

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI**

THIS THURSDAY, THE 6TH DAY OF FEBRUARY, 2025.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CV/930/2024

BETWEEN

MR EMMANUEL TERHEMBA CHILE APPLICANT

AND

GUARANTY TRUST BANK LTD RESPONDENT

JUDGMENT

This is an application brought pursuant to the Fundamental Rights Enforcement Procedure Rules 2009. The Amended Originating motion on notice is dated 22nd May, 2024 and filed same date at the Court’s Registry.

The Reliefs sought as contained in the statement accompanying the application are as follows:

- a. A Declaration that the compulsory curtailment of the Applicant’s interest/rights in his moveable property (Funds in his bank account No: 0028158933) and rights/interest over the said funds by the respondent without compensation and without his consent is a gross violation of the Applicant’s fundamental right under Sections 36 and 44 of the Constitution of the Federal Republic of Nigeria and Article 44 of the African Charter on Human and People’s Rights.**
- b. A Declaration that the compulsory curtailment of the Applicant’s interest/rights in his moveable property (Funds in his bank account No: 0028158933) and rights/interest over the said funds by the respondent**

without compensation and without the prior order of a court of law or statutory backing was illegal, unlawful, barbaric, unconstitutional and therefore null and void and of no effect whatsoever.

- c. A Declaration that the Applicant has the right to property and his right to property cannot be arbitrarily interfered with save for public interest with prompt payment of compensation and in accordance with the appropriate provisions of the law in force in Nigeria.**
- d. A Declaration that the arrest and detention of the Applicant without warrant on 30th October, 2023 and subsequent handing over to the operatives of the Independent and Corrupt Practices Commission (ICPC) without disclosing to him the grounds/offence warranting his arrest as required by law and without arraignment to a competent court of law was/is unlawful, illegal and unconstitutional as its (sic) tend to breach the Applicant's fundamental rights to freedom of movement, liberty, ownership of moveable property and dignity of human person.**
- e. A Declaration that the Applicant is entitled to be informed of the reasons for his arrest and or detention in writing and in the language that he understood within 24 hours.**
- f. A Declaration that the Applicant is entitled to compensation and a written apology from the respondents jointly and severally.**
- g. An Order of this Honourable Court directing the Respondent to pay to the Applicant the sum of N100, 000, 000.00 (One Hundred Million Naira) only as compensation for his illegal arrest and detention without warrant on 30th October, 2023 without any charge, reason or trial.**
- h. An Order of this Honourable Court directing the respondent to pay to the Applicant the sum of N100, 000, 000.00 (One Hundred Million Naira) only as compensation for wrongful detention of the Applicant's funds without court order and without notice to the Applicant.**
- i. An Order of this Honourable Court directing the respondent to pay the Applicant the sum of N50, 000, 000. 00 (Fifty Million Naira) only as general damages for inconveniences, psychological pains, trauma, sufferings, embarrassment, humiliation and harassment.**

- j. An Order of this Honourable Court directing the respondent to pay the Applicant the sum of N200, 000, 000.00 (Two Hundred Million Naira) only as exemplary/aggravated damages.**
- k. An Order of this Honourable Court directing and compelling the respondent to cause a written apology to be published in a National Daily within the jurisdiction of this Honourable Court to the Applicant for violating his fundamental rights to liberty, freedom of movement and human dignity.**
- l. An Order of perpetual injunction restraining the respondent, its agents, privies, cohorts, representatives whatsoever, howsoever called from further breach of the fundamental rights to liberty, freedom of movement, ownership of moveable property and human dignity of the applicant.**
- m. An Order of this Honourable Court directing the respondent to pay the Applicant the sum of N1, 500, 000.00 (One Million, Five Hundred Thousand Naira) only as costs of litigation including damages arising from the professional fees.**

The Grounds upon which the reliefs are sought are as follows:

- 1. By Section 46 of the Constitution of the Federal Republic of Nigeria 1999 and Order II Rule (1) of the Fundamental Rights (Enforcement Procedure) Rules 2009 any person who alleges that his rights under Chapter IV of the said constitution has been, is being or likely to be contravened may approach a High Court in that State for redress.**
- 2. By the combined readings of Articles 41, 51, 12 and 28 of African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria, 2004 every individual including the applicant, is entitled to the enjoyment of his fundamental human rights without interference whatsoever, except in accordance with the Constitution.**
- 3. By Section 41 (1) of the Constitution of the Federal Republic of Nigeria, 1999 "Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. "**

4. **By Section 34 (1) of the Constitution of the Federal Republic of Nigeria, 1999 “Every individual is entitled to respect for the dignity of his person, and accordingly – (a) no person shall be subjected to torture or to inhuman or degrading treatment.”**
5. **By Article 27 of the African Charter and the provision of the 1999 Constitution, the applicant has the right to be humanly treated without humiliation, degradation and cruelty.**
6. **By Section 35 (1) of the Constitution of the Federal Republic of Nigeria, 1999 “Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by a law.”**
7. **By Section 35 (3) of the Constitution of the Federal Republic of Nigeria, 1999 “Any person who is arrested or detained shall be informed in writing within 24 hours (and in a language that he understand) of the facts and grounds for his arrest or detention.”**
8. **By Section 35 (4) of the Constitution of the Federal Republic of Nigeria, 1999 “Any person who is arrested or detained in accordance with subsection (1)(c) of this section shall be brought before a court of law within a reasonable time.”**
9. **By Section 35(5) “reasonable time” referred to in subsection (4) means the maximum of 48 hours where the distance is above 40 kilometers.**
10. **By Section 35 (6) “Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.”**
11. **By the combined readings of Articles 41, 51, 12 and 28 of African Charter on Human and People’s Right (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria, 2004, every individual including the Applicant, is entitled to the enjoyment of his fundamental human rights without interference whatsoever, except in accordance with the Constitution.**
12. **By Section 44 (1) of the Constitution of the Federal Republic of Nigeria, 1999 “No moveable property or 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 law that, among other things – (a) requires the prompt payment of compensation thereof...”

