

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 12TH DAY OF FEBRUARY, 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO: FCT/HC/CV/2886/2020

BETWEEN:

- 1. COASTERNERS ENGINEERING &
BUILDING SERVICES LTD**
- 2. MR KOLA ADEGOKE**

APPLICANTS

AND

- 1. UNITED BANK FORAFRICA PLC**
- 2. ECONOMIC AND FINANCIAL CRIMES COMMISSION**

RESPONDENTS

JUDGMENT

This Judgment is on the suit of the Applicants against the Respondents seeking the enforcement of their fundamental rights.

On the 9th of October, 2020, the Applicants through an Originating Summons which was amended on the 13th of March, 2023 brought this action against the United Bank for Africa Plc seeking the following reliefs:-

- 1. A Declaration that the unwarranted and unjustifiable restriction(s) placed by the Respondents on the 1st Applicant's account, with Account Number 1019820476 domiciled in the 1st Respondent's bank and being operated by the 2nd Applicant since January/February 2019 on a purported*

- instruction from the 2nd Respondent without a valid court order is unlawful, illegal, and a gross violation of the fundamental human rights of the Applicant as enshrined under sections 34, 35, 36 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*
- 2. An Order directing the Respondents to lift any restriction or embargo whatsoever placed on the 1st Applicant's Account Number 1019820476 domiciled in the 1st Respondent's bank without a valid court order, with immediate effect and without further delay.*
 - 3. An Order of perpetual injunction restraining the Respondents from further placing any restriction or embargo on the operation of the 1st Applicant's account without following due process of law to obtain a valid court order to that effect.*
 - 4. An Order for the payment of the sum of ₦300,000,000.00 (Three Hundred Million Naira only) by the Respondents as compensation for the continuous violation of the Applicants' fundamental human rights since January 2019 as well as the tendering of an unreserved apology to the Applicant for the infringement of the aforesaid rights.*
 - 5. And for such further order or orders as the Honourable Court may deem fit to make in the circumstances in this case.*

Apparently, the Applicants intended to bring this suit through an Originating Motion on Notice pursuant to the provisions of Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 which provides for

what shall accompany the originating process used in initiating a suit for the enforcement of the fundamental rights of an applicant; but their Counsel was too careless with their draftsmanship. In any case, the originating process was accompanied with a statement of particulars in support of the application pursuant to the provisions of Order II Rule 3 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, a 7-paragraph affidavit in support of the application for the enforcement of the fundamental rights of the Applicants and a written address. Attached to the affidavit in support of the application are ten documents attached as Exhibits K1, K2, K3, K4a, K4b, K4c, K4d, K5, K6, and K7. These, respectively, are the 2nd Applicant's international passport, the certificate of incorporation of the 1st Applicant, the particulars of directors and shareholders of the 1st Applicant, letters of awards of contract, mail from the 2nd Applicant to the account officer of the 1st Applicant, Applicants' solicitors' letter dated the 16th of October, 2019 to the 1st Respondent and letter from the 1st Respondent to the Canada Immigration Office.

The Amended Originating Summons was served on the 1st Respondent on the 15th of March, 2023 and on the 2nd Respondent on the 28th of March, 2023. On the 22nd of March, 2023, the 1st Respondent filed its Counter-Affidavit in opposition to the Amended Originating Summons. The 4-paragraph Counter-Affidavit was deposed to by one Austine Odobi, an Administrative Officer in the law office of U. O. Sule, SAN & Co., the solicitors to the 1st Respondent. Attached to the Counter-Affidavit are three exhibits marked as Exhibits UBA1,

UBA 2 and UBA3. These are the 1st Applicant's statement of account from January, 2019-January, 2021, letter from the 2nd Respondent dated the 9th of January, 2019 and another letter from the 2nd Respondent dated the 26th of January, 2021 respectively. The 1st Respondent also filed a Written Address in accompaniment of the Counter-Affidavit. On the 16th of May, 2023, the Applicants filed a Further and Better Affidavit to the 1st Respondent's Counter-Affidavit. The 8-paragraph Further and Better Affidavit was deposed to by Blessing Ameh, a legal practitioner in the law firm of gracious Chambers, the counsel to the Applicants. The Applicants attached a statement of account of the 1st Applicant from the 1st of April, 2018 to the 10th of October, 2018 as Exhibit K8. A Reply on Point of Law was also filed to accompany the Further and Better Affidavit.

