74 SC at 91, paras G-H***, the apex court held that "***A judgment or ruling of a court of law, no matter how incorrectly arrived at, is valid, binding and subsisting, until it is set aside by the same court through a judicial review or by appellate proceedings***." This principle finds expression in a plethora of cases such as ***Okobi v. Okobi (2020) 1 NWLR (Pt. 1705) 301 CA at 335, paras B-D*** and ***Obla v. Iseoluwa (2024) 2 NWLR (Pt. 1923) 595 LPDC at 623, paras F-G***.

Though orders of court are binding until it is set aside, the presumption of regularity which inures in favour of decisions of court and upon which the Respondent seeks to invalidate the present action of the Applicants on the strength of **Exhibit P1** attached to its Counter-Affidavit is actually a rebuttable presumption.Section 168(1) of the Evidence Act, 2011 provides for the presumption of regularity. The provision states that: "***When any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its***

validity were complied with." See ***Mbamaenyi v. Abosi (1995) 7 NWLR (Pt. 405) 54 CA 64, para D*** where the Court of Appeal held that "***There is a general presumption of regularity of official and judicial acts, that things are rightly and properly done. This is expressed under the common law in the maxim:*** **omniapraesumuntur rite esseacta** ***(all acts are presumed to have been done rightly and regularly). This is also reinforced by the provision of section 150(1) of the Evidence Act, Laws of Nigeria, 1990*** [same as section 168(1) of the Evidence Act, 2011]***. In this case, there is a presumption that exhibits "D" and "E", being judgments of the native court, were validly and regularly made by a court duly constituted unless the contrary is established. No such contrary evidence was adduced by the appellants to displace that presumption***."

Is there a factual basis for this Court not to act on the order of the Chief Magistrate Court sitting at Mararaba*coram* His Worship V. V. Manga made on the 7th day of November, 2023? I have studied the enrolled Order. Specifically, the enrolled order directed the Respondent to place a Post No Debit on the account of the 1st Applicant with account number 1771366127 and the account of the 2nd Applicant with account number 1140021325. These accounts were specifically mentioned on the letter

from the office of the Inspector-General of Police to the Respondent dated the 6th of November, 2023.

The Respondent did not only comply with the directive from the Nigerian Police and the enrolled order of the Chief Magistrate Court of Nasarawa State, it proceeded to place a Post No Debit on other account numbers not covered by the said order it places so much reliance on. These account numbers are 4010000620, 17711453562 and 4120006347 belonging to the Applicants. One of the rules of interpretation of written instruments is that where the interpretation of the written instrument will invariably impact on any of the constitutionally guaranteed freedoms, the courts must be liberal enough to guarantee the protection and preservation of those freedoms. In ***International Bank for West Africa v. Imano (Nig.) Ltd. & 1 Other (1988) 3 NWLR (Pt. 85) 633 S.C. at 665, paras B-D per Oputa, JSC***, the Supreme Court advised thus: "***Where the freedom of the person and the rights of the citizen are in jeopardy and the words of a statute are capable of more than one meaning, judicial activism may be justified, and there the Court may go beyond the strict and literal interpretation and adopt a purposeful interpretation if the justice of that particular case so requires… In such a case, the Statute or Rule should be strictly and narrowly construed in favor of the existing right and against any***

encroachment of that right otherwise than by express provision." If the order of the Chief Magistrate Court of Nasarawa State specifically mentioned account number1771366127 with account name Anngood Global Investment Limited and account number 1140021325 with account name Fountain of Knowledge Academy, why did the Respondent proceed to place a Post No Debit on account numbers 4010000620, 1771453562 and 4120006347 belonging to the 1st Applicant which were not the subject of the enrolled order of the Chief Magistrate Court of Nasarawa State?

Interestingly, the Applicants deposed to a Further and Better Affidavit wherein they stated that the enrolled order of the Chief Magistrate Court made on the 7th of November, 2023 and on which basis the Respondent placed a restriction on the accounts of the Applicants had been set aside. The enrolled order setting aside the earlier order was attached to this Further and Better Affidavit as **Exhibit FBA1**. This Order was made on the 11th of December, 2023 – that is, one month and four days after the earlier Order placing a Post No Debit on the accounts of the Applicants was made. The Further and Better Affidavit to which the order was attached was filed on the 20th of September, 2024 and served on the Respondent on the 24th of September, 2024. The parties herein adopted their processes in this suit on the 24th of November, 2024. The Respondent did not challenge the Further and Better Affidavit and the

attached exhibit. The position of the law is clear in such circumstances, and that is, where an averment, or a piece of evidence is not challenged by the other party even when he has all the opportunity to do so, the evidence is deemed admitted by that other party. See ***Fadac Ent. Ltd. v. Chizea (2023) 13 NWLR (Pt. 1902) 481 S.C. at 502-503, paras. F-B*** where the court held that "***A court is bound to believe and act upon averments that are not challenged or uncontroverted, without hesitation***."

