

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO ABUJA
ON THURSDAY THE 4TH DAY OF FEBRUARY 2021
BEFORE HIS LORDSHIP: THE HON. JUSTICE FRANCES ERHUVWU
MESSIRI (JUDGE)**

SUIT NO: FCT/CV/M/11848/2020

BETWEEN:

ATROMYDE NIGERIA LTD

} **PLAINTIFF**

AND

FIDELITY BANK PLC

} **DEFENDANT**

JUDGMENT

By an application vide an originating motion on notice dated the 11th day of November 2020, the applicant seeks to enforce his fundamental human right to own movable property guaranteed by sections 43 and 44 of the constitution of the Federal Republic of Nigeria as amended in 2018 (hereinafter referred to as 1999 constitution).

The application is supported by a 15-paragraph affidavit deposed to by one Mr Femi Adedeji. Annexed to the affidavit are eight (8) exhibits marked Exhibit A, B, C, D, E, F, G and H.

In the mandatory statement accompanying this application the following reliefs are being sought by the applicant namely: -

- a. **A DECLARATION** that the freezing of the Applicants account number **4010066550** with account name **ATROMYDENIGERIA LIMITED** domiciled with the Respondent; Fidelity Bank plc without due process of law is unconditional, null and void and a violation of the Applicant's right to own property as enshrined under the provisions of

section 44 of the constitution of Nigeria 1999 (as amended) and Article 14 of the African Charter of Human and Peoples' Rights.

- b. **AN ORDER** of this Honourable court directing the respondent to lift the restriction placed on the Applicant's account **number4010066550**with account name **ATROMYDENIGERIA LIMITED**domiciled with the Respondent, Fidelity Bank plc.
- c. **AN ORDER** of perpetual injunction restraining the respondent whether by themselves, their agents,privies, or servants from interfering with the account **number4010066550**with account name **ATROMYDENIGERIA LIMITED**domiciled with the Respondent; Fidelity Bank plcwithout due process of law.
- d. **AN ORDER** of this Honourable Court mandating the respondent to pay to the Applicant the **SUM OF (#27,000,000.00) TWENTY-SEVEN MILLION NAIRA as specific** damages for the unlawful freezing of account **number4010066550**with account name **ATROMYDENIGERIA LIMITED**domiciled with the Respondent; Fidelity Bank plc.
- e. **AN ORDER** of this Honourable Court mandating the Defendant to pay the Applicant the **SUM OF (#10,000,000.00) TEN MILLION NAIRA as general damages** for unlawful freezing of account **number4010066550**with account name **ATROMYDENIGERIA LIMITED**domiciled with the Respondent; Fidelity Bank plc.
- f. **AN ORDER** of this Honourable court mandating the Defendant to pay the Applicant the **SUM OF (#5,000,000.00) FIVE MILLION NAIRA as** punitive, compensatory and exemplary damages for the unlawful freezing of account **number4010066550**with account name **ATROMYDENIGERIA LIMITED**domiciled with the Respondent; Fidelity Bank plc.
- g. **AN ORDER** of this Honourable court mandating the Defendant to pay to the Applicant the **SUM OF (#3,000,000,00.) THREE MILLION NAIRA as cost of prosecuting the instant suit**

The grounds upon which these reliefs are based are outlined in the said mandatory statement.

Attached to this application is applicant's written address in support of the motion on notice.

In response to this application the respondent filed a counter affidavit of 14 paragraphs deposed to by one Maigari Jacob, the counter affidavit was deposed to on the 21st day of January 2021. Attached to the counter affidavit are two exhibits marked as exhibit A and exhibit B. When the need arises, I shall refer to the exhibit.

Learned counsel to the respondent filed a written address dated 21/01/2021 in support of respondent's counter affidavit.

Learned counsels adopted their respective written addresses on the 26th day of January 2021.

The said addresses are incorporated into this Judgment; I shall refer to the relevant portions as the need arises. It is my candid view that fundamentally the main issue begging for determination in this application is, whether the infringement of any of the rights contained in chapter IV of the 1999 constitution has been established?