13. Article 14 of the African Charter on Human and People’s right provides thus: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

14. By Section 36 of the Nigerian Constitution and Article 7 of the African Charter every individual and person is entitled to be heard before any decision affecting his rights, interest or obligations would be reached by any government, authority or person.

The application is supported by a 14 paragraphs affidavit with one Exhibit annexed as **Exhibit A**. A written address was filed in compliance with the FREP Rules in which one issue was raised as arising for determination:

“Whether or not based on the facts and circumstances of this case the Applicant has made out a case of violation and threat to violation of his fundamental rights against the Respondents warranting the grant of the reliefs sought in the Application.”

Submissions were made on the above issue which forms part of the Record of Court. The thrust of the address is essentially that the actions of the Respondent complained of in the affidavit constituted a violation of the Fundamental Rights of the Applicant as enshrined in the constitution.

The Applicant also filed a further affidavit in response to the counter-affidavit of respondent. A reply on points of law was filed along with the further affidavit which essentially sought to accentuate the position earlier canvassed in the main address and it was contended that the extant action was properly initiated under the originating motion and thus competent.

At the hearing, counsel for the Applicant relied on the paragraphs of the supporting affidavit and the further affidavit and the addresses filed in urging

the court to hold that the actions of the Respondents were wholly unconstitutional and grant the Reliefs sought.

In opposition, the Respondent filed a counter-affidavit dated 8th March, 2024 with two (2) annexures attached and marked as **Exhibits GTB1** and **GTB2**.

A written address was filed in compliance with the FREP Rules in which two (2) issues were raised for determination as follows:

1. Whether the originating motion is the proper mode of commencing this action?

2. The issue framed by Applicant was adopted as issue 2.

Submissions were also made on the above issues which forms part of the Record of Court.

On **issue 1**, the case made out as a preliminary issue is that the mode of commencing this action by way of an originating application is not proper and thus incompetent. That the relationship between parties is that founded on contract and that the proper mode that ought to have been utilized to commence this action should be by a writ of summons. The respondent then argued on issue 2 that if the preliminary point fails, that on the substance, the actions taken by them did not infringe or violate the fundamental Rights of Applicant; that the actions they took were from instructions they received from the Independent Corrupt Practices and Other Related Offences Commission (ICPC) vide **Exhibit GTB2** and that having acted on the instructions, they are “shielded from any form of prosecution and liability on account of its compliance.” Reliance was placed on the provisions of **Section 45 (1) – (3) of the ICPC Act 2000**. The respondent contends that the fundamental rights of Applicant was not infringed in such circumstances.

At the hearing, counsel to the respondent relied on the paragraphs of the Counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application as the Applicant has not proved or established that his fundamental rights were infringed.

I have given an insightful consideration to all the processes filed by parties together with the oral amplification by respective learned counsel and it seems to me that notwithstanding the volume of the processes filed, the issue to be

resolved from the materials before the court falls within a very narrow legal compass and that is **whether on the facts and materials before court, the Applicant has proved that his fundamental human rights were violated by Respondents to entitle him to the reliefs sought.**

I will however first consider the **preliminary and threshold issue** raised by the respondent which I will prefer to reframe or modify in this concise and precise terms as follows:

Whether a person whose account was frozen without a court order can bring an action under the fundamental rights (Enforcement Procedure) Rules?

Now it is stating the obvious that firstly, jurisdiction is very important and indispensable in the administration of justice. It is fundamental as the validity or otherwise of any proceedings turns on its existence or non-existence. See **Uti V Onoyiwe (1991) 1 SCNJ 25 at 49.**

Secondly and as rightly alluded to by all counsel in this case, the issue of jurisdiction is a crucial question of competence extrinsic to the adjudication on the merits. It is a matter obviously which the court cannot dance around with and is usually given the utmost consideration when raised. In the often cited case of **Madukolu V. Nkemdilim (1962)1 AII W.L.R 587 at 595; The Supreme Court** instructively stated as follows:

“A court is competent to adjudicate when:

- a) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another; and**
- b) The subject matter of the case is within its jurisdiction and there is no feature which prevents the court from exercising its jurisdiction.**
- c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.**

Any defect in the competence of the court is fatal and the proceedings however well conducted and decided are a nullity as such defect is extrinsic to the adjudication”.

For the jurisdiction of the court to crystallize into hearing a matter, the three ingredients above must co-exist conjunctively.

As a logical corollary any challenge to the jurisdiction of the court must be clearly defined or delineated within the specific context of the ingredients or elements as defined above and then to situate its absence.

Now again, it is settled principle of general application that it is the Plaintiffs' claim or the affidavit in support of the Applicants originating application in this case that determines the question of the court's jurisdiction. The issue of the court's jurisdiction is best determined from this streamlined process which has to be carefully examined. The correct approach for a case or claim for the enforcement of Fundamental Rights on the authorities is to examine the reliefs sought, the ground(s) for the relief and the facts relied upon. Where the facts relied upon disclose a breach of fundamental right of the Applicant as the basis of the claim, there is redress available under the **FREP Rules 2009** and the **1999 Constitution**.

Applying the above set of criteria, I have carefully examined the processes filed by Applicant and his case essentially is anchored on the following streamlined scenarios:

1. **Reliefs (a), (b) and (c) border on the propriety or legality of the restriction placed on the account of Applicant without a court order and whether it constitutes a violation of his fundamental right within the purview of Section 44 of the 1999 Constitution.**
2. **Reliefs (d) and (e) situates complaints of the alleged unlawful arrest and detention of the Applicant and the failure to inform him in writing in a language he understands the reasons for his arrest and detention.**
3. **Reliefs (f) – (m) are essentially ancillary reliefs which border on compensation, damages, apology and injunction predicated on the success of the alleged violations of his fundamental human rights and (1) and (2) above.**

I note that the respondent here for reasons that are not clear has essentially based the **challenge on want of jurisdiction** on the basis of **Reliefs (a) – (c)** under scenario one above, ignoring the other reliefs situating constitutional

infractions and the remedies claimed. This is not a situation where it can be argued that **Reliefs (a) – (c)** are the principal reliefs while the others are ancillary reliefs based or predicated on it. It is clear that **Reliefs (a) – (e)** claimed by Applicant are all principal reliefs seeking enforcement of his fundamental rights and cannot be classed as ancillary reliefs predicated on a defined principal Relief(s) which is not a violation of Fundamental Human Rights. The implication here is that even where for example, the court cannot inquire into the availability of **Reliefs (a) – (c)**, it does not impact the jurisdictional competence of the court to determine the other reliefs which clearly seek enforcement of Fundamental Rights. While Respondent may have the liberty to engage in acts of apparent self denial of the existence of the other reliefs, the court enjoys no such liberties. As alluded to earlier, the court in determining whether it has jurisdiction cannot take one or two Reliefs in the midst of many in isolation but as part of a greater whole. The court has to take into consideration the totality of the facts of the case and the Reliefs sought, and not pockets of it to properly situate the case projected.