The 2nd Respondent did not file any process in opposition to the suit of the Applicants.

On the 28th of November, 2024, the parties through their Counsel adopted their respective processes. This Court then adjourned for Judgment.

Blessing Ameh Esq., a legal practitioner, deposed to the affidavit in support of the Originating Summons on behalf of the Applicants in the case. She stated that the 1st Applicant is a limited liability company registered in Nigeria, and the 2nd Applicant is a director and shareholder of the company. She attached **Exhibits K2 and K3** in proof of these averments. The Applicants' account with

the 1st Respondent bank was restricted without a valid court order, she averred, causing them financial hardship.

She further swore that the Applicants had been operating the account satisfactorily since its opening in 2016. However, in December 2018/January 2019, the 2nd Applicant discovered that the account had been blocked. Despite efforts to communicate with the Respondent, they refused to respond or lift the restriction. She attached **Exhibit K5** as evidence of this communication. The failure of the 1st Respondent to address the Applicants led to the Applicants' solicitors sending a letter to the Respondent, but they failed to respond. She attached **Exhibit K6** in proof. The Applicants alleged that the Respondent's actions were targeted at crippling them financially and violating their fundamental human rights.

The Applicants stated that they have no criminal record and are law-abiding citizens. They urged the court to grant their claims and provide relief, as the Respondent's actions have caused them irreparable loss and damages. The deponent believed the content of the affidavit to be true and correct to the best of her knowledge.

Austine Odobi, an administrative officer, deposed to the Counter-Affidavit on behalf of the 1st Respondent. He stated that the Applicants' affidavit is

incompetent, as no sufficient reason was provided for the 2nd Applicant's inability to depose to the affidavit personally.

Odobí contradicted the Applicants' claims, stating that the 2nd Applicant's international passport does not suffice to prove their absence from Nigeria. He also argued that the 1st Applicant, being a company, has other officers who could have deposed to the affidavit.

Furthermore, Odobí stated that the 1st Applicant's account was lawfully restricted by the Economic and Financial Crimes Commission (EFCC) due to investigative activities. He attached exhibits, including EFCC letters, to support this claim.

Odobí described the Applicants' action as an attempt at "gold digging," which the court should not grant. He emphasized that the Respondent acted lawfully within the authority given by the EFCC and that the Applicants have not shown any injury suffered by the Respondent's actions.

In conclusion, Odobí urged the court to dismiss the suit, as it is in the interest of justice to do so.

In the Written Address in support of the Counter-Affidavit, Counsel for the 1st Respondent formulated the following two issues for determination: “(1) *Whether in view of the circumstances and facts of this case vis-à-vis the contents of Exhibit UBA1, the Applicant has a case against the 1st*

Respondent; and (2) Whether the Applicants are entitled to the compensation sought having not proved any injury.”

The 1st Respondent's Counsel in his argument on the two issues submitted that the Applicants' suit is an abuse of court process, initiated with malice and aimed at frustrating the 1st Respondent. They contended that the Applicants have not come to court with clean hands, as their actions are bereft of good faith and are vexatious.

Counsel relied on **Exhibit UBA 1**, which shows that the Applicant's account was dormant and not funded, contrary to their claims. They argued that the Applicant's attempts to withdraw funds were aimed at "gold digging," as there were no funds in the account.

The 1st Respondent's Counsel also submitted that the freezing of the Applicants' account was done in accordance with the directive from the 2nd Respondent, citing **Exhibits UBA 2 and UBA 3**. They argued that the Applicants have not shown how their rights under sections 34, 35, 36, and 37 of the Constitution have been breached.

