IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: **JAMILA OMEKE & ORS**

COURT NUMBER: **HIGH COURT NO. 24**

CASE NUMBER: **SUIT NO. FCT/HC/GAR/CV/142/2023**

DATE: **12/7/2023**

BETWEEN:

STEPHEN SMART ASIME…….....APPLICANT

AND

UNITED BANK FOR AFRICA PLC……..……RESPODNENT

RULING/JUDGMENT

APPEARANCES:
Segun Fiki Esq for the Applicant.
Defendant unrepresented.

By an Originating Motion on Notice brought pursuant to Section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), Section 14 of the African Charter on Human and People's Rights, Orders 2 and 4 of the Fundamental Rights Enforcement Procedure Rules, 2009 and under the inherent jurisdiction of the Court, the Applicant herein prayed the Court for the following reliefs:-

> ***"(1). A DECLARATION of this Honourable Court that the action of the Respondent in freezing and restricting the Applicant's Bank Account with Account Number: 2090449725 from May, 2022 till date is a breach of the***

Applicant's proprietary rights as guaranteed by Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 14 of the African Character on Human and Peoples Right (Ratification and Enforcement) Act 1983.

(2). A DECLARATION of this Honourable Court that the action of the Respondent in restricting the Applicant's access and use of his funds in his account domiciled with the Respondent with Account Number: 2090449725 from May, 2022 till date is manifestly unlawful, oppressive, arbitrary and a flagrant breach of the Applicant's right to the dignity of the human person an enshrined in Section 34 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) .

(3). A DECLARATION that the failure of the Respondent to disclose and give reasons for the restriction of the Applicant's account with Number: 2090449725 after several demands by the Applicant is capricious, an act of willful intimidation, a violation of the fiduciary duty owed by the Respondent to the Applicant and a breach of the Applicant's fundamental rights.

(4). AN ORDER of this Honourable Court directing and mandating the Respondent to lift all forms of restrictions placed on the Applicant's account with Number: 2090449725 domiciled with it FORTHWITH AND UNCONDITIONALLY.

(5). AN ORDER of this Honourable Court perpetually barring the Respondent, whether by itself or through its agents, officers, or privies, howsoever called or described from further infringing on the Applicant's proprietary rights by way of freezing or otherwise restricting the Applicant's access to and operation of account Number: 2090449725 without a valid Court Order.

(6). AN ORDER of this Honoruable Court awarding the sum of One Hundred and Fifty Million Naira (N150, 000, 000.00)

against Respondent in favour of the Applicant as general damages.

(7). AN ORDER awarding pre-judgment interest on the above sums at the rate of 21% per annum from May, 2022 when the Applicant's account was frozen until the delivery of judgment.

(8). POST-JUDGMENT INTEREST on the judgment sum at the rate of 21% per annum from the date of judgment until the judgment sum is fully liquidated.

(9). ANY OTHER ORDER OR FURTHER ORDERS that this Honourable Court may deem fit to make in the circumstances."

The Application is accompanied by a Statement in support of the application, facts relied upon by the Applicant in support of the application, the grounds predicating the Reliefs sought, a Supporting Affidavit deposed to by Stephen Smart Asime the Applicant herein, Annextures marked Exhibits A – E, as well as a Written Address.

Meanwhile, in opposition to this Originating Motion on Notice, the Respondent filed a Counter Affidavit of 19 paragraphs deposed to Haward Adun, a staff of the Respondent i.e Untied Bank for Africa Plc, accompanied with Annextures marked Exhibits UBA FMA, UBA1, UBA2, UBA 3 as well as a Written Address in support of its Counter Affidavit.

In response, the Applicant filed a Further Affidavit deposed to by Juliet Adugbuo, a Litigation Secretary in the law firm of Ojukwu Chikaosolu & Co, Solicitors to the Applicant as well as a Reply on points of law.

Meanwhile, at the same time, the Respondent filed a Notice of Preliminary Objection on 19th April, 2023 seeking for the following to wit:-

"(1). AN ORDER of this Honoruable Court striking out or/dismissing this suit in its entirety for lack of jurisdiction.

(2). AN ORDER FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstances of this case."

The Notice of Preliminary Objection is predicated on several grounds contained therein, as well as a supporting affidavit of 8 paragraphs deposed to by Howard Adun, a staff of the Respondent United bank for Africa Plc, as well as a Written Address.

Meanwhile, in response to the Notice of Preliminary Objection, the Applicant filed a Written Address in opposition to same on 25th April, 2023.

In response, the Respondent/Objector filed a Reply on points of law on 2nd May, 2023.

Having taken a close look at the processes filed on both sides, it is imperative to first of all consider the merits or otherwise of the Notice of Preliminary Objection.

I hereby formulate a sole issue for determination of the Preliminary Objection to wit:-

"Whether this Honourable Court ought to sustain this Preliminary Objection in the light of the facts and circumstances of this case."

Basically, the contention of the Respondent/Objector is that the subject matter of the application is founded on contract arising from the alleged breach of a Banker-Customer relationship between the parties herein, and consequently not envisaged under Chapter IV of the Constitution of the Federal Republic of Nigeria and the African Charter on Human and People's Rights (Ratification and Enforcement) Act.

Same is clearly captured in the Supporting Affidavit of the Respondent/Objector.

In the address in support of Notice of Preliminary objection, learned Respondent's Counsel, Obinna Mbata Esq, while relying on the provisions of Order IX Rule 1 of the Fundamental Rights Enforcement (Procedure

Rule) 2009 that this suit as presently constituted was brought under the guise of Fundamental Rights application, while same is one founded on simple contract, i.e a Banker-Customer relationship.

Counsel placed reliance on several authorities cited on record including the case of ***BANK OF THE NORTH LTD V YAU (2001) LPELR-746 (SC),*** in arguing that while a dispute may arise in such instances, and a party may have recourse to the Courts for redress such a party is not allowed to surreptitiously seek to have recourse to the Fundamental Rights Enforcement Procedure.