It would therefore be, with respect unduly limiting, in this case to reduce the lack of jurisdiction of the court on the basis of just **Reliefs (a) – (c)**.

Now even on **Reliefs (a) – (c)** which questions the restrictions place on the account of Applicant, the complaint raised here which is as clear as crystal is centered on the alleged violation of his fundamental right to own property within the purview of **Section 44 of the 1999 Constitution** and thus would appear to be a wholly constitutional question bordering on enforcement of a fundamental right.

Now it is true that the question of whether such restrictions on account by a bank constitute a violation of fundamental human rights or simply a matter constituting a breach of contract continues to generate debate in legal circles.

It is true in principle that the same facts which constitutes a violation or breach of a contract may also give rise to an infraction of a constitutional provision on fundamental human rights. This in my opinion does not necessarily impact the jurisdiction of a court to determine either of the cases. The jurisdiction to entertain any particular case will largely be dependent on the case presented. Where a cause of action is pleaded and streamlined on the pleadings as one of breach of contract, then such a case can conceivably not to be brought under the

conduit of enforcement of fundamental human rights. The converse appears to me to be the case; where the case on restriction of account is projected as a violation of a fundamental human right to own property, then a complaint cannot validly be made that it is a case of breach of contract which must be brought or initiated by a writ of summons.

The confusion here for me on the controversy which with respect is not real, stems from a lack of proper appreciation of the import of the constitutional provision on the right to own moveable property.

Section 44 (1) of the 1999 Constitution provides thus:

“44(1) No movable property or any interest in 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 ...”

The above provision is clear. In the **Black’s law Dictionary (8th Ed)** at page 1252, “**property**” is defined thus:

“The right to possess, use and enjoy a determinate thing (either a tract of land or a chattel); the right of ownership – the institution of private property is protected from undue governmental interference.

2. Any external thing over which the rights of possession, use and enjoyment are exercised.”

From the foregoing definition, it cannot be argued with any **conviction** that money is not property as it is something external over which the rights of possession, use and enjoyment are exercised.

The constitution under **Section 44(1) (supra)** may not have expressly situated the right to own money, but it clearly protects the right to own property which clearly includes financial assets and money. This then clearly implies that individuals have the right to earn, save and own money in Nigeria.

I incline to the view that **Reliefs (a) – (c)** are reliefs clearly centered on violation of fundamental human right to own property within the ambit or remit of **Section 44(1)** and therefore wholly a constitutional dispute bordering on

fundamental human rights. That for me is the crux of the aforementioned reliefs and I am unable to situate or appreciate how this fundamental constitutional question on the restrictions can be said to be a matter for **breach of contract**. The tendency to situate **Section 44 (1) (supra)** as some vague constitutional provision when **money** is involved, and the decidedly narrow interpretation given to the provision appears to me to be the source of the confusion.

The respondent may elect or choose to project the case of Applicant in a particular light to suit a particular purpose but the cause of action encapsulated in the processes before the court and in particular **Reliefs (a) – (c)** were initiated properly under the enforcement of fundamental rights procedure and firmly grounded in constitutional provisions. The point to underscore and judicial authorities are clear on the position of the law in relation to a claim for enforcement of Fundamental Rights. It is to the effect that Enforcement of Fundamental Rights or securing the enforcement thereof must form the basis of the Applicants Claim as presented to court. In other words, where the main claim or principal claim is not enforcement or securing of fundamental rights, the jurisdiction of the court cannot be properly exercised because it will be incompetent. These principles were projected in many cases including **Tukur V. Govt Or Taraba State (1997)6 NWLR (pt.510)549, Unillorin & Anor V. Oluwadare (2006)LPELR-3417(SC)** among others.

These authorities and the principles enunciated by our revered Apex Court remain good law but it has no application to the facts of this case.

I am therefore not persuaded that **Reliefs (a) – (c)** are not predicated on alleged contravention of a **fundamental right** which belongs to a constitutional class of actions. The contention that the case borders on breach of contract which ought not to have been initiated by the extant procedure is not availing. This case was not framed as one on breach of contract, therefore parties and even the Courts, I am afraid, have no competence to label a case or to foist on it a particular designation to suit a particular purpose.

Now it is true that parties on both sides have availed me with decisions, two each from Lagos State High Court to wit:

1. SUIT NO: ID/14679MFHR/22

BETWEEN:

MR ZHAO JINGONG APPLICANT

AND

UNITED BANK FOR AFRICA PLC RESPONDENT

Delivered on 13th June, 2024 by Hon. Justice (Mrs.) L.A.F. Oluyemi; and

2. SUIT NO: ID/15444MFHR/2023

BETWEEN:

MR. LI AI XIAN APPLICANT

AND

1. ACCESS BANK PLC
2. ECONOMIC AND FINANCIAL CRIMES COMMISSION } RESPONDENTS

Delivered on 5th September, 2024 by Hon. Justice Y.R. Pinheiro.