Finally, Counsel urged the Court to dismiss the suit with substantial cost, as the Applicants have not proved any injury suffered as a result of the 1st Respondent's actions. They cited the case of ***Julius Berger (Nig) Plc v. Ogundehin (2014) 2 NWLR (Pt. 1391) 388 at 427*** among other cases in support of their argument.

In the Applicants' Further and Better Affidavit, Blessing Ameh Esq., a legal practitioner, deposed to it on behalf of the Applicants, having established that she has the authority of the 1st and 2nd Applicants to depose to the facts contained in the affidavit.

Ameh contradicted the 1st Respondent's Counter-Affidavit, stating that paragraphs 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, and 4 are untrue and unhelpful to the 1st Respondent's case.

She argued that the 1st Respondent's actions were unlawful, as they froze the Applicants' account without a valid court order. Ameh also stated that the Applicants' account had a balance of ₦8,297,454.20 as of October 2018, contrary to the 1st Respondent's claims.

Ameh further argued that the 1st Respondent's actions were aimed at crippling the business of the 1st Applicant and that the interest of justice will be better served if the Court enforces the Applicants' fundamental rights.

She urged the Court to discountenance the Respondent's Counter-Affidavit and enforce the Applicants' infringed rights. Ameh also requested that the Court should not allow the Respondent to hide under purported letters allegedly emanating from the 2nd Respondent.

The Applicants, in their Reply on Point of Law, filed in response to the 1st Respondent's four-paragraph Counter-Affidavit and Written Address in support of same, filed a Further and Better Affidavit with supporting exhibits, arguing

that the objection lacks merit. According to Counsel for the Applicants, the 1st Respondent contends that the suit constitutes an abuse of court process but fails to substantiate this claim with any factual basis. Furthermore, he submitted that the 1st Respondent asserts that the Applicants lack a case due to their account being dormant and unfunded, yet provides no evidence linking account activity to the enforcement of fundamental rights.

The Applicants maintain that their fundamental rights under Sections 34, 35, 36, and 37 of the 1999 Constitution (as amended) have been violated, particularly their right to fair hearing, as their bank account was restricted without prior notice or a valid court order. Citing judicial precedents, they argue that an infringement need not have occurred before an Applicant may seek redress.

On the issue of damages, the 1st Respondent asserts that no injury has been proven; however, the Applicants counter that the financial losses suffered due to account restrictions justify their claim. The 1st Respondent's failure to contest these depositions strengthens the Applicants' position, they argued. Citing judicial authorities such as *Aiyetan v. The Nigerian Institute for Oil Palm Research (1987) S.C. 73*, Counsel affirm that banks cannot unilaterally restrict accounts without a court order, reinforcing the illegality of the Respondents' actions.

Conclusively, the Applicants urge the court to dismiss the 1st Respondent's objection to their suit, declare the restriction unlawful, and grant appropriate reliefs, including damages.

After due consideration of the facts of this suit and the issues the parties have formulated for this Court to determine, I have streamlined them into a sole issue, that is, "***Whether the Applicants have established a breach of their fundamental rights to dignity of the human person, personal liberty, fair hearing and right to own movable and immovable property as to be entitled to the reliefs sought in this suit?***"

Before I delve into the resolution of this sole issue, I shall dispose with the preliminary point which the 1st Respondent raised in its Counter-Affidavit and which the Applicants responded in their Further and Better Affidavit. The point bordered on the competency of the deponent to depose to this application. The 1st Respondent is urging this Honourable Court to discountenance the affidavit in support of the Originating Summons on the ground that it was not deposed to by the 2nd Applicant who is the alter-ego of the 1st Applicant. According to the 1st Respondent, the Applicants did not comply with the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009 by getting the Applicants to depose to the affidavit personally or by explaining why the Applicants were unable to depose to the affidavit personally. In response, the Applicants explained that the 1st Applicant who is the alter-ego of the 1st Applicant was not in Nigeria at the time of filing this suit and at all material

times relevant to the pendency of this suit and therefore could not be present physically to depose to the affidavit in support of the Originating Summons or any other affidavit filed in respect of this suit.

