

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

*ON THURSDAY THE 4TH DAY OF MARCH 2021,
BEFORE HIS LORDSHIP: THE HON. JUSTICE FRANCES
ERHUVWU MESSIRI. (JUDGE)*

SUIT NO: FCT/HC/M/11862/20

BETWEEN

PRISCILLA NDU

}

PLAINTIFF

AND

GUARANTY TRUST BANK PLC

}

DEFENDANT

JUDGMENT.

By an application vide an originating motion on notice in Suit No. M/11862/2020 dated the 12th day of November 2020 the Applicant, Priscilla Ndu seeks to enforce her fundamental human right to own movable property and interest in immovable property as guaranteed by section 43 and 44 of the 1999 constitution of the Federal Republic of Nigeria as amended, hereinafter referred to as the 1999 constitution.

The application is supported by a 20-paragraph affidavit deposed to on the 12th day of November 2020 by one Priscilla Ndu the applicant in this suit.

In the mandatory statement accompanying this application dated the 12/11/2020 the following reliefs are being sought: -

- i. **AN ORDER OF THIS HONOURABLE COURT** enforcing the Fundamental Rights of the Applicant as guaranteed under Section 43 and 44(1) of the 1999.

- ii. **A DECLARATION OF THIS HONOURABLE COURT** that the freezing of the Applicant's account by the Respondent without any court order is illegal, unlawful, unconstitutional and a clear breach of the Fundamental Right of the Applicant as guaranteed by the 1999 Constitution.
- iii. **AN ORDER OF THIS HONOURABLE COURT** mandating the Respondent to unfreeze account Number **0106798264** that is, the account being maintained by the Applicant in the Respondent's bank.
- iv. **AN ORDER OF THIS HONOURABLE COURT** directing the Respondent to immediately and promptly pay the Applicant the sum of **#50,000,000.00 (Fifty Million Naira)** only as general damages for the illegal and unlawful freezing of the Applicant's account.
- v. **The sum of #100,000,000.00 (One Hundred Million Naira) Only** against the Respondent as exemplary and aggravated damages for the flagrant breach of the Fundamental Rights of the Applicant as enshrined in the 1999 constitution and other extant laws.
- vi. **The sum of #5,000,000.00 (Five Million Naira) Only** as the cost of this suit

The grounds upon which these reliefs are based are outlined in the said mandatory statement, the Applicant further filed a written response on point of law to the Respondent's Counter Affidavit, dated the 4/1/2021, also filed along with this application is a written address in support of the Originating Motion on Notice

In response to this suit the Respondent filed a 12-paragraph affidavit deposed to on the 25th day of January 2021 by one Oluwafemi Adepoju. Annexed to the Counter affidavit is exhibit GT1 which is a notice to the Respondent from the Independent Corrupt Practices

And Other Related Offences Commission. Learned counsel to the Respondent also filed a written address dated 25/1/2021 in support of the Respondent's Counter Affidavit.

The aforementioned written addresses are hereby incorporated into this judgment. Reference shall be made to the relevant portions of the written addresses, the exhibits and other processes filed, as the need arises.

The applicant in this suit has approached this Honourable Court to enforce her Fundamental Human Right guaranteed by Section 43 and section 44 (1) of the 1999 constitution which she is alleging has been infringed upon by the Respondent.

Her case is that she owns and maintains a bank account with the Respondent to wit Account Number **0106798264**. That the Respondent placed a restraint on the said bank account by unlawfully freezing same without a court order which violates the right of the Applicant as enshrined in sections 43 and 44(1) of the 1999 constitution, that the Respondent did not comply with the laid down procedure as there was no valid court order issued on the Respondent as required by law and that the action by the Respondent caused her huge loss which makes her entitled to damages as set out in her statement attached to this application.

Learned Counsel for the Applicant distilled three (3 issues) for determination by this honourable court stating that section 43 of the 1999 constitution provides for and guarantees the right of every citizen to acquire and own property in Nigeria, such property could be movable or immovable property and can be anywhere in Nigeria. These right, learned counsel states was interpreted in the case of **OKON VS ENYIEFEMI (2016) LPELR – 41168 CA** to mean that every citizen in Nigeria has the right to acquire and to own movable

property and interest in both movable and immovable properties anywhere in Nigeria. This right is therefore guaranteed. Learned counsel to the Applicant further posits that it is illegal to take possession of or acquire interest in an immovable property except in the manner and for the purposes prescribed by a law.

It is the contention of learned counsel to the Applicant that the Respondent is in breach of sub section 1 to section 44 of the 1999 constitution and that having failed to follow due process of the law before freezing Applicant's account same amounts to a violation of the Applicant's right.