These decisions projected the position that restriction placed on accounts without a Court Order can be initiated under enforcement of Fundamental Human Rights actions;

And two, from my learned brothers of the **FCT High Court:**

1. SUIT NO: FCT/HC/CV/522/2021

BETWEEN:

MR. ADETOLA OLULENU ESQ. APPLICANT

(Trading under the name and style of Gracious Chambers)

AND

GUARANTY TRUST BANK PLC RESPONDENT

Delivered on 1st July, 2021 by Hon. Justice Muhammad S. Idris; and

2. SUIT NO: FCT/HC/CV/7130/2023

BETWEEN:

CHARLES OKWUDIRI ONUOHA APPLICANT

AND

STANDARD CHARTERED BANK OF NIGERIA LTD ...
RESPONDENT

Delivered by Hon. Justice Chinyere E. Nwachukwu on 17th April, 2024.

These decisions **projected** the contrary narrative.

It is obvious from my detailed analysis that if I was to decide the issue by a **casting vote**, I would have joined or casted that decisive vote along with my brethren in Lagos. I however enjoy no such decisive vote. These are all pronouncements of my respected brothers from the same court of coordinate jurisdiction and the decisions are persuasive.

Happily for me, our superior court of appeal will appear to have settled the controversy with recent pronouncements on the issue projecting the clear jurisprudence that **freezing or placing of freezing restrictions on accounts of bank customers without a court order amount to a breach of the customers fundamental right to moveable property guaranteed by Section 44 of the 1999 Constitution.**

In **Access Bank Plc V Agabsiere (2022) LPELR – 58489 (CA)**, the Court of Appeal per Patricia Mahmoud JCA, stated instructively as follows:

“The real question is whether the Respondent’s right or cause of action lies in an application for enforcement of fundamental rights under the Fundamental Rights (Enforcement Procedure) Rules or through a regular Writ of Summons. In answering this question, it is important to reproduce the provisions of Section 44 (1) of the 1999 Constitution allegedly breached by the Appellant. It provides follows: “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 law...” In resolving a similar dispute, this

Court in the case of *Olagunju V EFCC (2019)LPELR- (48462 (CA)* in ruling in a preliminary objection held thus: “In the resolution of issue No.1, I have held that the freezing of the Applicant’s account by the Respondent is unlawful and unconstitutional having been done without a Court order. Furthermore, I hold that the freezing of the Appellant’s account on the order of the Respondent without a court order amounts to a breach of the Appellant’s fundamental right to moveable property guaranteed by Section 44(2) (k) of the Constitution of the Federal Republic of Nigeria, 1999 and Section 34(1) of the EFCC Act.” The court also came to the same conclusion in the case of *GTB PLC V Adedamola & AMP; Ors (2019)5 NWLR, Pt 1664, 30 (CA)* where the appellant contended that the Respondent’s suit was not enforceable under the Fundamental Rights (Enforcement Procedure) Rules because like in the instant case the action centered on the restriction of the Respondent’s account as its principal relief. The instant case is on all fours with these two cases cited. I have no reason to depart therefrom. Consequently, I hold that the lower Court acted rightly in the exercise of its jurisdiction when he heard and determined the application.”

In *EFCC V UBOH (2022) LPELR – 57968 (CA)*, the same Court of Appeal per Balkisu Bello Aliyu JCA aligning with the above position stated thus:

“The order of the Appellant to freeze the Respondent’s bank accounts without an order of Court to that effect is a flagrant violation of his fundamental right guaranteed by Section 44 of the Constitution.”

This court and indeed all lower courts are bound by these decisions of the Court of Appeal under the principle of *stare decisis*. In a legal context, this principle is understood to mean that courts should generally abide by precedent and not disturb settled matters. Its meaning is that when a point of law has been once solemnly and necessarily declared by the decision of a competent court, it will no longer be considered open to an examination, or a new ruling, by the same court or tribunal or by those which are bound to follow its adjudications. In a hierarchical judicial arrangement, it precludes the judges of subordinate courts from changing what has been determined by a higher court. In other words, they should keep the scale of justice even and steady and not liable to waver with every Judge’s opinion. See *Adesokan V. Adetunji (1994)5 NWLR*

(pt.345)540; Okeke V. Okoli (2000)1 NWLR (pt.642)641, Osakue V. Federal College of Education, Asaba (2010)10 NWLR (pt.1201)1.

The doctrine therefore properly understood postulates that where the facts in a subsequent case are similar or close as facts in an earlier case that that been decided upon, judicial pronouncements in the earlier case are subsequently utilized to govern and determine the decision in the subsequent case. See **Nwangwu V. Ukachukwu (2000)6 NWLR (pt.662)674.** Similarly, where the provisions of a statute or section of a statute are the same or similar, and the purport, meaning and effect of such similar provisions of the statute or section had been considered in a previous decision of a competent court higher up in the judicial hierarchy, then such previous decision becomes a matter of judicial precedent and is binding on the courts lower in the hierarchy where they are called upon to consider a provision similar to that earlier considered. See **Nwobodo V. Onoh (1984)1 SCNLR 1; University of Lagos V. Olaniyan (1985)1 NWLR (pt.1)156 and Ngige V. Obi (2006)14 NWLR (pt.999)1.**

Accordingly the challenge to the jurisdiction of the court to entertain this action on the basis that **Reliefs (a) – (c)** were initiated wrongly through the Enforcement of fundamental rights conduit will not fly.

Even if **Reliefs (a) – (c)** were impacted negatively in any manner, I am not sure it would have prevented the court from determining the other infractions and reliefs claimed bordering on alleged **unlawful arrest and detention.** The Reliefs impacted would have simply been struck out. No more.

On the whole, the **jurisdiction** and indeed **competence** of this court to entertain this action initiated through the fundamental rights conduit appears firmly established by constitutional mandate and the authorities of our superior courts. The **preliminary objection** of 1st Respondent thus fails and is dismissed.

Now back to the **substance** and the issue formulated by court.

ISSUE 1

Whether on the facts and materials before the court, the Applicant has established or proved that his fundamental rights were infringed or violated by the Respondent to entitle him to all or any of the Reliefs sought?