It is important I consider the relevant provisions of the applicable Rules and law to determine the competency of the affidavit in support of the affidavit in support of the Originating Summons for the enforcement of the fundamental rights of the Applicants. Order II Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 provides thus: ***“The affidavit shall be made by the Applicant, but where the Applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit.”***

The deponent in paragraph 3 of the affidavit in support of the Originating Summons avers thus: *“That the 1st Applicant is a corporate entity while the 2nd Applicant is a director and shareholder in the 1st Applicant and he is not presently in Nigeria but overseas and he is unable to personally depose to this affidavit. Attached herewith is copy of the data page of the 2nd Applicant’s International Passport marked as Exhibit ‘K1’.”* I agree with the 1st Respondent in paragraph 3(b) of its Counter-Affidavit that the 2nd Applicant’s International Passport was not sufficient proof that he was not in Nigeria, and particularly, within the jurisdiction of this Court when the originating processes were being

prepared and when the suit was filed. That said, the 1st Respondent has not however adduced contrary evidence to show that indeed the 2nd Applicant was in Nigeria at the time the deponent to the affidavit in support of the Originating Summons deposed to the said affidavit.

By virtue of Order II Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, an affidavit in support of an application for the enforcement of an applicant's fundamental rights is competent if (i) it is deposed to by the applicant personally; or (ii) if the applicant is in custody; or (iii) if for any reason the applicant is unable to swear to an affidavit. In the event the applicant is unable to depose to an affidavit in support of the application for the enforcement of their fundamental rights, the person deposing to the affidavit must either (i) be a person who has personal knowledge of the facts; or (ii) by a person who has been informed of the facts by the Applicant. In both circumstances, the deponent must state that the Applicant is unable to depose personally to the affidavit.

Moreover, the test of a competent affidavit for all purposes is found in section 115 of the Evidence Act, 2011. I hereby reproduce the entire section verbatim:

“(1) Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

(2) An affidavit shall not contain extraneous matter, by way of objection, or prayer, or legal argument or conclusion.

(3) When a person deposes to his belief in any matter of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.

(4) When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information.”

Subsections (3) and (4) are relevant to the 1st Respondent’s objection to the competency of the Applicants’ affidavit in support of their application. The deponent of the affidavit in support of the Originating Summons avers in paragraph 4 thereof that:

“That I was informed by the 2nd Applicant on 1st of July 2020 through video conferencing within the premises of our office at about 2.00pm in the presence of all Counsels in Chambers and I had since perused on same day and I verily believed the Applicants as follows:” From this point, the deponent began to state the facts which gave rise to this suit and which the Applicants hoped would ground the reliefs sought in this suit.

It is my considered view that the deponent having satisfied the combined requirements of section 115(3) and (4) of the Evidence Act, 2011 and Order II Rule 4 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the affidavit in support of the Originating Summons is competent. I so hold. I shall

turn my attention to the resolution of the sole issue I have distilled for determination in this Judgment.

The Applicants' principal relief is captured in Relief Number 1 as seen on the face of the Originating Summons, to wit: *"A Declaration that the unwarranted and unjustifiable restriction(s) placed by the Respondents on the 1st Applicant's account, with Account Number 1019820476 domiciled in the 1st Respondent's bank and being operated by the 2nd Applicant since January/February 2019 on a purported instruction from the 2nd Respondent without a valid court order is unlawful, illegal, and a gross violation of the fundamental human rights of the Applicant as enshrined under sections 34, 35, 36 and 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)."* Section 34 of the Constitution of the Federal Republic of Nigeria, 1999 deals with the right to dignity of the human person. Section 35 deals with the right to personal liberty. Section 36 deals with the right to fair hearing whereas section 44 is titled compulsory acquisition and deals with the right of Nigerians to own movable and immovable property and protection of those property from compulsory acquisition without the payment of compensation.