Reliance was placed on some decided authorities cited on record, particularly the case of ***EMEKA V OKOROAFOR & ORS (2017) LPELR-41738 (SC).***

On Counsel's argument on the mode of commencement of this suit, reliance was made on the case of ***MOHAMMED & ANOR V SUCCESS & ORS (2020) LPELR 50276 (CA),*** with particular reference to the deposition of the Applicant contained in paragraphs 11, 12 and 13 of the Affidavit in support of this application, to argue that all the three declaratory reliefs sought by the Applicant have to do with the alleged breaches of restriction of Applicant's access to use funds domiciled in his account with Respondent/Objector.

It is therefore argued that references made by the Applicant to breach of his proprietary rights and dignity of his person as guaranteed by Sections 44(1) and 34 of the 1999 Constitution (as amended) and Article 14 of the African Charter on Human and People's Rights, are merely ancillary, assuming such breaches exist.

Further argued in that regard is that one is compelled to inquire into the relationship between the allegations of compulsory possession or acquisition of a Applicant's property as he alleges, and the fact that the Applicant's funds with the Respondent, which he willingly and freely deposited with the Respondent, have not been shown to be missing or misappropriated.

Submitted however, that what the Respondent/Objector owes the Applicant is a contractual duty or obligation to pay the Applicant's funds domiciled

with it, upon lawful demand, and where it fails to do so, upon lawful justification, the Applicant shall have and can exercise his right in breach of contract against the Respondent.

But, that in the present application brought under Section 44(1) of the Constitution (as amended) and sundry laws, same is rather a misnomer and abuse of proper procedure to ventilate a claim.

Therefore, learned Counsel submits, that the Respondent, did not, and has not compulsorily acquired interest in or compulsorily taken possession of the Applicant's funds domiciled with it and urged the Court to so hold and to dismiss/strike out the suit.

Meanwhile, arguing against the above submission in the Applicant's address, learned Counsel Segun Fiki Esq submitted that the objection of the Respondent is both utterly misconceived and untenable in law. That it is a clear attempt by the Respondent to evade the consequences of its high handed, pre-meditated, malicious and unconstitutional action of freezing the Applicant's account for almost a year without any Court order in violation of the provisions of Section 44 of the 1999 Constitution (as amended) and the African Charter (supra).

Further argued in that regard that the Applicant has suffered deprivation of his right to use his funds in his account for nearly a year, has the right to seek enforcement of this fundamental rights against the Respondent's act of unilaterally constituting itself as a Judge, Jury and Executioner against the Applicant, which act constitutes to deprive him of his proprietary right without a Court Order.

In fact learned Counsel argued that the case of ***EMEKA V OKOROAFOR (supra)*** cited by Respondent/Objector supports the case of the Applicant in this suit, as the apex Court in that case clearly held that for an action to be predicated on the Fundamental Rights (Enforcement Procedure) Rules, the principal reliefs in such an action must be based on fundamental rights.

The is therefore invited to look at the reliefs sought in this application, and for the Court to consider that, contrary to the Respondent's posturing, the restriction of a customer's bank account without a Court Order, which is the subject matter of the instant suit, is a matter bordering on the violation of

fundamental rights as enshrined in Section 44 of the Constitution, and that it is not merely a matter of contract. Reliance was placed on a very recent Court of Appeal decision in the case of ***E.F.C.C. V UBOH (2022) LPELR-57968 (CA) 15-16,*** as well as the case of ***OPARA HENRY V ACCESS BANK PLC (2022) LPELR-59775 (CA).***

Submitted moreso that, unlike in the cases of where a law enforcement agency gave an unlawful directive to a bank to freeze an account, in this case, no law enforcement agency gave any directive to the Respondent. That it acted unilaterally. Submitted further that the Respondent was on slippery ground when it alleged that this suit ought to have been ventilated as a matter of contract, notwithstanding the peripheral reference to the breach of fiduciary duty in the originating process.

Counsel therefore submits, that the law is settled that where the principal relief is founded on fundamental rights (as in the case in this suit) the presence of ancillary reliefs bordering on other aspects of the law will not defeat the action. Several authorities were cited on record in this regard, including the case of ***UBA PLC V JUDE-BELA EJE & ORS (2022) LPELR 57973 (CA).***

Learned Counsel therefore urged the Court to reject the Respondent's attempt to mischaracterize the clear nature of the Applicant's suit, in the face of its own illegality and wanton, callous and unjustified violation of the Applicant's fundamental rights, and finally urged the Court to dismiss the Preliminary Objection being devoid of any merit, as it is merely aimed at defeating the end of justice by invocation of hollow technicalities.

Meanwhile in the Respondent/Objector's reply, it is argued that what the Court should consider herein is the facts presented by the Applicant in his pleadings, i.e. Affidavit in applications of this nature.

Learned Counsel further re-reiterated Respondent/Objector's position that such applications must come under Chapter IV of the Constitution for the Court to consider whether or not there is an alleged breach of the rights as envisaged by law.

Learned Counsel also argued that the cases cited by the Applicant in their reply address are good authorities for matters in similitude with their

circumstances, but totally out of place and inapplicable in this suit. The Court is urged to so hold and to uphold the Preliminary Objection and to have this matter struck out as not being principally a fundamental rights issue.

Now, it is clear in this case that the alleged contractual relationship between the Applicant, Respondent/Objector herein is a Banker – customer relationship.

Hence, the main grouse of the Respondent/Objector is that in case of any alleged breach of the contractual relationship, the Applicant may have recourse to the Courts for redress, but that where it borders on simple contract such as in this case, the action ought not to have commenced via the Fundamental Rights Enforcement Procedure.

Of course, looking closely at the arguments canvassed on both sides, it is clear that the Applicant is of a contrary view.

It is trite that for a claim to qualify as falling under fundamental rights, the principal reliefs sought must be for the enforcement of fundamental rights.

