

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
HOLDEN AT APO, ABUJA.**

**ON THURSDAY THE 29th DAY OF SEPTEMBER 2021  
BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.  
(JUDGE.)**

**SUIT.NO. FCT/ HC/M/11893/2020  
BETWEEN**

**ABDURRAHMAN SANI -----APPLICANT  
(Trading in the name and style of  
HILLWAY TRADING AND GLOBAL VENTURES)**

**AND**

**1. ZENITH BANK PLC ----- }  
2. UNITY BANK PL ----- } RESPONDENT**

**[ JUDGMENT.]**

By an application vide an amended motion on notice number m/11893/2020 dated the 25//02/2021, the

Applicant Abdulrahman Sani trading under the name and style of Hillway Trading and Global ventures seeks to enforce his fundamental human right to own movable property guaranteed by section 44 of the of the 1999 constitution of the Federal Republic of Nigeria( as amended).

The motion on notice is supported by a 31-paragraph affidavit deposed to by the Applicant on the 25<sup>th</sup> day of February 2021 and 7 annexures namely exhibits A1-A7. The Applicant filed the mandatory statement in support of this application along with written address by Learned Counsel for the Applicant.

In the statement in support of this application the following reliefs are being sought by the Applicant :

- a. A declaration that the unrequested and unauthorized debit and overdraft of the Applicant's account – HILLWAY TRADING AND GLOBAL VENTURE- ACC. NO. 1016139313 to the tune of ₦80,000,000.00( eighty million Naira) only is unconstitutional, a gross abuse of the Applicant's fundamental right, illegal,*

*arbitrary, wrongful, null, and in breach of duty owed the Applicant by the Respondent.*

- b. An order quashing the purported instruction or directive of Unity Bank or whosoever which resulted in the unrequested and unauthorized debit and overdraft of the Applicant's account – HILLWAY TRADING AND GLOBAL VENTURES with ACC. NO. 1016139313 to the tune of ₦80,000,000.00(Eighty million Naira) only.*
- c. An Order mandating the Respondent to reverse the unrequested, unauthorized and unlawful debit and overdraft on the Applicant's account - HILLWAY TRADING AND GLOBAL VENTURES ACC. NO 1016139313 to the tune of ₦80,000,000.00(Eighty million Naira ) only.*
- d. An Order mandating the Respondent to give effect, value and credit to all instructions of the Applicant duly issued within the purview of their banker-customer relationship.*

- e. *An Order of perpetual injunction restraining the Respondent whether by itself, its privies, agents or servants from further unauthorized overdraft, debit and any other unauthorized transactions or any interference with the normal operation of the Applicant's account - HILLWAY TRADING AND GLOBAL VENTURES with ACC. NO. 1016139313 except by an Order of the court validly made.*
- f. *The sum of ₦10,000.000.00 (Tenmillion Naira) only being general damages.*
- g. *The sum of 5,000.000.00 ( Five million Naira) only being the cost of legal fee for filing and prosecuting this suit.*
- h. *Interest on judgment sum at the rate of 10% per annum until the whole judgment sum is liquidated.*
- i. *AND for any other order or further orders that this Honorable Court may deem fit to make in the circumstance of the Application.*

*The grounds upon which this application is brought are ;*

- a. Section 44 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) guarantees the Applicant's fundamental and inalienable right to ownership of property.
- b. By the provisions of section 44 of the 1999 Constitution of the federal republic of Nigeria, section 13 of the Money Laundering Act and section 34(1) of the Economic Financial Crime Commission Act, it is only with a valid Court Order that the Respondent can interfere with the Applicant's right to his money.
- c. That the bank is under a duty of care to ensure that its customer's account is correctly debited according to the customer's instructions and not illegally.
- d. A bank does not have the power to block, debit and overdraft or place any form of restriction on its

customer's account on the basis of any suspicion without recourse to the Court.

In response to this application the 1<sup>st</sup> Respondent filed a counter affidavit of 33 paragraphs deposed to by one Victor Uyanwanne. The counter affidavit was deposed to on the 5th day of March 2021. Attached to the counter affidavit are ten (10) exhibits marked as exhibit zenith 1A-exhibit Zenith 1H and exhibits 2A and 2B . Learned Counsel for the 1<sup>st</sup> Respondent also filed a written address dated the 5th day of March 2021.

The Learned Counsel for the 2<sup>nd</sup> Respondent filed a notice of preliminary objection on the 24/3/2021 objecting to the jurisdiction of this honourable.

The 2<sup>nd</sup> Respondent also filed a Counter Affidavit of 22 paragraphs deposed to by one Habeeb Adamu Abdullahi on the 24<sup>th</sup> day of march 2021. Annexed thereof are four(4) exhibits marked exhibits 1, 2, 3, and 4.