It is not every right of an applicant which is involved here but only the rights which fall within the provision of chapter IV of the 1999 constitution. No right outside the provision of chapter IV of the 1999 constitution or Africa Charter on Human and Peoples' Rights can form an action under the jurisdiction of the court provided for in chapter IV of the 1999 constitution. Clear, unambiguous, and serious as the right may be, if in fact it cannot be spelt out as being within the content of chapter IV of the constitution or the African Charter on Human and Peoples' Rights, this court cannot protect the Applicant under the fundamental right enforcement procedure Rule. Applicant must in that case look for rights elsewhere under common law or statute law **SEE UZOUKWU VS EZEONUII (1991) 6 NWLR PART 200 page 708 AT 762.**

It is settled law that an Applicant seeking redress under violation of fundamental human right must additionally pinpoint the relevant section of the constitution

wherein the violation of right is expressly or impliedly guaranteed. Otherwise, the alleged act of violation cannot be sustained nor protected constitutionally.

The applicant herein has pinpointed sections 44 of the 1999 constitution and Article 14 of the African Charter on Human and Peoples' Rights (ratification and enforcement Act 2010) wherein the violation of right is expressly or impliedly guaranteed. By its nature the provision of the constitution must always be construed in such a way that it protects what it sets out to protect or guide what it sets out to guide. A constitution therefore must by necessity be interpreted broadly so as not to defeat the clear intention of its framer **SEE AQUA LIMITED VS ONDO STATE SPORTS COUNCIL (1998) 4 NWLR (PT 91) 622 AT 639. UKAEGBU VS AG IMO STATE (1983) SCNLR.**

Application for enforcement of fundamental rights is granted once the rights of the applicant as provided in chapter iv of the 1999 constitution is shown to have been breached, threatened to or even likely to be breached.

The law remains trite that he who asserts must prove. Suffice it to put in perspective that the duty of the court whilst entertaining application under fundamental rights enforcement procedure is certainly not to conduct a criminal investigation, inquiry or trial neither is it to establish the guilt or innocence of any party to the Application relating to any allegation of crime, its essence is also not to establish the liability or otherwise of a party with respect to whatever transaction that they may be involved in, the focal essence of fundamental right enforcement procedure is simply and strictly for the court to enforce the protection of citizens fundamental rights guaranteed by chapter iv of the 1999 constitution and other applicable human right instrument where an infringement or contravention is established or perceived.

Article 14 of the African Charter on Human and Peoples' Rights provides that the right to own property shall be guaranteed. It may only be encroached upon in the interest of the community and in accordance with the provisions of appropriate laws.

Flowing from section 44 of 1999 constitution and article 14 of the African Charter on Human and Peoples' Rights, every citizen is guaranteed the right to own property and same can only be acquired by following due process of law.

In the instant case.

Learned counsel for the applicant Fidel Bassey Esq. distilled four (4) issues for determination by this Honourable Court, while learned counsel to the Respondent distilled a lone issue for determination. It is my candid view, that Issues 1 and 2 as formulated by the learned counsel to the applicant once adequately dealt with, will also address the sole issue formulated by the learned counsel for the Respondent.

Issue 3 and 4 as formulated by learned counsel to the Applicant are hinged on the success of issues 1 and 2 as formulated.

Narrowing the compass to a sole issue as compressed from issues formulated for determination by learned counsels to the parties, which is, **"whether the act of the respondent that is placing a no debit order on the account of the applicant with the respondent in the way and manner done constitute an infringement on the right of the applicant as guaranteed under section 44(1) of the 1999 constitution and Article 14 of the African Charter on Human and Peoples' Rights"**.

Section 44 of the 1999 constitution upon which the applicant's application is anchored provides that

"Nonmovable 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".