In the case of ***RIVERS STATE ROAD TRAFFIC MANAGEMENT AUTHORITY V YUSUF (2017) LPELR-43067 (CA), the Court per ABIRIYI, JCA held at (PP.14-15) Paras B – A,*** as follows:

> ***"Only actions founded on a breach of any of the fundamental rights guaranteed in the Constitution can be enforced under the Fundamental Rights (Enforcement Procedure) Rules. It is a condition precedent to the exercise of the Court's jurisdiction that the enforcement of fundamental right or the securing of the enforcement thereof should be the main claim and not an ancillary or subordinate claim. Where the main claim or principal claim is not the enforcement of fundamental right, the jurisdiction of the Court cannot be said to be properly invoked and the action is liable to be struck out for incompetent.***
>
> ***See: W.A.E.C V AKINKUNMI (2008) LPELR-3468 SC and TUKUR V GOVERNMENT OF TARABA STATE (1997) 6 NWLR (Pt.510) 549. In determining the competence of the suit, the Court has a***

duty to examine the reliefs claimed to ascertain what the claim is all about. In doing so, this could, will disregard the manner in which the claim is couched or how it is categorized in the claim…"

See: NWACHUKWU V NWACHUKWU & ANOR (2018) LPELR-44696 (SC); UNILORIN & ANOR V OLUWADARE (2006) LPELR-3417 (SC); EMEKA V OKOROAFOR & ORS (2017) LPELR-41738 (SC).

In the instant case, I have taken my time to study carefully the reliefs sought by the Applicant in this application for enforcement of fundamental rights, which mainly borders on the alleged breach of his right to have access to funds in his account with No. 2090449725, domiciled in the Respondent bank.

The allegation is that the Respondent's act of freezing the said account for over a year now without any Order of Court and the continued freezing of the said account without any Order of Court is a violation of his fundamental rights as enshrined under Section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

A close look at the Applicant's supporting affidavit to the Originating Motion on Notice will also reveal that it is the main grouse of the Applicant.

Moreso, Relief No. 1 on the face of the motion reads thus:-

"A DECLARATION of this Honourable Court that the action of the Respondent in freezing and restricting the Applicant's Bank Account with Account Number: 2090449725 from May, 2022 till date is a breach of the Applicant's proprietary rights as guaranteed by Section 44(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Article 14 of the African Character on Human and Peoples Right (Ratification and Enforcement) Act 1983"

Section 44(1) of the Constitution (supra) provides thus:-

"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.

(Underlining mine for emphasis)"

Therefore, the right to own property as seen in the above provision of the Constitution, is one of the inalienable rights, preserved and guaranteed under the CFRN 1999 (as amended).

Hence, where a person alleges breach, a likely breach or continued breach of same, he may approach a High Court in the State in question for redress.

See Section 46(1) of the CFRN 1999 (as amended).

"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress"

Moreso, I fortify myself further with the decision of the Court of Appeal in ***OPARA HENRY V ACCESS BANK PLC*** cited by the Applicant in its response to the Preliminary Objection in paragraph 3.6 of the address, where the Court of Appeal held as follows:-

"It is a principle of law that a Court Order is a prerequisite for a bank before freezing an account. It is equally trite, and especially so in a democratic society with a Written Constitution with guaranteed fundamental rights such as ours, that where a Bank takes it upon itself to unilaterally freeze the account of a customer or prevent a customer with money standing to his credit in his account from accessing the money, simply because of an allegation of fraud made against such a customer, it will amount to self-help and it is illegal and wrongful to block such account without a recourse to a competent Court of law to have the administrative decision validated to be lawful."

In this case, it is not in dispute that the funds of the Applicant/Respondent are in the possession or custody of the Respondent/Objector.

Therefore, in the light of the above, it is my candid opinion that although the relationship between the Applicant and Respondent is one founded on Contract i.e Banker-Customer relationship, the alleged breach in this case as well as the principal relief sought fall within the facts envisaged under Chapter IV (and particularly) Section 44(1) of the Constitution Federal Republic of Nigeria 1999 (as amended) for this suit to be brought via the Fundamental Rights Enforcement Procedure. I so hold.

Consequently, this Court has the requisite jurisdiction to entertain same. The sole issue is resolved against the Respondent/Objector. The Preliminary Objection therefore is lacking in merit and same is accordingly dismissed.

I shall now move to consider the main application. In doing so, I will adopt the sole issue formulated by the Applicant in the Written Address to wit:

> ***"Whether, from the totality of the facts and circumstances of this case, the Applicant is entitled to the grant of the reliefs sought in the Originating Motion on Notice."***

Arguing the sole issue, learned Applicant's Counsel, Segun Fiki Esq submitted that the inalienable rights held by citizens of the Federal Republic of Nigeria as captured in the 1999 Constitution in Chapter IV thereof, are of overreaching, importance. Thus, it is a trite principle of our laws that the supreme duty of any Court of law in interpreting the Constitution where the rights of the citizens are either breached or in danger of being breached, is to protect and uphold the sanctity of these rights. Reliance was placed on the case of ***FAWEHINMI V ABACHA (1996) 9 NWLR (Pt.475) 710 at 760-761 (CA).***

Learned Counsel further argued that these rights no doubt extend to the right to own property and to the dignity of the human person as enshrined in Sections 44(1) and 34(1)(a) of the 1999 CFRN (as amended) as well as Section 14 of the African Charter on Human and People's Rights.

It is therefore submitted that in this case, going by the Applicant's Supporting Affidavit, the Respondent has unjustifiably and unlawfully frozen/restricted the Applicant's bank account since May of 2022 and deprived him of the ability to operate same for the benefit of education and general well being. That the Respondent merely froze the Applicant's accounts wantonly and without lawful justification in breach of his fundamental rights.

Submitted to that extent, that it has long been settled by law Courts that a Bank is not an authority unto itself and therefore cannot arbitrarily freeze/restrict bank accounts in perpetuity without lawful Order of a Court of competent jurisdiction.