Section 34 provides that

"(1) Every individual is entitled to respect for the dignity of his person, and accordingly –

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include –

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of –

(i) normal communal or other civic obligations of the wellbeing of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly."

I have perused the affidavit in support of the Originating Summons. It is my considered view that the Applicants have made out a case of the breach of their right to dignity of the human person. I so hold.

On the right to personal liberty, again the law is certain of what should exist to ground a claim for the enforcement of one's fundamental right to personal liberty. The right to personal liberty is provided for and protected under section 35 of the Constitution of the Federal Republic of Nigeria, 1999. Subsection (1) of the section provides that "**Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law...**"

However, under certain and clearly defined circumstances, the right to personal liberty may be derogated from, and the derogation therefrom would not amount to an infringement of the said right. The circumstances under which the right to personal liberty can be modified are enumerated under the paragraphs that accompanied subsection (1) of the said section 35. These are:-

“(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.”

The right to personal liberty has been pronounced on by the Courts in a number of decisions. For instance, the Supreme Court explained in ***Ezeigbo v. Asco Inv. Ltd. (2022) 8 NWLR (Pt. 1832) 367 S.C. at 89, paras C-D, F-H*** that ***“For the purpose of the provisions of section 35 of the 1999 Constitution,***

put simply, “personal liberty” connotes freedom and autonomy of movement at will without any hindrance or restraint, physical or otherwise; and the right not to be subjected to any wrongful restraint, arrest or any other physical confinement, whether in an enclosure or open space in a manner which does not accord with the law or admit any legal justification. It may also mean freedom to do what a person pleases within the ambit of the law without any hindrance or restraint.”

I have carefully perused through the depositions in the affidavit in support of the Originating Summons and I do not see any scintilla of fact that supports the claim of the Applicants that their right to personal liberty has been breached in any way by the Respondents. In view of this, therefore, the claim that the Respondents have breached the fundamental right of the Applicant to personal liberty hereby fails. I so hold.

Section 36(1) of the Constitution of the Federal Republic of Nigeria provides that ***“(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”*** The succeeding subsections deal with the various elements and manifestations of fair hearing. In ***Traxys Europe SA v. Basem El Ali &Ors (2022) LPELR-57434(CA) at 36, paras A-E*** the Court of Appeal per Georgewill, JCA held that

“Thus, the term ‘fair hearing’ is in most cases synonymous with fair trial and natural justice, an issue which clearly is at the threshold of our legal system and thus once there has been a denial of fair hearing the whole proceedings automatically become vitiated. A denial of fair hearing can ensure from the conduct of the Court in the hearing of a case or in the judgment of the Court. The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from the observation justice has been done in the case.”

The implication, therefore, is that any decision affecting a person’s rights and obligations must be done through a process that accords with the principle of fair hearing which in turn equates to fair trial. It is immaterial whether the process is judicial or quasi-judicial. The deponent of the affidavit in support of the application for the enforcement of the fundamental rights of the Applicants averred at paragraphs 4 (f), (g), (h), (i), (j), (k), (l),(m), (n), (o) and (p) how the 1st Respondent placed a post no debit status on the bank account of the 1st Applicant domiciled with the 1st Respondent. The 1st Respondent in its Counter-Affidavit claimed at paragraph 3(e) that the account of the 1st Applicant was dormant and had only ₦266.28 (Two Hundred and Sixty-Six Naira, Twenty-Eight Kobo) standing to its credit and, therefore, the Applicants could not have made any attempt to withdraw any money from the account. It attached **Exhibit UBA1** in proof. **Exhibit UBA1** is the statement of account of the 1st Applicant from 1st of January, 2019 to the 2nd of May, 2019. It shows an

opening balance of ~~₦~~286.28K (Two Hundred and Eighty-Six Naira, Twenty-Eight Kobo) and a closing balance of N40.28K (Forty Naira, Twenty-Eight Kobo). In their Further and Better Affidavit, the Applicants attached Exhibit K8. This is the statement of account of the 1st Applicant for the period 1st April, 2018 to the 10th of October, 2018. It shows an opening balance of ~~₦~~819.58K (Eight Hundred and Nineteen Naira, Fifty-Eight Kobo) and a closing balance of ~~₦~~8,297,454.20K (Eight Million, Two Hundred and Ninety-Seven Thousand, Four Hundred and Fifty-Four Naira, Twenty Kobo).