As stated earlier, section 44(1) of the 1999 constitution guarantees the Applicant's right to own interest in movable property. However, the same constitution makes exception in section 44(2)(k) which provides that nothing in subsection (1) above shall be construed as affecting any general law. Subsection (k) states and provide thus:

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

SEE ADEYEMI BERO VS LAGOS STATE DEVELOPMENT PROPERTY CORPORATION AND ANOR (2013) 8 NWLR PT 1356 P 238. It is clear from the above provision that the right to own property be it movable or interest in immovable property is indeed guaranteed by the 1999 constitution. However, same is not absolute as **section 44(2) (K) provides** that where any movable or immovable property is taken possession temporarily for the purpose of any examination, investigation or inquiry then such action will not translate to a contravention or breach of section 44(1). The case of the applicant as can be gleaned from the affidavit in support of the originating motion and respondent's counter affidavit is that the bank account of the Applicant with the respondent was frozen, this fact is not in issue.

The reaction of the respondent is that it acted lawfully in obedience to the court order procured by the office of inspector General of Police.

It is evident from exhibit D annexed to the affidavit in support of this application that the respondent acted on the strength of the said exhibit D. The respondent contends that he acted lawfully in obedience to the court order procured by the office of inspector general of police, with the belief that he was carrying out a lawful and usual directive.

On the flip side, learned counsel to the applicant submits that the respondent had a responsibility to verify that indeed there was an order of court authorizing them to place restraint or no debit order on the applicant's account before going ahead to place a restriction on the applicant's account.

Learned applicant's counsel relied on the case of: **GTBANK VS ADEDAMOLA (2019) 5 NWLR PT 1664 PCR 30 AT 43 PARAE-F** where Abubakar J.C.A held that:

“Before freezing a customer’s account or placing any form of restraint on any bank account the bank must be satisfied that there is an order of court.”

The Leaned counsel to the Respondent posits that indeed the said duty contained in the case of **GT BANK PLC(SUPRA) was** complied with and added that the court order acted upon was procured by the office of the Inspector General of Police who served same on the respondent.

The learned counsel to the respondent relied on the principle **in the case of: LABOUR PARTYVSINEC (2009) LPELR 1732 SC page 25 paras C-D where OGBUAGUJSC held that**

It is now firmly settled that a court order must be obeyed even if such order is perverse, until such a time that the order is set aside by a competent court.

The law is settled that it is the unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey same unless and until the order is discharged and this is more so where the person affected by the order believes it to be irregular or void.

The court was also referred to the case of

OBA ALADEGBAMI VS OBA FASANMADE (1989) 3 NWLR pt 81 131(1988)6 SCNJ 103.

Learned counsel to the respondent cited the case **AG ANAMBRA STATE VS AG FRN &ORS (2005) LPELR 13(SC)P54.**

Where Hon Justice Tobi JSC held that

In so far as the order exist it must be obeyed to the letter until set aside by due process.

SEE ALSO MILITARY GOVERNOR OF LAGOS STATE VS OJUKWU AND ANOR (1986) 1 NWLR Pt 18 621. From the foregoing ,it is evident that the respondent satisfied

itself that there is or there was an order of court before placing restraint on the applicant's account. Now theposer flowing from the issue under consideration from the submission of learned counsel to applicant is if the said court order is valid?

Learned Counsel to the applicant picked out 5 anomalies on the said court order

These anomalies include

- a. Heading of the court
- b. Absence of jurisdiction seal
- c. The statute upon which the said order was procured
- d. The name of magistrate
- e. Date the said order was procured.

In the light of these alleged red flags learned counsel to the applicant urged the court to hold that the freezing of the applicants account was unlawful and did not follow due process and therefore in contravention of section 44 of the 1999 constitution.

Reacting to the above submission, learned counsel to the respondent submits that:

Where a function is discharged in an official capacity there is always a presumption recognised by the law that it was done legitimately, correctly, and solemnly until the contrary is proved.

Learned counsel to the respondent cited Section 168(1) and (2) of the evidence Act 2011 and the case of **DR TUKUR IDRIS WADABO VS SANI ABDULLAHI DABAI AND 4 ORS (2011)7 NWLR pt. 1245 page 155 at 178 Paras D-G** and adds that the allegation of learned counsel to the applicant borders on crime which proof is required tobe beyond reasonable doubt.