Counsel placed reliance on the case of ***GUARANTY TRUST BANK PLC V ADEMOLA (2019) 5 NWLR (Pt.1664) 30.***

Argued further that the essence of the requirement of obtaining a Court Order is to forestall the wanton abuse of power by the Respondent such as in this case, where the action of the Respondent is detrimental to the Applicant's likelihood, his academic pursuit, resulting in unquantifiable embarrassment, loss of good standing, reputation and there respect of associates, friends, acquaintances and even family members since May, 2022, when his account was frozen. That as part of the opprobrium suffered by the Applicant, he is now viewed within close circles as bankrupt, insolvent and unable to meet his principal obligations, thus degrading and utterly embarrassing to the Applicant on account of the actions of the Respondent in breach of his rights.

Submitted moreso that banks such as the Respondent have a Debtor-Creditor relationship with their customers and any action such as the one under review must be made without a valid Order of Court. Learned Counsel cited: ***HASTON (NIG) LTD V ACB (2002) 12 NWLR (Pt.782) 623 @ 623 at 646; AFRIBANK NIG. PLC V ANUEBUNWA (2012) 4 NWLR (Pt.1291) 560 at 579, Paras B – C; GTB V EKEMEZIE (2016) 2 NWLR (Pt.1497) 579 @ 596 – 597, Paras C – G; JIM JAJA V C.O.P RIVERS STATE (2013) 6 NWLR (Pt.1350), 225 @ 254, Paras B – H; DASUKI V DIRECTOR GENERAL STATE SECURITY SERVICES (2019) LPELR-481113 (CA).***

Submitted in that regard, that where there is a violation such as in this case, such a citizen must be compensated by the Court for the said violation in damages, whether specifically prayed for or not as there's room for discretion by the Court. Learned Counsel further cited ***FRN V IFEGWU (2003) 15 NWLR (Pt.842)*** to buttress the importance of enforcement of fundamental rights in our society and finally urged the Court to intervene in the circumstance by granting all the reliefs sought by the Applicant.

Meanwhile, in the Written Address of the Respondent in opposition to this application, learned Respondent's Counsel Obinna Mbata, Esq, while arguing on a sole and similar issue formulated by the Applicant herein, submitted that the Applicant's Supporting Affidavit has not established that the Respondent threatened or violated his fundamental rights as alleged and therefore is not entitled to the grant of the reliefs sought since Respondent has denied the said allegation.

Submitted in that regard that by its Counter Affidavit, Respondent did not unlawfully and arbitrarily as claimed by the Applicant, place a restriction on the Applicant's BVN.

But, that the restrictions were placed sequel to the deliberate and willful action of the Applicant in supplying and uploading fake and fictitious documents and materials on Central Bank of Nigeria's Form A in Order to unlawfully access forex in the sum of £9, 565.00 (Nine Thousand, Five Hundred and Sixty Five British Pounds Sterling) through the Respondent, an action which runs contrary to the provisions of the Regulatory Framework for the Bank Verification Number (BVN) operations and watch list for the Nigerian Banking Industry, made by the Central Bank of Nigeria (CBN) in line with its powers under the CBN Act, 2000 and other Financial Institutions Act, 2020.

It is equally the Respondent's contention as seen in the address that the Applicant's claim is not covered under the extant provisions of the law. Further submitted is that the Applicant admitted in his affidavit that he willingly deposited his money with the Respondent and it is trite that depositor's funds in the custody of a bank or financial institution are not in the custody or control of the customer.

Counsel cited authorities reflected on record in support of the argument including ***WEMA BANK PLC V OSILARU (2008) 10 NWLR (Pt.1094) 150.*** Counsel therefore argued that the funds in the Applicant's account was not compulsorily acquired since the funds were voluntarily deposited and cannot come within the contemplation of Section 44(1) of the Constitution (supra).

Submitted moreso, that based on a contractual duty, the Respondent has the duty or obligation to pay the Applicant's funds domiciled with it, upon lawful demand, and where it fails to do so with lawful justification, the Applicant shall have and can exercise his right in breach of contract against the Respondent but not by a misnomer, such as in this case, by instituting a fundamental rights action. The Court is urged to so hold.

However, Counsel submitted, assuming but without conceding that the Applicant's action as presently constituted is one that finds accommodation within the purview of Fundamental Rights Enforcement (Procedure Rules) 2009, that Respondent's action is in line with CBN regulation on BVN. Thus, the rights under Section 44(1) of the CFRN 1999 (as amended) are not absolute.

Counsel relied on the cases of ***EZIEGBO & ANOR V ASCO INVESTMENT LTD & ANOR (2022) 8 NWLR (Pt.1832) 367, NDIGWE V IBEKENDU (1998) 7 NWLR (Pt.558) 486,*** as well as Sections 30, 53 and 56 of the Banks and other Financial Institutions Act (BOFIA), 2020, to argue that the Respondent's action was pursuant to the above provisions and others as aforesaid, including Section 51 of the CBN Act, 2007, made in the national interest. Counsel further relied on Section 42(1)(c) as well as the cases of ***LIBERTY BANK & ORS V CENTRAL BANK OF NIGERIA & ORS (2019) LPELR-50238 (CA); FRSC V OFEGBU (2014) LPELR-24229 (CA) O. 34-40. F; EZEIGBO & ORS V ASCO INVST. LTD & ANOR (Supra).***

Likewise, for purposes of clarity, Watchlist for the Nigeria Banking Industry was reproduced therein, which includes what constitutes a breach, method or procedure to be adopted or categories of breaches and classification of same, Watchlist stakeholders, delisting from watch list, conditions for De-listing process for delists, sanctions and penalties etc.

Consequently, learned Counsel submit that it is the Respondent's contention, and as contained in its review of the Applicant's submissions in Form A for Forex for the purpose of payment of school fees for the alleged Admission to the said Sanctus Institute, Mancestrer, United Kingdom, it discovered several anomalies which led to further inquiries about the school.