This Court wonders why the Applicants did not produce a statement of account that extends to the period covered by **Exhibit UBA1**. Could it be that the Applicants knew that the amount standing to the credit of the 1st Respondent in that bank account was ~~₦~~40.28K (Forty Naira, Twenty-Eight Kobo)? If that is the case, the provisions of section 167(d) of the Evidence Act, 2011 will apply. The provision stipulates that “***The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case, and in particular the court may presume that – (d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;***”

This Court therefore agrees with the 1st Respondent that **Exhibit UBA1** represents the actual liquidity of the bank account of the 1st Applicant as of

January, 2019 when the Applicants claimed the 1st Applicant's bank account was frozen. This Court, however, disagrees with the 1st Respondent that the bank account of the 1st Applicant was dormant. A dormant account is an account that has had no activity for a long time. Conventionally, a dormant account does not record inflows and outflows of funds. In some cases, it may record inflows, but it cannot record outflows. An examination of **Exhibit UBA1 and Exhibit K8** shows that the bank account of the 1st Applicant was active at the time the acts complained of occurred. In the same way, I do not find paragraph 3(f) of the Counter-Affidavit of the 1st Respondent helpful to its defence since the Applicants are not obligated to disclose the amount standing to their credit before they can successfully claim that their account was frozen.

Moreover, the 1st Respondent averred in paragraphs 3(h) and (i) of its Counter-Affidavit that the 1st Respondent placed restrictions on the bank account of the 1st Applicant pursuant to letters from the 2nd Respondent directing it so to do. These letters are attached to the Counter-Affidavit as **Exhibits UBA2 and UBA3**. I have perused the contents of **Exhibits UBA2 and UBA3**. Indeed, the 2nd Respondent ordered the 1st Respondent to place the bank account of the 1st Applicant domiciled with the 1st Respondent. Specifically, paragraph 2 of **Exhibit UBA2** reads thus: *"In view of the above, you are kindly requested to place the account on Post-No-Debit status, effect the arrest of the account holder and inform this office via 07034592479 and 0803879336 for pickup."* Paragraph 2 of **Exhibit UBA3** reads thus: *"In light of*

the foregoing, you are kindly requested to maintain the Post-No-Debit on the accounts, effect the arrest of the account holder and contact the Commission via 08032215997 and 08066894802 for pick-up.”

The 2nd Respondent purported to act pursuant to the provisions of section 38(1) and (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and section 21 of the Money Laundering (Prohibition) Act, 2011. I have carefully gone through the provisions of the these statutes. Section 38(1) and (2) provides that:-

“(1) The Commission shall seek and receive information from any person, authority, corporation or company without let or hindrance in respect of offences it is empowered to enforce under this Act.

(2) A person who –

(a) willfully obstructs the Commission or any authorized officer of the Commission in exercise of any of the powers conferred on the Commission by this Act; or

(b) fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provision 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.”

On the other hand, section 21 of the Money Laundering (Prohibition) Act, 2011 provides that:-

“For the purposes of this Act, the Director of Investigation or an officer of the Ministry, Commission or Agency duly authorized in that behalf may demand, obtain and inspect the books and records of the Financial Institution or Designated Non-Financial Institution to confirm compliance with the provisions of this Act.”