Counsel for the 2<sup>nd</sup> Respondent filed his written address on the 24/3/2021

Learned Counsel for the Applicant filed a Reply to the preliminary objection by the 2<sup>nd</sup> Respondent dated 1/7/2021 and filed on the 2/7/2021, He also filed reply on point of law to the counter affidavit of the 1<sup>st</sup> and

2<sup>nd</sup> Respondent dated the 8/3/2021 and 1/7/2021 but filed on the 9/3/2021 and 2/7/2021 respectively.

At the hearing of this suit on the 8/7/2021, Learned counsel for the Applicant relied on the Depositions in affidavits of the Applicant and also adopted his written addresses as well as the reply on point of law as his argument in this suit .

On their part learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent while relying on the depositions in Respondents Counter affidavits adopted their written addresses respectively.

When the need arises, I shall refer to the processes filled and exhibits annexed thereto.

The case of the Applicant is that the representative of MBA Dantata Ltd approached him for the purchase of United States Dollars (USD), equivalent to ~~N~~80,000.000.00 (eighty Million Naira). Being aware of the Central Bank of Nigeria (CBN) regulation on cash transaction and considering the size of the amount of money involved, he agreed to the transaction but only by a bank transfer. Accordingly, there was transfer from the current account of MBA Dantata Nig.

Ltd with Unity Bank to the Applicants business account with Zenith Bank with account name -HILLWAY TRADING AND GLOBAL VENTURES , ACCOUNT. NO. 1016139313 to the tune of ₦80,000.000.00(EightyMillion Naira) only.

The Applicant averred that following the receipt of the payment of the said sum to his account, he proceeded to release the agreed sum of USD173,160.00 at ₦462 to USD1 (the equivalent of ₦80,000.000.00, Eighty Million Naira) only to the customer, believing that Unity Bank duly verified the transaction before making the transfer.

The Applicant averred that based on the foregoing, he proceeded to make disbursement to his business associates and other people from whom he procured the USD in respect of the transaction. Subsequently, theApplicant was surprised to discover that his account had been debited and overdrafted with the sum of ₦80,000.000.00million ( Eighty Million Naira) only without his mandate, thereby pulling the account into a debit of

₦78,650,700.26 since the account had only about ₦1,321,167.87 in credit thereby immolating the said account with an unrequested overdraft. The Applicant further deposed to the fact that the cheques which he issued were dishonoured, that his account officer informed him that there was a report of suspicious activities related to the transferor's account with Unity Bank. The Applicants states that based on the above facts, his right to ownership of property was grossly breached.

Counsel for the Applicant raised the following three (3) issues for determination in his Written Address:

1. Whether the unrequested, unauthorized and unlawful debit and overdraft of the Applicant's account by the Respondent is unconstitutional and in breach of the Applicant's right to ownership of property guaranteed under section 44 of the 1999 Constitution FRN (as amended) and Articles 14 & 21 of the African Charter on Human and Peoples' Rights.

2. Whether the unrequested, unauthorized and unlawful debit and overdraft of the Applicant's account and the wrongful dishonour of its cheque by the Respondent is in breach of a contractual bank/customer relationship.

3. Whether the Applicant is entitled to the reliefs sought.

Arguing on Issue 1, Learned Counsel submitted, that considering the circumstances and facts of the case, the unauthorized and unrequested debit of the Applicant's bank account by the 1<sup>st</sup> Respondent constitutes an infringement of the Applicant's right to own property. He cited Section 44(1) of the 1999 Constitution which provides that

"No moveable property or any interest in moveable property shall be taken possession of compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law."

The Learned Counsel to the Applicant supported his position with Section 13 of the Money Laundering Act and section 34(1) of the EFCC Act which contain provisions that

a valid Court order is required before the respondent can make such unauthorised and unlawful debit on the bank account of any citizen.

On Issue 2, the Applicant argued through his Counsel that the Respondent, without any justifiable reason, dishonoured his cheque and breached the contractual relationship between the Applicant and the Respondent. The Applicant cited the case of **GTB V. OGBOJI (2019)13 NWLR (1688) 67 AT 84-85** among others and submits that in the case of **GTB V. OGBOJI** (supra), the Court of Appeal held thus:-

***“The relation between a bank and its customer is contractual. It consists of general and special contracts arising from the particular requirements of the banking business. The relationship varies and can be said to be that of debtor and creditor where there is sufficient balance in the client’s account”.***

On the last issue, learned counsel to the applicant cited the case of **GTB PLC V. ADEMOLA (2019) 5 NWLR (PT.**

**1664) 30** at 41 where the Court of Appeal held that:-

***“Whenever a court is confronted with an application brought under the Fundamental Right(Enforcement Procedure)Rule.It is imperative that the court should critically examine the reliefs sought by the Applicant,the grounds for seeking the reliefs and the facts contained in the statement accompanying the Application and relied on for the relief sought.Where the fact relied on disclose infringement of the fundamental right of the Applicant as the main basis of the claim then it is a clear case for the enforcement of the fundamental rights through the Fundamental Rights(Enforcement Procedure)Rules.***

In Response Learned Counsel for the 1<sup>st</sup> respondent denied the averments of the Applicant, and stated that it received a report from Unity Bank Plc on fraudulent transfer

of ~~₦~~80,000.000(eighty Million Naira) only into HILLWAY TRADING AND GLOBAL VENTURES with ACC.NO.1016139313,domiciled with the 1<sup>st</sup>Respondent.