That upon further inquiries and discoveries, that no such school was in existence in Manchester, or indeed in the United Kingdom, and that the purported admission letter (signed by Lucas Hasan) and logo of the fictitious Sanctus Institute Manchester, United Kingdom were copies of the exact signature of the head of Admissions of University of Salford, among several other inconsistent and fictitious information and materials supplied by the Applicant, thus the Respondent's actions in line with the CBN regulation as contained in Section 2 therein which led to Applicant's BVN being watch-listed, which learned Counsel argued is justified in law. The Court is urged to so hold.

Submitted moreso, that the Respondent, proceeded to contact the Applicant on the phone number supplied on his account and that the Applicant stuck to his guns claiming that the documents he uploaded and the information he supplied were genuine and were the invoices the purported Sanctus Institute, Manchester, United Kingdom provided him.

Learned Counsel submitted further that the Applicant confirmed he filled the FORM A by himself and supplied the fictitious documents which he insisted were not fictitious, and was informed that his account had been placed on restriction and his BVN would be watch-listed as a consequence of the breach of the CBN's regulatory frame work, which counsel contends is a mandatory provision of the law.

Counsel relied on the case of ***A.G. FED V NSE & ORS (2016) LPELR-40518 (CA); ODUA INVESTMENT CO. LTD V TALADI (1997) LPELR-2232 (SC) (PP.85-86, Paras G).***

Learned Counsel further referred the Court to the provisions of Section 3 of the CBN Regulatory Frame Work for Bank Verification Number which states that:-

> ***"Any participant who fails to perform its stipulated responsibilities shall be penalized by the Central Bank of Nigeria."***

That the Respondent in this case was being obedient to an enactment, and has not breached any fundamental rights of the Applicant as alleged.

To that extent, learned Counsel argued that it is the duty of the Applicant, in the face of this lawful justification of Respondent's action to prove the alleged infringement of his rights.

Counsel cited, ***NIGERIAN COPYRIGHT COMMISSION & ORS V MUSICAL COPYRIGHT SOCIETY OF NIG. LTD & ORS (2017) LPELR-50743 (CA).***

Submitted in that regard that where an Applicant fails to prove the breach of his fundamental rights as alleged, the Court is duty bound to strike out/dismiss such application for being devoid of merits. Counsel relied on the case of ***CHIEF L.C. MEZUE & ANOR V PRINCESS NKIRU OKOLO & ORS (2019) LPELR-47666 (CA).***

In conclusion, learned Counsel urged the Court to hold in favour of the Respondent and to dismiss the suit in its entirety.

Meanwhile, in the Applicant's reply on points of law, learned Applicant 's Counsel submitted that Respondent's contention in paragraphs 1.9 – 1.15 of its Written Address is a reproduction of the arguments already canvassed in the Notice of Preliminary Objection and urged the Court to discountenance same.

Counsel argued that the fulcrum of Applicant's case is placing of the restriction on his account by the Respondent without a Court Order thus bring this suit within the purview of Section 44(1) of the CFRN (supra).

In this light, Counsel referred the Court to the cases of ***EFCC V UBOH (2012) LPELR-57968 (CA) 15-1; OPARA HENRY V ACCESS BANK PLC (2022) LPELR-59775 (CA); FRN & ANOR V IJEGWU (SUPRA) (SC); UBA PLC V JUDE-BELA EJE & ORS (2022) LPELR -57973 (CA).***

That it is gratifying that the Respondent in this case did not deny restriction of the account without Court Order. Thus, this vital admission relieves the Applicant of the burden of proving that established facts in line with the decision of the apex Court in the case of ***JEGEDE & ANOR V INEC & ORS (2021) LPELR-55481 (SC)*** and other cases cited on record.

On the Respondent's contention on the Regulatory Framework for the Bank Verification Number (BVN) operations and Watch List for the Nigeria Banking Industry, learned Counsel submitted that this attempt by the Respondent is futile. In that it is a mere Internal Framework employed by the Banking Regulator to monitor activities in the Banking Sector, and as of any citizen/Bank customer may be denied such it is not a law upon which the rights and obligations under Section 44(1) of the Constitution (Supra), that in Section 44(2)(b) & (e) thereof, has provided that a derogation from this right is only permissive where amongst other things, there is a "general law" for the imposition of penalties or forfeitures for the breach of any law, whether under civil process or after conviction for an offence or where it relates to the execution of Judgments or Orders of Courts, neither of which is applicable in this case before this Court. Submitted that not only is there no law permitting the blanket restriction of the Applicant's bank account, there certainly is no Order of Court sanctioning the imposition of the restriction.

Reliance was place on the cases of ***EFCC V ADEDAMOLA (2019) 5 NWLR (Pt.1664) 301 (CA); DANGABAR V FRN (2012) LPELR-19732 (CA) and EFCC V UBOH (2022) LPELR57968 (CA).***

That, the position erroneously held by the Respondent that by the purported framework, it can wantonly deprive citizens of access to their funds for long or indefinite periods, is misconceived, callous and unjustifiable and urged the Court to reject same.

Counsel further argued, that assuming for the sake of argument only, that the purported framework is even applicable to banker-customer relations, Counsel submits that there is nothing in the framework that clothes the Respondent with the power to freeze Accounts. that the functions of Banks and other financial institutions (OFIS) as stated in paragraph 1.5.3 (ii – (viii) of the framework exhibited in the Counter Affidavit does not include the

power to freeze bank accounts. That there's equally nothing contained therein that clothes either the CBN or any Bank with the power to order the freezing of a bank account, much less for almost one year.

That, the power given to the Governor of the Central Bank of Nigeria who is the Regulator of the entire Banking Industry under BOFIA (from which the frame work derives its validity) to freeze accounts, where a bank customer is suspected of having committed an offence is as stipulated in Section 97(1) of the Bankers and Other Financial Institutions Act (BOFIA) 2020.

Therefore, learned Counsel argued, that even the Respondent must obtain an Order of Court before freezing any customer, how much more a financial institution, when a subsidiary legislation cannot confer more powers than the principal legislation.