Now it is settled principle of general application that an applicant who seeks for the enforcement of his fundamental rights under **Chapter IV of the Constitution** has the onus of showing that the reliefs he claims comes within the purview of the fundamental rights as contained in chapter IV and this is clearly borne out by the express provision of **Section 46 of the 1999 Constitution and Order 11 Rule 1 of the FREP Rules 2009**. In **Uzoukwu V. Ezeonu II (1991)6 N.W.L.R (pt.200)708 at 751**, the **Court of Appeal** in construing **Section 42 of the 1979 Constitution** which is in *pari materia* with **Section 46 of the 1999 Constitution** stated as follows:

“The Section requires that a person who wishes to petition that he is entitled to a fundamental right:

- a. Must allege that any provision of the fundamental rights under chapter IV has been contravened, or**
- b. Is likely to be contravened, and**
- c. The contravention is in relation to him”.**

The reliefs which therefore an applicant may seek under the FREP Rules are specifically limited to any of the fundamental rights prescribed and embodied in chapter IV of the Constitution. See **Dongotoe V. Civil Service Commission Plateau State (2001)19 WRN 125; Inah V. Okoi (2002)23 WRN 78; Achebe V. Nwosu (2002)19 WRN 412**.

I had at the beginning spelt out the reliefs of applicant in his statement accompanying the application and they clearly come within the purview of fundamental rights under **Chapter IV of the 1999 Constitution**. The burden therefore was on the Applicant alleging that his fundamental rights have been contravened or likely to be contravened to place before the court cogent and credible facts or evidence to enable the court grant the reliefs sought. See **Fajemirokun V. C.B.C.I (Nig) Ltd (1999)10 N.W.L.R (pt.774)95**.

In resolving this dispute, it may be necessary to again give same background facts as distilled from the processes filed by parties themselves for a proper appreciation of the issues raised and that will shortly be resolved. I prefer to take my bearing from the **affidavit of parties**. The case of Applicant as stated earlier can be situated within the following paragraphs of his affidavit as follows:

- “ 4. That I operate a salary account with the following particulars to wit; Account number: 0028158933; Account Name: Chile Emmanuel Terhemba with the Respondent.
6. That sometime in September, 2023 I went to the Respondent’s branches at Asokoro and Wuse II Abuja respectively to withdraw some money from my salary’s account domicile with the Respondent using my Bank’s Card but I was not allowed to withdraw on the grounds that my account has been placed on restriction or post no debit/frozen.
7. That I was reportedly informed by the ATM that I could not access the account as the said account has been frozen.
8. That I know as a fact that the Respondent also carries on business at Plot 1473, Ahmadu Bello Way, Area 11, Garki Abuja within the jurisdiction of this Honourable Court where I visited but unable to access my account.
9. That since September 2023 my salaries have been coming into my account but I have not been able to access my funds in my account with the Respondent as the respondent has exercised right of ownership over my account without my knowledge and consent.
10. That I have sufficient money in my salary’s account with the respondent but the respondent had since taken possession of the funds and have been exercising right of ownership over the funds compulsorily without giving me any compensation and interest on same.
11. That I know as a fact that I am not indebted to the respondent.
12. That I know as a fact that the respondent have never notified me of the reasons for freezing my account but have been collecting every money that goes into my account without rejection.
13. That I do not have pending issues with the respondent to the best of my knowledge and the respondent too has never disclosed any issue to me.
14. That I know as a fact that my account with the respondent is not under investigation to the best of my knowledge and have never received any money from suspicious source to the best of my knowledge.

- 15. That I have not been served with any court order from the respondent authorizing the freezing of my account domicile with the Respondent.**
- 16. That the respondent had placed restriction on my account without giving me any notice to that development.**
- 17. That the respondent had placed restriction on my account without serving me with a court order to that effect.”**

The Respondent in its counter-affidavit averred thus:

“4. That I was informed by MOYO AMONDI a Legal officer of the Respondent’s Legal Department on the 29th February, 2024 at about 10:43am in our office at 1 Dutsima Close, Off Kano Street, Area 1, Garki, Federal Capital Territory Abuja of the following facts which I believe to be true and correct as follows:

...

- b. That the Applicant is a customer of the Respondent maintaining Account No. 0028158933.**
- c. That on the 12th October, 2023, Guaranty Trust Bank Ltd received a letter with Reference No. ICPC/OPS/BFI/SDD/T.B/439 dated 10th October, 2023 from the Independent Corrupt Practices and Other Related Offences Commission. The letter is attached herewith as Exhibit GTB1.**
- d. That Exhibit GTB 1 mandated the respondent to place an embargo on all debit transactions on the Applicant’s account as well as inform the commission once there is any attempt to make withdrawals across the counter from the Applicant’s account until the order is varied.**
- e. That in line with the extant provisions of the Corrupt Practices and Other Related Offences Act 2000, the Respondent immediately complied with Exhibit GTB 1 by restricting withdrawals from the Applicant’s account.**

...

- h. That the Respondent as a law abiding financial institution, lawfully placed a restriction on withdrawals from the Applicants account in compliance with Exhibit GTB 1 as provided by the extant provisions of the Corrupt Practices and Other Related Offences Act 2000.**
- i. That failure of the respondent to obey or comply with Exhibit GTB1 would have amounted to violating the provisions of the Corrupt Practices and Other Related Offences Act 2000.**
- j. That Exhibit GTB 1 is still subsisting and same has not been varied as provided by extant provisions of Corrupt Practices and Other Related Offences Act 2000 or any court of competent jurisdiction till date.”**

The Respondent here did not deny or controvert the fact that it indeed placed restrictions on the account of Applicant on the directives of ICPC vide **Exhibit GTB1** dated **10th October, 2023** and not on the basis of any **Court Order**.

The narrow question here is whether the actions of the respondent on the instructions of ICPC has legal validity?

Happily again for lower courts, the question of the propriety of law enforcement agencies like the EFCC, ICPC unilaterally giving orders to financial institutions to freeze accounts or place any form of restriction on any bank account such as raised by the extant case has been given full vent and expressions by our Superior Courts. My duty especially where the facts are the same or similar is to refer to those decisions and apply same. I note the extensive submissions made by Respondent in its affidavit and address which essentially seeks to shift any responsibility or blame in the circumstances to the ICPC relying on extant provisions of the ICPC Act.