It however, went on to explain that the account of the Applicant was never debited with the alleged sum of ~~₦~~78,650,700.26K or any other sum for that matter, adding that all it did was to place a lien on the account pending the conclusion of its investigation, thereby attaching the credit sum of ~~₦~~1,321,000.00K, which was the only sum left after the Applicant had hurriedly transferred the ~~₦~~80,000,000.00 into various accounts before the lien was placed on the account. Counsel for the 1<sup>st</sup> Respondent averred that the account was still active and open to the Applicant for his business.

In its written address, learned counsel for the 1<sup>st</sup>Respondent adopted the three issues formulated by the Applicant, he argued them *seriatim*.

On the first Issue, He submitted that the Applicant did not operate an account with the Respondent in his personal name and, therefore, lacked the *locus standi* to institute and maintain the present suit. It further contended that its depositions in its counter-affidavit and the exhibits attached thereto represented the true state of affairs regarding the circumstances of the case.

Counsel for the 1st Respondent drew the attention of the Court to the fact that between 26/10/2020 and 27/10/2020 the Applicant virtually dissipated the entire ~~N~~80,000,000.00 to various firms, companies and individuals and wondered how the Respondent could have withdrawn the same amount. He added that the Applicant's conduct amount to approbating and reprobating or blowing hot and cold at the same time, a conduct that amounts to a somersault .

**OSUJI V. EKEOCHA (2009) 39 NSCQR PAGE 523 AT 578 PER NIKI TOBI JSC..**

He further submitted that section 44 of the 1999 Constitution, Articles 14 and 21 of the/ African Charter on Human and People's Rights were inapplicable to the instant application because the Applicant's property was not compulsorily acquired by the Respondent while section 34(1) of the EFCC Act was inapplicable because the account of the Applicant was not frozen. He also added that the Applicant had not been able to adduce any evidence to establish his allegation that the Respondent had been interfering with the running of his account. He therefore urged the court to resolve the issue in favour of the Respondent.

On Issue 2, learned Counsel for the 1<sup>st</sup> Respondent submitted that the Fundamental Rights (Enforcement Procedure) Rules 2009 was inapplicable to this application because the issue relates to a disagreement that arose out of a banker-customer relationship, adding that the reliefs sought by the Applicant were not within the reliefs

contemplated by Chapter IV of the 1999 Constitution and the African Charter on Human and People's Rights, but, rather, belonged to the province of contract and tort. He therefore urged the Court to discountenance all the submissions of the Applicant and all the authorities cited in support of the submissions and resolve the second issue in support of the 1st Respondent.

On Issue 3, learned Counsel for the 1<sup>st</sup> Respondent referred this Honourable Court to his submissions on behalf of the 1<sup>st</sup> Respondent on the preceding issues and submits that Applicant was not entitled to the reliefs sought. In conclusion, he urged the Court to dismiss the suit for being groundless ridiculous and unmeritorious.

The learned counsel to the 2<sup>nd</sup> Respondent argued his notice of preliminary objection stating that the breach alleged by the Applicant is contractual, therefore the applicant has not invoked the jurisdiction of this honourable

court. He urged this honourable court to look at the reliefs sought which are declarations and damages bothering on breach on unrequested and unauthorised debit and overdraft of Applicants account number 1016139313.

Learned Counsel for the 2<sup>nd</sup> respondent urge court to look at issue 2 formulated by learned counsel for the applicant which proves that the transaction between the parties is contractual and accordingly urge this honourable to decline jurisdiction.

Learned Counsel for the 2<sup>nd</sup> Respondent submits that section 44 of the 1999 constitution is not absolute and that section 44(2)(k) is an exception thereto.

In his reply on points of law, learned counsel for the Applicant challenged the procedure adopted in raising its preliminary objection. Citing the provisions of Order VIII Rules 1 and 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009, he submitted that the style adopted

by the Applicant was strange and unknown to law. He therefore urged the honourable Court to disregard the submissions

In his reply to the submission of learned Counsel for the 1<sup>st</sup> Respondent on Issue 2, learned Counsel for the Applicant asserted that for the court to determine whether a matter falls within the purview of an action for the enforcement of fundamental rights, the reliefs must be considered. He cited the cases of **EFCC V. THOMAS (2018) LPELR-45547 (CA), ABDULHAMID V. AKAR (2006) 13 NWLR (PT. 996) 127 AND TUKUR V. GOVERNMENT OF TARABA STATE (1997) 6 NWLR (PT. 510) 549** to support his argument stating that his main claim bordered on enforcement of his fundamental right to own property and that, as a consequence, the present suit was properly constituted.