Learned counsel to the applicant cites the case **GT BANK VS ADEDAMOLA (2019) 5 NWLR PT 1664** and added that it is not in contention that the Respondent placed a restraint on the Account of the Applicant by freezing same without any valid court order and submits that by the authority of **GT BANK AND ADEDAMOLA(Supra)** the Respondent ought to have followed due process of law by ensuring that there is or there was an order of court directing the Respondent to take such a step before acting accordingly.

Having failed to do so, by implication where issue two is answered in the affirmative then the applicant will be entitled to reliefs four (4) and five (5) set out in the originating motion relying on the authority of **SKY BANK VS NJOKU & ORS(2016) LPELR -40447 -(CA) PAGES 9-11 PARAS D**

Learned counsel to the Applicant urges court to unfreeze the applicants Account with the Respondent and grant the claim for general damages and exemplary/aggravated damages, relying on **OHAKIM VS AGBASO & ORS SC 3/2010(CONSOLIDATED) PG 45 PARAS D-E, the case of OKANU VS OKANU &ANOR (2018) LPELR 45021 (CA), also the case UBN LTD VS ODUSOTE BOOKSTORE LTD**

(1995)9 NWLR AND the case of MICAH& ORS VS HON.MINISTER OF THE FCT & ANOR (2018) LPELR- 44917 (CA)pp 18-20

Learned counsel to the applicant submits that the action of the Respondent in unlawfully placing a restraint on the Applicant's bank account by freezing same is a flagrant disregard of the law outrageous enough to attract punishment and that the chairman of the ICPC acting under section 45 sub sections 1,2 and 3 is in conflict with the 1999 constitution and therefore illegal especially by giving such order without hearing from the side (the applicant).

Learned counsel for the Applicant in the light of the canvassed authorities hereinbefore cited urges this honourable court to award exemplary/aggravated damages against the Respondent so as to deter the Respondent from embarking on such action in the future. He accordingly urges court to hold that the action of the Respondent was indeed an infringement on the rights of the Applicant and grant prayers in this application as set out on the face of the Originating Motion on Notice.

In Response to the Applicants Originating Motion on Notice, learned counsel to the Respondent distilled a sole issue for determination.

‘Whether the Applicant is entitled to the relief sought in the Applicant application’.

Learned counsel to the Respondent opined that the Respondent acted in compliance with the request of the chairman of the Independent Corrupt Practice Commission upon receipt of exhibit GT1 and relying on its powers under section 45(1)(2)(3) OF the Independent Corrupt Practices And Other Related Offences Act 2000 to issue such directive without recourse to a court order.

from the provision of this law, the ICPC Chairman is empowered or has the legal authority to issue such directive and that same is not in breach of the rights of the applicant as protected under section 43 and 44(1) of the 1999 constitution.

Learned counsel to Respondent cites section 44(2)(k) of the 1999 constitution which provides for taking over possession of property for the purpose of any examination, investigation or enquiry and states that this provision buttresses the fact that such fundamental rights are not absolute as interest in immovable property can be stalled for the purposes contained in section 44(2) and in this case sub section (K)

learned counsel to the Respondent cited the case of **LA WARI FURNITURE & BATHS LTD VS FRN (2019) LPELR SC 40/2018** and urged court to give **section 45(1)(2)(3) OF THE ICPC ACT** it's clear, unambiguous and literal meaning adding that the supreme court has held that none of the forfeiture orders or freezing accounts made pursuant to the Independent and Corrupt Practices And Other Related Offences Commission Act (ICPC) National Drug Law Enforcement Agency act (NDLEA) Economic and Financial Crimes Commission (EFCC) act and the AFF Act are in conflict with section 36 and 44 the 1999 constitution, the reason being that the relevant provisions recognise the right of the person whose property is attached or frozen to be heard before a final order is made.

Learned Counsel to the Respondent submits that the case of the Applicant lacks merit and therefore urged court to dismiss this suit adding that the Respondent enjoys statutory protection against being sued for obeying such statutory order.