These submissions were however made without reference to any judicial authority to support their position and also without reference to a plethora of clear judicial authorities defining the correct legal position and or parameters on the propriety of Banks such as respondent acting on the unilateral directives of law enforcement agencies like the ICPC. I sense here a deliberate reluctance to address these decisions of the superior courts which I will soon refer too.

As alluded to earlier, counsel may have or enjoy liberty to ignore these decisions but a court of law qua justice, especially lower courts in the hierarchy

enjoys no such liberties, for obvious reasons. Those decisions thus remain binding. I leave it at that.

As stated earlier, I will simply refer to these decisions which dealt with decidedly similar matters like the one in the extant suit.

In **Arogundade V Skye Bank (2020) LPELR – 52304 (CA)**, the court extensively deciding on a similar matter espoused the legal principle thus:

“The Respondent never obtained any Court order to do that but went on unilaterally to place the restriction on the accounts of the Appellant. Is this a legitimate action which the law allows and permit? I generally do not think so. 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. This Court has condemned unilateral action of freezing customers account without a Court order in the case of in GT Bank V Adedamola & Ors (2019) LPELR-47310 (CA). It is in the interest of both Government and citizens that laws are respected, as respect for the rule of law promotes order, peace and decency in all societies, we are not an exception. Our financial institutions must not be complacent and appear toothless in the face of brazen and reckless violence to the rights of their customers.

The point I am laboring to make here is to drive home the point that generally the Respondent has no right whatsoever to place a restriction on the account of the Appellant unilaterally. This is both legally and morally unacceptable. The law frowns against unilateral use of power by any person or institution hence the doctrine of separation of power was entrenched in our Constitution. For emphasis sake, I will state again that the Respondent has no right whatsoever to unilaterally place a restriction order on the accounts of the Appellant not even for the best of reasons. What is clear from the facts of the case on appeal is that there was no Court order that gave the Respondent power to place the accounts of the Appellant with the Respondent on restriction. The Respondent unilaterally took that decision without the order of any Court. This was a bold and dangerous step taken by the Respondent. See also GTB PLC V. ETUWEWE & ANOR (2021) LPELR – 56768 (CA).

In **Diamond Bank Plc V Chijioke Unake & ors (2019) LPELR-50350 (CA)**. The Court of Appeal held thus:

“The law is that a Bank has no right or power, by itself, to freeze the account of a customer, be it its staff or otherwise, and/or to prevent such a customer with money standing to his credit in his account from accessing the money – First City Monument Bank Plc Vs Abdul Gafaru & Co Ltd (2017) LPELR – 42452 (CA). The only exception is where the Bank receives notice of the death of a customer, it is under a duty in such a circumstance to stop withdrawals from the account, and only the legal representatives of the customer duly appointed by law can access the account thereafter. 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 – Fidelity Bank Plc V Bayuja Ventures Ltd (2010) LPELR 8873 (CA) per Abiru, JCA (now JSC) (p.37, paras. A-F).”

In effect, the Respondent lacks the power(s) to unilaterally freeze the account of the Applicant without a subsisting **Court Order**. The ICPC as an institution is not a court recognised by the constitution. The provision of **Section 6 (1) and (6) of the 1999 Constitution** projects clearly that the judicial powers of the federation shall be vested in the **courts** to which this section relates, being courts established for the federation.

As a logical corollary, since the ICPC is not a court under the constitution, it follows that it cannot legally issue order(s) for freezing of accounts. That duty and responsibility which is not shared is solely that of the **Courts**.

In this clear context, the reliance by respondent on the provision of **Section 45 (2) of the ICPC Act 2000**, will equally not fly or be helpful to respondent in the light of the decisions of the Court of Appeal. The imperative for the respondent to obtain a **Court Order** cannot be glossed over or jettisoned for any reason.

I shall also here call in aid decisions of our Superior Courts which admittedly dealt with provisions of the EFCC Act, but the principles apply *mutatis mutandis* notwithstanding that in this specific case, we are dealing with the ICPC Act.

In **GTB Plc v Adedamola (2019) 5 N.W.L.R (pt.1664) 30 at 43 E-H**, the Court of Appeal, per Tijani Abubakar, J.C.A (as he then was) construed the provision of **Section 34(1) of the EFCC Act, 2004** in the case and held in unambiguous terms the procedure for the freezing of an account pursuant to that Section as follows:

“Before freezing 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. By the provisions of Section 34 (1) of the Economic and Financial Crimes Commission Act 2004, the Economic and Financial Crimes Commission has no power to give direct instructions to banks to freeze the account of a customer without an order of court, so doing constitutes a flagrant disregard and violation of the rights of a customer.”

The learned jurist in his judgment called on financial institutions not be complacent but insist on adherence to clear provisions of the Act thus:

“Our financial institutions must not be complacent, reticent and toothless in the face of the brazen and reckless violence to the rights of customers. Where there is a specific provision regulating the procedure for doing a particular act, that procedure must be followed.”

Also in the case of **GTB V Odeyemi Oluyinka Joshua (2021) LPELR – 53173 (CA)**, the law lords at the court again reiterated the principles in the earlier decisions cited and stated per Abiriyi JCA as follows:

“It is clear from reading of the entire Section 34 of the EFCC Act that the commission if satisfied that money in the account of any person is made through the commission of an offence may apply to the court ex-parte for the power to freeze the account. The EFCC may by an order issued by the court direct the freezing of the account, the bank shall then take necessary steps to comply with the requirements of the order. “Order” rings a loud bell in both subsections (2) and (3) of the said Section 34 of the EFCC Act. This is not surprising because the freezing of the account of a person will be done if the money is reasonably suspected by the court to have been made through the commission of an offence. It is then that the court makes the order sought by the EFCC and without that order, the bank or any financial institution cannot freeze the account of any person. The Order of the Court is the basis for any other action under the section as an allegation

that money is made through the commission of an offence is a serious allegation. It is for this reason that the bank must ensure that there is an order of court before it proceeds to freeze the account of any person. That is what Section 34 (3) means by the Bank taking necessary steps to comply with the order. In my view, a bank fails to enquire whether or not EFCC had obtained an order of court at its peril... The procedure set out in Section 34 of the EFCC Act must be followed by the EFCC and the bank and other financial institution.”