The learned counsel for the Applicant drew the attention of the Court to the fact that the 1<sup>st</sup> Respondent had admitted

certain paragraphs in the affidavit in support of the originating motion. He cited the cases of **CHUKWUNYERE V. STATE (2018) 9 NWLR (PT. 1624) SC 249 AT 273** AND **ADEOKIN RECORDS V. M.C.S.N. (LTD/GTE) (2018) 15 NWLR (PT. 1643) SC 550 AT561**. He further urged the Court to strike out c paragraphs in the counter-affidavit for being in contravention of section 115(2) of the Evidence Act 2011. He cited the case of **EMEKA V. CHUBA-IKPEAZU (2017) 15 NWLR (PT. 1589) SC 345 AT 389**.

Learned Counsel also pointed out that the Respondent had made allegations of fraud against the Applicant in its counter-affidavit, stating that allegation of fraud in civil proceeding, requires particulars of fraud pleaded and proof strictly. He relied on **RILWAN & PARTNERS V. SKYE BANK PLC (2015) 1 NWLR (PT. 1441) 347 AT 469**. and submitted further that, contrary to the argument of the Respondent that he did not have an account with the 1<sup>st</sup> Respondent, a business name is not legal person and,

therefore, could not operate bank accounts. It is the proprietor of the business name who operates the account of the business name.

He further insisted that he had discharged the burden placed on him to prove his entitlement to award of damages, while drawing the attention of the court to the fact that the certificate of compliance in respect of EXHs 1A, 1B, 1C, 1D, 1E, 1F and 1G was not signed and therefore worthless. He cited the case **OF TSOKWA V. IBI (2017) 10 NWLR (PT. 1574) 343 AT 404 – 405** and urged the Court not to rely on those exhibits, particularly as they do not amount to a valid court order to validate the lien placed on his account. He insisted that the 1<sup>st</sup> Respondent, not being a court of law, could not purport to place a lien on his account. He cited the case of **GTB V. ADEDAMOLA (2019) 5 NWLR (PT. 1664) 30 AT 43.**

Finally , he drew the attention of the Court to the 1<sup>st</sup> Respondent's denial that it was interfering with the account of the Applicant. Quoting the definition of 'interference' provided in Black's Law Dictionary, 11<sup>th</sup> edition and the decision of the court in ***N.B.A. v. Gbenoba (2015) 15 NWLR (Pt. 1483) 585 at 691***, learned Counsel for the Applicant submitted that placing a lien on the account of the Applicant constituted interference. He therefore urged the Court to hold that the Applicant was entitled to all the reliefs he sought.

I have summarised the case of the applicant viz a viz the case of 1<sup>st</sup> and 2<sup>nd</sup> respondent. Preliminary objection as the expression connotes, is an objection which is initiated or commenced at the earliest opportunity. A preliminary objection should be taken first in time because it could be liable to time in our adjectival law. Perhaps, apart from

preliminary objection as to the jurisdiction of the Court, most others are liable to time and could be subject of waiver. Order 8 rule 2 of the FREP also deals with preliminary objections which should be filed with Respondent's counter affidavit.

Now section 43 of the 1999 constitution provides that:

“Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”.

44. (1) Provides that, 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. Now sub paragraph k provides that:

“relating to the temporary taking of possession of property for the purpose of any examination, investigation or.....”

This right as guaranteed in section 43 of the 1999 constitution was restated in the case of **UKAOBASI V. EZIMORA AND ORS (2016) LPELR 40174 (CA)**

It is therefore not in issue that the Applicant and every Nigerian is guaranteed of his/her right to own movable property and interest in immovable property.

Now compulsory acquisition is when an authority like the Government acquires privately owned land or property. Most commonly it is done in order to build infrastructure like roads or public transport, but could be for other reasons. Property could be acquired compulsorily for public safety - in cases of contamination for instance.

The operative phrase in section 44(1) of the 1999 constitution is “compulsory acquisition”.

Clearly by no stretch of interpretation can it be said that freezing an account with the bank or unauthorized deductions from an account in a bank would translate to “compulsory acquisition”.

I agree with the submission of counsel to the 2nd respondent that the infringement complained of in this case would not amount to compulsory acquisition as envisaged in section 44(1) Supra and I so hold. In the circumstances, the preliminary objection is up held and this suit is dismissed.

I make no order as to cost.

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***HON JUSTICE F. E. MESSIRI .***

***( HON. JUDGE )***

Appearances.