Nowhere in these provisions did the law empower the 2nd Respondent to take steps that are prejudicial to the rights and obligations of the citizens and to expropriate or in any way, tamper with the right of the citizens to acquire and own movable and immovable properties. This is one instance where the Court has to apply the maxim *“fortissime contra proferentes”*. In the case of ***N.D.I.C. v. AkahallSons Co. Ltd. (2004) 6 NWLR (Pt. 869) 245 CA at 272, paras D-E***, the Court of Appeal explained the maxim thus: ***“The doctrine “fortissime contra proferetes posits that a statute which takes away the citizen's right of access to the court must be construed narrowly and strictly.”*** See also ***Din v. Fed. A.G. (1988) 4 NWLR (Pt. 87) 147 SC*** where the apex court held that ***“Statutes which encroach on the rights of a subject, be they personal or proprietary rights, attract strict construction by the courts; they are construed fortissime contra preferentes - if possible, so as to respect such personal or proprietary rights.”***

Since the statutory provisions upon which the 2nd Respondent purported to act did not empower the 2nd Respondent to restrict the enjoyment of a citizen's property by the citizen, the 2nd Respondent acted ultra vires when it directed the 1st Respondent to place a Post-No-Debit status on the bank account of the 1st Applicant domiciled with the 1st Respondent. The 1st Respondent was also wrong when it acted on an unlawful order from the 2nd Respondent. I so hold.

It is important I reproduce the provisions of section 44 of the Constitution of the Federal Republic of Nigeria, 1999. The section provides that

“(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.”

Significantly, the provisos to this section recognize that the deprivation of the right to own movable properties, such as funds in a bank account as in this case, or interest in immovable properties can be derogated from only through a process recognized by law. This process, as can be seen from section 44 (1)(b), 2(b) and (e). in other words, any administrative fiat or directive which deprives a citizen of the enjoyment of their movable property or interest in immovable property is a breach of the provisions of sections 36 and 44 of the Constitution of the Federal Republic of Nigeria. In this case, therefore, the 1st

and 2nd Respondents breached the Applicants' right to fair hearing and their right to own movable and immovable properties. I so hold. I therefore resolve the sole issue I have formulated herein partly in favour of the Applicants.

I note that throughout this proceeding, the 2nd Respondent did not file any process in defence of the suit of the Applicants. It was neither in Court nor was it represented by Counsel. It is therefore deemed to have admitted the facts and evidence adduced by the Applicants against it. In **Fadac Ent. Ltd. v. Chizea (2023) 13 NWLR (Pt. 1902) 481 S.C. at 502-503, paras. F-B**, the apex court held that ***"A court is bound to believe and act upon averments that are not challenged or uncontroverted, without hesitation."*** See also ***Incorporated Trustees of Ladies of Saint Mulumba, Nigeria v. Ekhaton (2022) 15 NWLR (Pt. 1852) 35 S.C. at 61, paras B – C*** where the court held that ***"Affidavit evidence constitutes evidence. Therefore, any deposition that is not challenged is deemed admitted."***

Having established that their rights to fair hearing and to acquire and own movable and interest in immovable property have been abridged by the Respondents, the Applicants are entitled to the ancillary reliefs they seek in this suit. Specifically, the Applicants seek an order of perpetual injunction restraining the Respondents from further placing an restriction on the bank account of the 1st Respondent. They also seek the payment of N300,000,000.00 (Three Hundred Million Naira) as compensation for the

continuous violation of the Applicants' fundamental rights since January, 2019 and public apology from the Respondents.

While the Courts must always award damages where a breach of any of the fundamental rights guaranteed in Chapter IV of the Constitution has been established, it is important to note that the Court makes an order of public apology only where the right to personal liberty has been breached while an order or award of compensation is made where the right to personal liberty guaranteed under section 35 of the Constitution and the right to acquire and own immovable property preserved under section 44 of the Constitution are violated. In *Okibe v. NDLEA (2022) LPELR-56995(CA)*, at pages 18 to 22, the Court held thus: ***“Once a person who is arrested or detained beyond the time or limit provided in the provisions of the aforesaid Constitution is able to discharge the onus of proof cast upon him he is automatically entitled to compensation as provided for under the Constitution.”*** Since the Applicants have established the breach of only their fundamental rights to fair hearing and their right to own movable property and interest in immovable property, they are not entitled to an order for the payment of compensation and an order for the tendering of public apology since compensation is applicable only where the right to personal liberty and the right to own interest in immovable property have been breached whereas public apology is applicable only where the right to personal liberty has been breached. I so hold.