Curiously, the Respondent continued to sustain the Post No Debit restriction it has placed on the bank accounts of the Applicants. This is in spite of the fact that it became aware that the platform upon which it stood to place the restrictions in the first place, that is the enrolled order of 7th of November, 2023, had been dismantled on the 11th of December, 2023 *vide* an order of court setting aside that order of 7th of November, 2023. The action of the Respondent in disobeying an order of court is therefore unjustified. The Respondent gleefully complied with the order of 7th of November, 2023 but blithely ignored the order of 11th of December, 2023. It is not in the office of the Respondent to pick and choose which order of court to obey and which to disobey.

Moreover, the Chief Magistrate Court of Nasarawa State lacks the jurisdiction to adjudicate over a matter that is at worst a banking matter or at best a banker – customer relationship. In any case, even if financial impropriety is alleged, the Chief Magistrate Court is still divested of the requisite jurisdiction considering the root of the allegation. I agree with learned Counsel for the Applicants – and I am persuaded by the persuasive authorities of my Learned Brothers Adepoju, J. and Onwuegbuzie, J. which the Applicants attached as **Exhibits A and B** to their Further Affidavit – that the appropriate court would have been the Federal High Court pursuant to section 251(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 or the High Court of the Federal Capital Territory, Abuja or the High Court of a State pursuant to sections 257 and 272 respectively of the Constitution. In addition, there is nothing in the body of evidence before this Court support the bare assertion of the Respondent in paragraph 9 of its Counter-Affidavit that the sum of ₦16,500,000 (Sixteen Million, Five Hundred Thousand Naira only) was transferred in a fraudulent manner from the account of one Victor Onokogu to the accounts of the Applicants. For instance, the Respondent did not attach any statement of account to prove this assertion. It did not also attach the statement of the said Victor Onukogu to support this claim. **Exhibit P1** which it attached did not make reference to this alleged

fraudulent transaction. Section 131(1) of the Evidence Act, 2011 provides that "***Whoever desires any court to give judgment as to any legal right or liabilitydependent on the existence of facts which he asserts must prove that those facts exist.***" The Respondent has failed to discharge this evidential burden in this regard.

I have no hesitation, therefore, in arriving at the ineluctable conclusion that the Applicants have been able to establish that their right as guaranteed under section 44 of the Constitution of the Federal Republic of Nigeria, 1999 has been breached. I therefore resolve Issue One (1) in favour of the Applicants. I shall move on to Issue Two (2).

Issue Two (2) is this: "***if the answer to Issue One (1) above is in the affirmative, whether the Applicants are not entitled to the ancillary reliefs of damages and injunction sought in this originating application for the enforcement of the fundamental rights of the Applicants.***"

In the case of fundamental rights proceedings, damages naturally flow once the Applicant has shown that their fundamental rights have been abridged.

On why damages in fundamental rights proceedings are not trivialized, the Court citing with approval its decision in ***Odogu v. A-G., Fed. (1996) 6***

NWLR (Pt. 456) 508 S.C., held ***at page 160, paras A-C of the First Bank of Nigeria's case*** that "***Whatever compensation is awarded it should truly reflect not only the pecuniary loss of the victim, but also the abhorrence of society and the law for such gross violation of human rights... An unwitting trivialization of a serious matter by an inordinately low award should be avoided…***"

Having found that the right of the Applicants protected under section 44 of the Constitution was breached, it is only fair this Court award general damages against the Respondent that has acted with so much impunity in keeping the bank accounts of the Applicants domiciled with it under a figurative lock and key. Their disregard for the law, typified in their selective compliance with orders of court, is abhorrent and must be specially condemned. Considering that the bank accounts of the Applicants have been restricted since November, 2023, the award of aggravated and exemplary damages becomes all the more pertinent. The award of exemplary damages is very appropriate in this case.