On the rather interesting contention that the EFCC Act did not give an option to the financial institution to disobey the directive of EFCC and that they are being punished for following the directive of EFCC, the Court of Appeal in the above decision stated instructively as follows:

“I do not agree with learned counsel for the Appellant that the Appellant was being punished for the sin of the EFCC and that the Act did not give the Appellant, the option of disobeying EFCC. With respect to learned counsel for the Appellant, the Appellant had no business obeying an unlawful directive of EFCC. The Appellant is only expected to comply with a lawful directive of EFCC otherwise the rights of customers to their money in the bank would be arbitrarily interfered with. This would be contrary to the safeguards provided for under Section 34 of the EFCC Act. Section 34 of the EFCC Act is intended to prevent the EFCC from interfering arbitrarily with the rights of customers of the banks or other financial institutions to their funds. That purpose will not be achieved if the banks and the EFCC as in this case are allowed to illegally get their customers accounts frozen through the back door...”

I have deliberately and in some detail quoted at length the pronouncements of our Superior Courts on the issue to **project the clear position to all Banks and financial institutions** that Account(s) cannot simply be frozen or restrictions placed without an **order of a Competent Court**.

On the basis of these **binding precedents**, there is no room any longer for the freezing of any account on the purported dubious directive of ICPC or any law enforcement Agency without a **Court Order**. The courts provide a critical judicial oversight in the circumstances. The Respondent therefore has a duty to ensure that there is a **Court Order** before freezing or placing any form of

restraint on any Bank account. If the Respondent Bank or Financial Institutions were hitherto unsure or have any hesitation or concerns or even fear when they receive such directives, and don't want to ask or demand for the Court Order allowing for the placing of the restrain on the account, the decisions of our **Superior Courts** have now made it abundantly clear and provided legitimate grounds to now insist and demand for such Court Order(s). They should now be emboldened to insist on compliance with the law. If any institution fails to do the needful, it will have only itself to blame. The ICPC is a creation of law and subject to the dictates of the Rule of Law. The ICPC is not above the law and must thus always keep strict fidelity to the requirements of the law. If for whatever reason(s), the ICPC fails to comply with the requirements of the law, the Bank must on their part unhesitatingly demand and insist on compliance with the law.

One more point. I have read the said notice by **ICPC** vide **GTB1** attached to the Counter-Affidavit of Respondent and it is strange that nothing was **disclosed in it in terms of commission of any offence** against Applicant or his account.

All the notice vide **paragraph 2** says is as follows:

“Whereas the commission is of the opinion that the account operated by the above account holder is subject of investigations for offences under the ICPC Act 2000, the bank shall henceforth place an embargo on all debit transactions on the above-mentioned account including fixed deposit in respect of same and shall not part with or deal in the movable property or otherwise until this order is revoked or varied.”

It is a matter of great concern that **restriction** will be placed on an account on such nebulous and unclear allegation of commission of an offence. The ICPC obviously cannot operate in such opaque manner without any defined parameters. To have denied Applicant access to his earnings on the strength of a fluid, unclear and un-defined investigations for offences under the ICPC Act for over a year now without any charge and hearing and without an order of court is intolerable and unacceptable.

On the whole, the respondent lacks the power to unilaterally freeze or place restrictions on the account of Applicant without a subsisting court order.

Consequently I find that the Respondent acted in flagrant disregard and violation of the fundamental right of applicant to hold property in that respect.

This now leads to the complaint relating to the **alleged unlawful arrest and detention** of Applicant.

Now in **paragraphs 19-29** of affidavit in support, the applicant stated thus:

“19. That I went into the Respondent’s banking hall, Oshogbo Branch to make a transfer which I could not make through the ATM and my transfer order was refused by the respondent.

20. That the Operation Manager of the respondent Mr. Oyedokun Ogundele spearheaded my arrest and detention in the banking hall on 30/10/2023.

21. That I was under banking hall arrest and detention some hours as the Operation Manager called the Chief Security Officer and the Police Officer on duty to ensure that I have been arrested and taken to the nearest police station.

22. That the police officer and the team of officers called by the Operation Manager declined to arrest me because it was not their case as no crime was alleged to have been committed by me by the Respondent against the bank.

23. That the Operation Manager in the Oshogbo branch of the respondent with the security officers attached to the respondent’s branch save the police officers arrested me without warrant and detained me until the police officers came from the outside to arrest me.

24. That upon the police interrogation on the reasons for the arrest, the police officers on listening to the cause, told the Operation Manager to call the Independent Corrupt Practices Commission (ICPC) as according to the Operation Manager it was the ICPC that gave them the directive to arrest me.

25. That the security officers following the instructions of the operation manager accosted me while he called another security officers now the

Independent Corrupt and Practices Commission (ICPC) who came in a Hilux Van for my arrest.

26. That the Operation Manager of the Respondent who was overzealous called the operatives of the ICPC who came and arrested me, handcuffed me and whisked me away to their office at Oshogbo.

27. That the officers of the ICPC in Oshogbo called their colleagues at the Headquarters Abuja where they were directed to release me forthwith that they did not give orders for my arrest.

28. That the officers of the ICPC released me shamefully with insincere apology for the arrest pleading that it was the call from the Operation Manager of the Respondent that gave them the right to arrest me.

29. That I was publically embarrassed and humiliated whilst handcuffed and whisked away in Hilux Van of the ICPC as a common criminal following the investigation and promptings of the Respondent's officers at Oshogbo."

The respondent in response stated thus:

"f. That contrary to the averments in paragraphs 20-29 of the Applicant's affidavit, the respondent did not at any time arrest the Applicant but only complied with the directives of Exhibit GTB 1 by informing the ICPC of withdrawals as stated in Exhibit GTB 1.

g. That contrary to paragraph 31 of the Applicant's affidavit, the respondent did not at any time cause any humiliation on the Applicant."