Above are the facts of the case as distilled from the processes filed by both Learned Counsels to the parties in this suit

On issue one as distilled by learned counsel to the Applicant to wit whether the Applicants have right to own interest in movable property in Nigeria as guaranteed in section 43 of the 1999 constitution

Section 43 Provides thus,

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

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 interest in immovable property. Issue one as distilled by counsel to learned applicant is accordingly resolved in the affirmative

Issue two as distilled by the learned counsel to the applicant is whether it was unlawful for the respondent to place a restraint on the account number 0106798264 belonging to the applicant without an order from a court of competent jurisdiction

Section 44(1) of the 1999 constitution provides that

` No moveable property or any interest in an immoveable 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

section 44(2)(K) provides that nothing in sub –section (1) of this section shall be construed as affecting any general law

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

The Apex court of the land in the case of **DR ADEWUNMI ADEYEMI-BERO VS LAGOS STATE DEVELOPMENT AND PROPERTY CORPORATION &ANOR (2012)12 SC PT I PG 78** states that indeed section 43 of the 1999 constitution guarantees the right to own movable property and interest in immovable property but states that same is not absolute as section 44(1) provides procedure for taking possession of same while 44 (2)(k) is exception to the rights protected by section 44

Put simply, by the provisions of section 44(1) of the 1999 Constitution interest in movable property can be lawfully tampered with in the manner and for the purpose provided for by a law as in this case the ICPC ACT 2000, Clearly the constitution has no provision mandating the procuring of a court order as a condition precedent to placing restraint on an account all it requires is compliance with the relevant law

Section 44(1) of the 1999 constitution says is that such taken possession of or acquiring compulsorily shall be for the purpose and in the manner prescribed by a law.

The case of **GT BANK PLC V ADEDAMOLA (SUPRA cited) ALSO EFCC V GLOBAL FORMWORK NIG LTD &ORS (2020) LPELR-51697(CA)** was with regards to the action of the bank acting on the order of the EFCC who derived its force from the section 34 (1) of the EFCC Act 2004, the EFCC Act requires the Commission to apply to court by way of an ex parte application to procure a court order as a condition precedent

to freezing or placing any form of restraint on any bank account. The Applicable law in this suit and which the Respondent acted upon is section 45(1) of the corrupt practices and other related offences commission Act 2000.

Section 45(1-3) of the corrupt practices and other related offences Act 2000 provides that: -

1. Where the Chairman of the commission is satisfied on information given to him by an officer of the commission that any movable property including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this ACT or evidence in relation to the commission of such offence is the possession, custody or control of a Bank or financial institution he may not withstanding any other written law or rule of law to the contrary by order, direct the bank or financial institution not to part with, deal in or otherwise dispose of such property or any part thereof until the order is revoked or varied.
2. No Bank, Agent or employee of a bank shall on account of such compliance be liable to any prosecution or to any civil proceeding or claim by any person under or by virtue of any law, contract or agreement or arrangement or otherwise.
3. Any person who fails to comply with an order of the chairman of commission under sub section (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two times the amount which was paid out in contravention of the chairman order or fifty thousand Naira whichever is the higher and to imprisonment term not exceeding two (2) years:

The supreme court in **case ofGT BANK VS ADEDAMOLA(Supra)** looked at section 34(1) of the EFCC Act 2004 which does not give the commission powers to give direct instruction/order to a Bank to freeze the account of its customer without an order of court therefore so doing constitutes a flagrant disregard and violation of the Rights of the customer,that is not the scenario that presents itself in the instant case.

Section 45(1) of the corrupt practices and related offences Act 2000 clearly gives the chairman of the ICPCpowers to give direct order to the bank or financial institution not to part with, deal in or otherwise dispose of such property or any part therefore until the order is revoked or varied.

This provision is clearly different from the principle as canvassed by learned counsel to the Applicant with regards to the provisions of EFCC Act 2004 which is the enabling law dealt with in the case of GT bank plc supra, the Respondent in this suit acted in line with the provisions of the law to wit section 45(1) of the ICPC Act 2000 which did not prescribe procuring a court order as a condition precedent thereto. Neither does section 44(1) of the 1999 Constitution as same empowers the relevant authority taking possession compulsorily to do so in manner and for the purpose prescribed by law.

Section 45(1) of the corrupt practices and other related offences Act 2000 is therefore not in conflict with section 44(1) OF THE 1999 CONSTITUTION

Issue two (2) as distilled by learned counsel to the Applicant is accordingly resolved in the negative that is it was not unlawful, illegal nor unconstitutional for the Respondent to place a restraint

on account Number **0106798264** belonging to the Applicant without an order of the court of competent jurisdiction directing it to do so, same being in compliance with section 45(1) of the corrupt practices and other related offences Act 2000.

Having resolved issue two (2) in the negative issue three (3) as distilled by learned counsel to the applicant is left hanging and must therefore collapse as it has nothing to attach on.

Learned counsel to the Respondent distilled a sole issue for determination which is same in substance with issue three (3) of learned counsel to the Applicant. The sole issue distilled by learned counsel to the respondent and issue 3 by learned counsel to the applicant are accordingly in the light of all said herein resolved in the negative that is the applicant is not entitled to the reliefs sought.

This suit therefore fails and is hereby dismissed.

*Hon. Justice Frances.
E Messiri
Judge*