Counsel cited ***FAMFA OIL LTD V AG. FEDERATION & ANOR (2007) LPELR- 9023 (CA).***

In conclusion, learned Counsel urged the Court to rule in favour of the Applicant and in doing so, to grant all the reliefs sought in this suit.

Now, the facts as can be distilled from the Applicant's supporting Affidavit is that the Applicant Mr. Stephen Smart Asime, is a customer of the Respondent United Bank for Africa Plc (UBA), and maintains an account with UBA with Account No: 2090449725.

That in line with his academic aspirations, sometime in March, 2022, he applied for and obtained admission to Sanctus Institute, Manchester, United Kingdom to study for an MSC. in project Management.

That on 15th of March, 2022, with a view to paying the school fees, he applied to the Respondent for Forex through a FORM A application through his account domiciled with the Respondent. The Applicant deposed further that at the time he made the application, his account domiciled with the Respondent, was fully funded and sufficient to offset the Naira value of the amount, and therefore prepared and travelled to Manchester, United Kingdom for his studies.

However, deposed further that sequel to his arrival in Manchester he became aware that his application Form A was not approved by the Respondent for reasons best known to it.

Deposed further that subsequently, in May 2022, he attempted to conduct a different transaction on his account through the Respondent's Internet Banking Platform, when he discovered to his greatest shock, that the Respondent's Platform kept returning **"unavailable balance"** at each attempt to execute a transaction.

That Applicant equally attempted to execute transactions through the Respondent's Bank App all to no avail, even though the account was well funded and Applicant realized that a restriction was placed on his account unjustifiably and without any prior notice whatsoever.

According to the Applicant, he immediately wrote to the Respondent to lay his complaints as to the said restriction on his account through instagram messages and Electronic mail, and attached Exhibits C, D and E in support of the depositions.

However, according to the Applicant, the only response he received from the Respondent was that his complaint was being looked into and the Respondent never got back to him.

Applicant further deposed that he equally put various calls across to the Respondent to the Respondent's customer care service operatives to ascertain the reason or the continued restriction of his account, but no information was given to him, and he subsequently lost his admission at Sanctus Institute Manchester, United Kingdom as he was financially distressed and dependent in the United Kingdom.

That, as at the 10th of February, 2023, the Applicant had made attempts to operative his account, but the restriction/PND imposed by the Respondent on Applicant's Account since May, 2022 has remained without any prior notice nor any valid Order of Court.

That due to paucity of funds, the Applicant was compelled to raise money from family and friends to return to Nigeria for the purpose of filing this action to seek redress for the actions of the Respondent.

In paragraphs 22 – 28 of the Supporting Affidavit, the Applicant deposed further as follows:-

> ***"Paragraph 22: That ever since the offensive and asphyxiating conduct of the Respondent, I have been unable to meet my legitimate financial obligations and have suffered tremendously.***
>
> ***23. That I know that the willful and deliberate action of the Respondent is oppressive, scandalous, demeaning and humiliating and has occasioned grave embarrassment to me and exposed me to opprobrium amongst my friends, associates and acquaintances.***
>
> ***24. That by the actions of the Respondent, I have been unfairly cast in bad light as an insolvent, bankrupt and insufferable debtor.***
>
> ***25. That I know as a fact that the funds in my account are not proceeds of illicit activity and do no form part of proceeds of any unlawful activity.***
>
> ***26. That I know that the Respondent's conduct being complained of herein, is actuated by malice, ill will, extreme wickedness, unprovoked callousness and abuse of power.***
>
> ***27. That I have suffered extreme deprivation, ignominy and unparalleled psychological torment since the actions of the Respondent.***
>
> ***28. That unless this Court intervenes to protect my rights, the Respondent will continue to trample upon same with reckless abandon."***

The Applicant attached Exhibits referred to in his depositions.

Therefore, from the above depositions of the Applicant, it is clear that the Applicant's main grouse is his inability to access the funds in his UBA account due to the restriction placed on same by the Respondent. According to the Applicant same was done without a valid Order of Court.

Meanwhile, on the part of the Respondent, it is alleged that the said restriction on the Applicant's BVN is a consequence of the Applicant's use of fake and fictitious materials and information to unlawfully obtain Forex at official exchange rate, using CBN's FORM A, which the Applicant filled and deliberately supplied the false information and materials contrary to the provisions of the CBN regulation i.e the Regulatory Framework for the Bank Verification Number (BVN) operations and Watch-list for the Nigeria Banking Industry as revised in 2021, made pursuant to the CBN Act, 2007 and the Banks and other Financial Institutions Act 2020.

I refer to paragraphs 9, e, f, g, h, I, j, k, l, m, n and o of the Respondent's Counter Affidavit, as well as Paragraphs 13, 16, 17, and 18 of thereof, which are herein reproduced for purposes of clarity below:

"***Paragraphs 9, e.*** ***In the course of the checks/investigation of the Applicant's documents which he supplied through the said CBN portal, it was discovered that the institution (Sanctus Institute, Manchester United Kingdom) which the Applicant purported to have offered him admission, does not exist. Further and all other inquiries with the name only revealed an institution called European Institute for Theology and spiritually based in Germany, and a certain 'Santus Institute e.V' is stated to be a non-profit institute of Theology and spiritually registered in Germany.***

f. ***Checks conducted on the internet on various electronic web addresses as contained in the said admission letter from***

the supposed 'Sanctus Institute, Manchester, to wit:

www.sanctusinstitute.co.uk/askus/topics/paying-for-university,
www.sanctusinstitute.uc/privaacy,
http:beta.sanctusinstitute/student-terms-and-conditions, etc,
all showed that the website addresses/links were fictitious and did not disclose or lead to institution, school or organization.

g. Further inquiries revealed that the logo on the supposed admission letter from the Sanctus Institute, Manchester presented by Applicant at the point of applying for forex using the Form A, is the same logo of an existing school in the United Kingdom, University of Salford, to whom the Respondent had processed payment of school fees for a different customer. The copy of the admission letter for the said Sanctus Institute, Manchester submitted by the Applicant, and a copy of an admission letter from University of Salford are herein attached and marked as Exhibits UBA 1 and UBA 2.