In ***Odogu v. A-G., Fed. (1996) 6 NWLR (Pt. 456) 508 S.C. at 519, para. F***, the apex Court held that "***Exemplary damages are usually awarded whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence,***

flagrant disregard of the law and the like." The circumstances of this case are such that an award of aggravated or exemplary damages is justified. See also ***G.K.F. Investment Nigeria Ltd v. NITEL Plc (2009) 15 NWLR (Pt. 1164) 344 S.C. at 373, paras D-F; Zenith Bank Plc v. Ekereuwem (2012) 4 NWLR (Pt. 1290) 207 C.A. at 238, para B; Think Ventures Ltd. v. Spice &Regler Ltd. (2021) 2 NWLR (Pt. 1759) 114 C.A. at 146, paras A-F***.

As for the relief for perpetual injunction, it is important to restate the position of the law that an order of perpetual injunction is appropriate where the Court has reached a final decision on a matter and it is important to protect the rights established at the conclusion of trial in order to forestall a situation where the party against whom the order is sought relapses into the same conduct that gave rise to the suit in the first place. In other words, an order of perpetual injunction is pertinent in order to prevent multiplicity of actions. In ***Ho v. Abubakar (2013) 12 NWLR (Pt. 1261) 323 CA at 343, paras G-H***, the court held that "***Where a person's legal right has been infringed or invaded and there is a continual invasion or threat of continuance of such an invasion and the legal rights of the parties have been determined in a final judgment, the successful party is entitled to a perpetual or permanent injunction.***"

An Order of perpetual injunction is therefore appropriate in the present circumstance.

In all, I find this application for the enforcement of the fundamental rights of the Applicants meritorious and worthy to be granted. Accordingly, the reliefs sought in this application are hereby granted as follows:-

a. **THAT the action of the Respondent in unlawfully freezing the account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants domiciled and operated with the Respondent is unconstitutional, unlawful, null and void and of no effect whatsoever.**
b. **THAT the act of placing a Post No Debit restriction on and thereby freezing the Polaris Bank Ltd bank account of the Applicants with Account Numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 without a due process of law or a valid court order from a court of competent jurisdiction and the continued restriction on the said accounts even after the earlier court order had been set aside is unconstitutional, illegal and a violation of the Applicants' right to own properties as enshrined under the provisions of section**

44(1) of the Constitution of the Federal Republic of Nigeria (as amended), Article 17 of the United Nations Declaration of Human Rights and Article 14 of the African Charter of Human and People's Rights.

c. **THAT AN ORDER OF THIS HONOURABLE COURT IS HEREBY MADE directing the Respondent and its servants, agents, or privies to immediately lift the restriction placed on the Polaris Bank Account Numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants and domiciled and operated with the Respondent.**

d. **THAT AN ORDER OF PERPETUAL INJUNCTION IS HEREBY MADE RESTRAINING the Respondent whether by itself, its agents, privies or servants from interfering and or further interfering with account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants and domiciled and operated with the Respondent without due process of law in so far as the subject matter of this suit is concerned.**

e. **THAT AN ORDER OF THIS HONOURABLE COURT IS HEREBY MADE MANDATING the Respondent to pay to the Applicants the sum of ₦10,000,000.00 (Ten Million Naira only) as general**

damages for the unlawful freezing of account numbers 4010000620, 17711453562, 4120006347, 1771366127 and 1140021325 belonging to the Applicants and domiciled and operated with the Respondent.

f. **THAT AN ORDER OF THIS HONOURABLE COURT IS HEREBY MADE MANDATING the Respondent to pay to the Applicants the sum of ₦3,000,000.00 (Three Million Naira only) as punitive, compensatory and exemplary damages for the psychological trauma and hardship suffered by the Applicants for the unlawful freezing of their account numbers 4010000620, 1771453562, 4120006347, 1771366127 and 1140021325 domiciled and operated with the Respondent.**

g. **THAT AN ORDER OF THIS HONOURABLE COURT IS HEREBY MADE mandating the Respondent to pay to the Applicant the sum of ₦1,000,000 (One Million Naira only) as cost of this suit.**

h. **THAT AN ORDER OF THIS HONOURABLE COURT IS HEREBY MADE PLACING a post-judgment interest rate of 10% on the entire Judgment sum beginning from the date of Judgment until same is fully and finally liquidated**.

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HON. JUSTICE A. H. MUSA
JUDGE
16/01/2025

APPEARANCES:
FOR THE APPLICANT:
Chief ChidiEzenwafor, Esq.
I.G. Nwaozichi, Esq.
O. F. Orji-Dibor, Esq.
K. O. Agboroh, Esq.
Precious Ogboro, Esq.

FOR THE RESPONDENT:
C. Y. Mkpuru, Esq.
D. J. Ako, Esq.
M. U. Bekwuhapu, Esq.
Amarachi Angela Oti, Esq.