It is however, now settled that where an applicant in an action for the enforcement of their fundamental rights has established that the said rights have been breached, damages flow naturally, whether or not the applicant specifically asks for it. Having established that their right to fair hearing and the right to own movable property and interest in immovable property have been breached, they are entitled to an award of damages. See ***Obinna Obiegue, Esq. v. Attorney-General of the Federation & 2 Others (2014) 5 NWLR (Pt. 1399) 171 CA at 217-218, paras. G-C*** where the court held that ***“Where the fundamental rights of a citizen are breached, the court is at liberty to award damages in favour of the claimant.”***

On whether the Court can make an order for perpetual injunction, it is important to understand the nature of perpetual injunction. In ***Adekunjo v. Hussain (2021) 11 NWLR (Pt. 1788) 434 S.C. at 455, paras. A-D***, the Court held that ***“A perpetual injunction is a post-trial relief meant to protect a right established at the trial. Because of its nature of finality, it can only be granted if the claimant has established his case on the balance of probability on the preponderance of evidence. Its aim is to protect established rights.”*** I therefore hold that the Applicants qualify for an order of perpetual injunction against the Respondents considering the facts and circumstances of this case.

In view of the foregoing reasoning, findings and conclusion, I hereby proceed to grant all the reliefs sought by the Claimant in this suit as follows:-

- 1. THAT the Post-No-Debit restriction placed by the 1st Respondent acting on the instruction of the 2nd Respondent on the 1st Applicant's account, with Account Number 1019820476 domiciled in the 1st Respondent's bank and being operated by the 2nd Applicant since January/February 2019 without a valid court order is unlawful, illegal, and a gross violation of the fundamental right of the Applicants to fair hearing as enshrined under section 36 of the Constitution of the Federal Republic of Nigeria 1999.**
- 2. THAT the Post-No-Debit restriction placed by the 1st Respondent acting on the instruction of the 2nd Respondent on the 1st Applicant's account, with Account Number 1019820476 domiciled in the 1st Respondent's bank and being operated by the 2nd Applicant since January/February 2019 without a valid court order is unlawful, illegal, and a gross violation of the fundamental right of the Applicants to own movable property and interest in immovable property as enshrined under section 44 of the Constitution of the Federal Republic of Nigeria 1999.**
- 3. THAT AN ORDER IS HEREBY MADE DIRECTING the Respondents to lift the Post-No-Debit restriction placed on the 1st Applicant's Account Number 1019820476 domiciled in the 1st Respondent's bank with immediate effect and without further delay.**

4. THAT AN ORDER OF PERPETUAL INJUNCTION IS HEREBY MADE restraining the 1st and 2nd Respondents from further placing any restriction by whatever name called or described on the operation of the 1st Applicant's bank account domiciled with the 1st Respondent without following due process of law, to wit, obtaining a valid court order to that effect.
5. THAT AN ORDER IS HEREBY MADE AWARDING the sum of 5,000,000:00 (Five Million Naira) only as damages against the 1st and 2nd Respondents jointly and severally for the breach of the Applicant's fundamental right to fair hearing and their right to own movable property and interest in immovable property.
6. THAT AN ORDER IS HEREBY MADE EMPLACING A 10% *per annum* post-Judgment interest on the Judgment sum until same is fully liquidated.

This is the Judgment of this Court delivered today, the 12th day of February, 2025.

HON. JUSTICE A. H. MUSA
12/02/2025
JUDGE

APPEARANCE:
For the Applicants:
AdetolaOlulenu, Esq.
J. E. Ameh, Esq.
G. E. Amule, Esq.

For the 1st Respondent:

Malcolm K. Ikyegh, Esq.

Catherine O. Egbodo, Esq.

Suleiman A. Haruna, Esq.

Nenbamun D. Longji, Esq.

For the 2nd Respondent:

Not in Court and not represented by Counsel