h. Comparisons made with similar admission letter issued by University Salford, revealed that the signature appended on the admission letter of the purported Sanctus Institute, Manchester, by its supposed Head of Admissions (Lucas Haran) as presented by the Applicant, was the same signature as that on the University of Salford's admission letter

duly signed by its Head of Admissions Joanna Haran.

i. A further inquiry by the Respondent to confirm the details of the beneficiary of the forex using the bank details on the Form A application provided by the Applicant, with the following details: Account Name: Sanctus Institute, with International Bank Account Number (IBAN): GB69HBUK40115650791393 as quoted on the fake admission letter, could not be verified on the Society for Worldwide Interbank Financial Telecommunications (SWIFT) platform which is an international member (banks and other financial institutions) owned messaging cooperative used to quickly, accurately and securely send and receive information primarily on money transfer instruments by banks and financial institutions, worldwide.

j. Following these discoveries of fictitious information and discrepancies, the Respondent contacted and called the Applicant via his phone number provided at the point of account opening, and upon being confronted with these findings, the Applicant claimed that the fictitious admission letter and sundry documents which he uploaded in the course of his Form A application were genuine and duly issued to him by the Sanctus Institute, Manchester, United Kingdom.

k. The Applicant was duly informed by the Respondent that the said 'Sanctus Institute Manchester, United Kingdom' did not exist, and the documents for admission into the

said fictitious institute were fake with the aim of fraudulently obtaining £9, 565.00 (Nine Thousand, Five Hundred and Sixty Five British Pounds Sterling) forex at official rate from the CBN for round tripping.

l. The Respondent consequently informed the Applicant that his Bank Verification Number (BVN) was going to be put on watch-list in line with the Central Bank of Nigeria's regulation known as Regulatory Framework for the Bank Verification Number (BVN) Operations and Watch-list for the Nigerian Banking Industry as a result of his deliberate submission and use of fictitious information and forged documents to access forex from the Central Bank of Nigeria through the Respondent. The said CBN regulation is herein attached and marked as Exhibit UBA 3.

m. The Regulatory Framework for Bank Verification Number (BVN) Operations and Watch-list for the Nigerian Banking Industry makes it mandatory that Banks enlist the BVN on individuals confirmed to be involved in fraudulent activity on the Watch-list.

n. The Watch-list is a database of bank customers identified by their BVNs, who have been involved in confirmed fraudulent activities.

o. A bank customer enlisted in the Watch-list is, inter alia, prohibited from carrying out

banking transactions until delisted from the Watch-list.

Paragraphs 13. The Respondent in addition states that it has also lodged a formal report with the Economic and Financial Crimes Commission (EFCC) on the actions of the Applicant in using fake and fictitious materials and information in order to obtain forex at the official exchange rate.

16. That the Respondent is not liable in any manner whatsoever for the alleged losses and inconveniences claimed by the Applicant.

17. That the Respondent would be prejudiced by the grant of the Applicant's reliefs as contained in his Originating Motion on Notice.

18. That it will be in the interest of justice that this Applicant's suit be dismissed."

It is therefore clear that in this case, the Respondent alleges fraud on the part of the Applicant that the Applicant therein allegedly furnished false/fictitious documents in his application in FORM A, as stated earlier. While the Applicant denies same and maintains that the Respondent has no power to unilaterally freeze a customer's account without a valid Order of Court; and further contends that his fundamental right to own property guaranteed under Section 44(1) of the CFRN 1999 (as amended) has been breached by the Respondent in this case.

By Section 46(1) of the CFRN 1999 (as amended) anybody who alleges that any of the provisions of Chapter IV of the Constitution, has been, is being or likely to be infringed in relation to him, may apply to a High Court in that State for redress. Such cases are normally fought and won by affidavit evidence.

Moresso, an Applicant seeking for the enforcement of his fundamental rights must prove same by placing relevant facts, before the Court in proof of his case.

See: ***MAINSTREET BANK & ORS V AMOS & ANORS (2014) LPELR-23361 (CA); EBO & ANOR V OKEKE & ORS (2019) LPELR-48090, PER DONGBAN-MENSEM, JCA @ PP. 42-43, Paras B – D.***

In this case, it is not disputed that a restriction was placed on the account of the Applicant, which restriction still subsists up till the time of filing this action. I've considered the position of the Respondent that such a restriction was made pursuant to the CBN Regulatory Framework as aforesaid, as well as the CBN Act 2o2o.

I have equally gone through the Exhibits annexed by the Respondent to its Counter Affidavit, including Exhibit UBA 3, the said Regulatory Framework.

Now, the question to ask here is whether in the case of alleged fraud by a customer, the Bank/Respondent is empowered by law to freeze a customer's account without a valid Order of Court?

I have taken my time to go through a plethora of decided authorities on this issue, and it is a matter that is well settled now that a Bank or Financial Institution, cannot unilaterally freeze a customer's account without a valid Order of Court.

In ***GTB V ADEDAMOLA (2019) 5 NWLR (Pt.1664) 30 @ P.43,*** the Court held:-

> ***"Before freezing a customer's account or placing any form of restrain on any Bank Account, a bank must be satisfied that there is an Order of Court."***

In the case of ***AROGUNDADE V SKYE BANK (2020) LPELR-52304 (CA), the Court Per TOBI, JCA, held @ PP. 32 -41, Paras A – C*** thus:

> ***"…No person or Institution has power unilaterally to place a restriction on the account of a customer. No law allows for such act or action in a civilized society people abide by the law and consequences are suffered for the violation of the law. This Court has condemned unilateral action of freezing customer's account without a Court Order…"***

Moreso, even in situations where fraud is alleged on the part of a Bank Customer, such as in this case, the Courts have held that before any form of restriction is placed on a customer's account, there must be a Court Order.