It is my firm view that the above alleged red flags pointed out by learned counsel to applicant can only be explained by the office of the Inspector General ofPolice who procured the said order that is exhibit D. Exhibit F in my candid view stretched the principle as enunciated in **GTBANK PLC VS**

ADEDAMOLA (Supra) beyond mere satisfaction that there exists an order of court indeed to making sure the existing order of court is a valid one.

This in my view is beyond the mandate and duties of the Respondent. The Respondent is protected by section 44(2)(K) and the principle as contained in **AG ANAMBRA STATE VS AG FRN AND ORS (Supra) as well as the decision in GOVERNOR OF LAGOS STATE VS OJUKWU AND ANOR (Supra)** which mandates the respondent to obey all court orders.

The rule being that an order of court of competent jurisdiction subsist until set aside by a court. This point is emphasised by the supreme court in several cases. In **NIDOCCO LIMITED VS MRS. I.A. GBAJABIAMILA (2013) LPELR-20899(SC) THE APEX COURT PER NGWUTA STATED IN PARA D** that

“.... but a party who perceives that there is an order of court by which he is bound, or which affects his interest, is null and void ought to seek a court declaration to that effect. If he ignores the court or proceeds to rely on his own personal perception that the order is nullity, he does so at his own risk”

SECTION 168(1) AND (2) OF THE EVIDENCE ACT 2011 provides that

- 1. When a judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisite for its validity were complied with.**
- 2. When it is shown that any person acted in a public capacity it is presumed that he had been duly appointed and was entitled to so act.**

The foregoing provisions **must** now be invoked in favour of the respondent who is entitled to believe that the office of the Inspector General Of Police acted within the ambit of the law in procuring the court order to wit Exhibit D.

The supreme court in the case of **ABDULHAMID VS AKAR& ANOR (2006) 13 NWLR part 996 P 127** State that

The position of the law is that for a claim to qualify as falling under fundamental rights, it must be clear that the principal relief sought is for

enforcement or for securing the enforcement of fundamental right and not from the nature of the claim to redress a grievance that is ancillary to the principal relief which itself is not ipso facto a claim for the enforcement of fundamental right. Thus, where the alleged breach is ancillary in nature, it will be incompetent to constitute the claim as one for the enforcement of fundamental right.

The Respondent in freezing the account of the Applicant acted pursuant to an order of court as presented to it by the office of the Inspector General of Police and therefore acted in line with section **44 (2)(1) of the 1999 constitution**. As observed earlier it is not the duty of the court while entertaining application under fundamental rights enforcement procedure to conduct criminal investigation, inquiry, or trial. Besides, any order made with regards to exhibit D will amount to marking an order against a party who is not before this court and that will offend the very principle the fundamental human right represents, as enshrined in Chapter IV of the 1999 constitution.

The question of infringement of fundamental human right is largely a question of fact and as provided for in chapter IV of the 1999 constitution as well as the African Charter of Human and Peoples' Rights.

Flowing from the above, the sole issue for determination by this honourable court is whether the act of the Respondent to wit: placing a no debit order on the account of the Applicant with the respondent in the way and manner done constitute an infringement on the right of the Applicant (as guaranteed under section 44(1) of the 1999 constitution and Article 14 of the African Charter on Human and People Rights') is answered in the negative and accordingly resolved in favour of the Respondent.

In other words, issues 1 and 2 as formulated by learned counsel to the Applicant are resolved in favour of the Respondent. Issues 3 and 4 hangs on the success of issues 1 and 2. Issues 1 and 2 having been resolved in favour of the Respondent, issues 3 and 4 must now crumble as issues 3 and 4 have nothing to stand on. In the circumstances, this suit fails, and is accordingly dismissed.

(HON. JUDGE.F.E MESSIRI)

SIGNED (HON.JUDGE)