In the case of ***DIAMOND BANK V UNAKA & ORS (2019) LPELR -50350 (CA),*** the Court held as follows:-

> ***"…Where a Bank takes it upon itself to freeze the account of a customer or prevent a customer with money standing to his credit in his account from accessing the money, simply because of an allegation of fraud made against such a customer, it will amount to self-help and it is illegal and wrongful…"***

See: ***FIRST CITY MONUMENT BANK PLC VS ABDUL GAFRAU &B CO LTD (2017) LPELR-42452 (CA); ZENITH BANK PLC V WAILI (2022) LPE;R -57349 (CA); ZENITH BANK V DAILY TIMES OF (NIG) PLC & ANOR (2022) LCN/15851 (CA); FIDELITY BANK PLC C BAYUJA VENTURES LTD (2010) LPELR-8873 (CA).***

In the instant case, the Respondent has justified its act of freezing the account of the Applicant based on the Regulatory Framework on BVN Act.

Indeed, the policies of the CBN are geared towards sanitizing the Banking Industry among other things as well as checkmating criminality and other vices for the good of the public. Therefore, no doubt, the Respondent being a financial institution has a duty to ensure that the directives of the CBN are implemented.

However, the question to ask here is whether the Respondent can act on instructions of the CBN to freeze a Bank customer's account without a Court Order?

A bank has a duty under its contract with the customer to exercise reasonable care and skill in carrying out its part with regards to operations within its contract with its customers. The duty to exercise reasonable care and skill extends over the whole range of banking business within the contract with the customer.

See: ***UNION BANK OF NGERIA LIMITED V NWOYE (1995) 3 NWLR (Pt.435) 135; GUARANTY TRUST BANK PLC V ODEYEMI OLUYINKA JOSHUA (2021) LPELR-53173 (CA).***

In the case of ***AROGUNDARE V SKYEBANK (SUPRA)*** the Court held as follows:-

> ***"…In UBA PLC V YAHUZA (2014) LPELR-23976, …it is trite law that customer's monies in the hands of the banker are not in the custody or under the control of the customer and such monies remain the property in the custody and control of the banker and payable to the customer when a demand is made…"***

The Respondent in its Counter Affidavit even went further to state that it has reported the Applicant to the E.F.C.C., consequent upon the allegation of supplying fake and fictitious documents when applying for forex in the said FORM A. While the learned Respondent's Counsel had argued in the Written Address that such is enough justification for freezing the Applicant's account since Section 44(1) of the Constitution (supra) on the right to own property is not absolute.

Now assuming without agreeing with the Respondent's position that its action was justified, can the CBN issue instructions for restriction on a Bank customer's account unilaterally without a Court Order?

The Applicant's Counsel has argued in the reply on points of law, that assuming for the sake of argument only, that the purported Framework is even applicable in Banker-Customer relations, there's nothing in the said Framework that clothes the Respondent with the power to freeze accounts.

That even the power given to the Governor of CBN who's the Regulator of the entire Banking Industry under BOFIA to freeze accounts is stipulated under Section 97(1) of the Banks and other Financial Institutions Act (BOFIA) 2020.

I hereby reproduce the Section below for ease of reference thus:-

> ***"(1). Notwithstanding anything contained in any other enactment, where the Governor has reason to believe that***

> ***transactions undertaken in any account with any bank, specialized Bank or other Financial Institution are such as may involve the commission of any criminal offence under any law, the Governor may make an ex-parte application for an Order of the Federal High Court Verifying on Oath the reasons for the Governor's belief, and on obtaining such Court Order, direct or cause a direction to be issued to the Manager of the bank, specialized Bank or Other Financial Institution where the account is situated or believed to be, or in the alternative to the head office of such Bank, specialized bank or other Financial Institution directing the bank, specialized bank or other Financial Institution to freeze the account."***

In the instant case, the Respondent has not exhibited any evidence to show that the Governor of Central Bank of Nigeria had obtained such an Order of Court and has issued directions to the Respondent in that regard to justify it freezing the account of the Applicant.

It is therefore crystal clear that in this case, there's non-compliance with Section 97(1) of BOFIA Act 2020.

Thus, the implication is that without such compliance, the act of the Respondent was unilateral, illegal, oppressive, wrongful and unconstitutional. I so hold.

It is trite, that where the law provides for the method of doing an act, failure to abide by such law renders the decision a nullity which can ground an action in damages, such as in this case.

See: ***UNTH MGT. BOARD & ANOR V HOPE CHINYELU NNOLI (1994) 8 NWLR (Pt.363) 376.***

Consequently, the act of the Respondent in unilaterally freezing the account of the Applicant since May, 2022 and the continued freeze without a Court Order is a violation of the Applicant's Fundamental Human Rights guaranteed under Section 44(1) of the CFRN 1999 (as amended) and Article 14 of the African Charter on Human and People's Rights.

The Applicant has shown in his Supporting Affidavit that he has suffered as a result of the Respondent's act, which equally resulted in the Applicant's dignity being stripped as he was made to resort to living on charity of friends, family members and associates to feed and settle his mounting bills in the United Kingdom. I so hold.

The Applicant in his supporting Affidavit has equally deposed that since the offensive and asphyxiating conduct of the Respondent he has suffered humiliation, grave embarrassment to him and exposed him to opprobrium amongst his friends, associates and acquaintances, he has been unfairly cast in bad light as an insolvent, bankrupt and insufferable debtor.

It is therefore my view that the Respondent has no doubt violated the Applicant's right to his dignity as a Human person guaranteed under Section 34(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Applicant is therefore entitled to the reliefs sought in this application.

The sole issue is resolved in favour of the Applicant. The Court hereby grants reliefs 1, 2, 3, 4, 5 and 8. Relief No. 7 is refused.

On relief 6 it is equally granted as prayed and I award the sum of **₦30, 000, 000.00 (Thirty Million Naira)** against the Respondent in favour of the Applicant as general damages.

Signed:

Hon. Justice S. U. Bature
12/7/2023.