The respondent has above denied or controverted the facts averred by Applicant relating to his arrest and detention at the respondents banking hall in **Osun State** on 30th October, 2023.

As alluded to earlier, the question of infringement of fundamental rights is largely a question of facts and does not depend so much on the dexterous submission from the forensic arsenal of learned counsel on the law. So, it is the facts of the matter as disclosed in the processes filed that are examined, analyzed and evaluated to see if the fundamental rights of the Appellants were eviscerated or otherwise dealt with in a manner that is contrary to the

constitutional and other provisions on the fundamental rights of an individual. The law remains that he who asserts must prove, so the Applicant had the onus of proving by credible affidavit evidence that his fundamental rights were breached. See **Chief Godwin Obla V EFCC (2019) All FWLR (pt.991) 37.**

It is the duty of the court to now examine the facts to determine whether the Respondent violated the Fundamental Rights of Applicant.

In this case, beyond the challenged contested assertions as situated in the affidavits of parties, nothing was placed by applicant before court that he was in the respondent's **Oshogbo Branch on 30th October, 2023** where the operations manager, one Oyedokun Ogundele spear headed his arrest and detention in the banking hall. Nothing credible was situated in proof of this arrest and detention. If Applicant was arrested and detained in a banking hall, suggesting that it is a public place with other customers transacting business in the hall, it is strange that nobody was presented to file an affidavit to lend credibility and credence to this narrative.

There is no clarity as between the manager and security officers attached to the bank who arrested and detained applicant. Are Mr. Oyedokan and the security men attached to the Bank, Police Officers? There is really nothing to indicate that the said operation manager is a police officer and it is therefore difficult to situate how he could have arrested and detained applicant in the banking hall. If the security officers on the other hand are not police officers, who are they and to which security agency are they attached to and was any complaint made by Applicant against them to either the police or the security agency or outfit itself?

These questions must be asked because in paragraph 22 of the affidavit, applicant said the police officers called by the operation manager declined to arrest Applicant as no crime was committed by him.

Now if police officers who legally could arrest and detain did not effect the arrest and detention of Applicant, who then effected his arrest and detention on 30th October, 2023?

Again if Applicant was arrested, handcuffed and publicly humiliated, the question here is where is the evidence to situate the arrest and the handcuffing of Applicant and the public humiliation allegedly suffered?

There is really nothing unfortunately on the materials before court to situate and prove the arrest, detention and public humiliation of applicant and the court cannot speculate.

All these issues cannot simply be left hanging in the air for purposes of securing a decision on infraction of human rights. I only need add here that the business of court does not include that of speculating. A court of law qua justice only acts or decides on the basis of what has been clearly demonstrated and creditability proved. I must also add that bare averments of infractions in an affidavit cannot suffice especially here where they are seriously controverted or challenged. I do not think that the assertions of applicant can stand or be accepted as correct without proof. The mere stating of a fact does not prove the correctness or credibility of that fact without cogent evidence to substantiate same. In as much as the assertion does not relate to any fact which the court can take judicial notice, it behoves applicant to substantiate same with proof.

The point therefore is that in a fundamental rights enforcement matter, which is a serious matter, the court will not declare an applicant's right(s) to be infringed simply because he says so and in the absence of credible evidence or proof. The materials also supplied by applicant in the circumstances must also not be such that is incredible, improbable or sharply falls below the standard expected in a particular case. It must establish that the rights claimed exist and has been infringed upon or is likely to be infringed. See **Neka B.B.B Manufacturing Co. Ltd. V. ACB Ltd. (2004)2 N.W.L.R (pt.858) 521 at 550 – 551.**

It is trite law that once an infringement of fundamental right is proved or established, the award of compensation in form of monetary damages, whether claimed or not, follows. See **Heritage Bank V S.S. Wireless Ltd (2018) LPELR – 46571 (CA).** Thus, the Court is empowered to make any order that may be considered just or appropriate once it is proved that a fundamental right has been violated in relation to any person. Having found that the Respondent has violated the Fundamental Rights of the Applicant, the award of damages follows.

This court equally has the inherent powers to make consequential orders. The court in granting or making consequential orders is not making a new case for the party. It is simply given effect to the judgment already given, not by granting a fresh or unclaimed or unproven Relief.

A consequential order on the authorities of our Superior Courts is an order founded on the claims of the successful party. It is merely incidental to a decision properly made but one which gives effect to the decision. It is also an order which flows necessarily, naturally, directly and consequentially from a judgment delivered by a court in a matter. It arises logically and inevitably by reason of the fact that the order in question is perforce obviously and patently consequent upon the decision given by the court and does not need to be specifically claimed as a distinct or separate head or item of relief. See **A. Ogbahon V The R.T.C.C.C.G & Anor (2002) 1 NWLR (pt.749) 675 at 701; Liman V Mohammed (1999) 9 NWLR (pt.617) 116.**

The above finding provide firm factual and legal basis to determine whether the reliefs of claimant are availing.

On the basis of the findings as demonstrated above at length, **Reliefs (a) and (b)** will be availing. With the success of Reliefs (a) and (b), **Relief (c)** will be availing on terms as framed hereunder. Flowing from this relief and the success of **Reliefs (a) and (b)**, a consequential order will follow for the re-opening of the Account. As stated earlier, this consequential relief is an offshoot of the main relief sought and owes its existence to the said main Reliefs.

Reliefs (d), (e), (g), (h), (i) and (k) fail for want of evidence.

Reliefs (f) and (l) for compensation for the wrongful detention of funds in applicants account is availing on terms as situated hereunder. In **Heritage Bank V S.S. Wireless Ltd (supra)**, the Court held thus:

“It is trite that once an infringement of fundamental right is proved or established the award of compensation in form of monetary damages, whether claimed or not, follows as surely as sunrise in the Tropics (permit the expression). There is nothing like categorization and particularization of damages in an action for the enforcement of fundamental rights vide Jim-Jaja V C.O.P. Rivers State (2013) 6 NWLR (pt.1350) 225 at 254 per the lead judgment prepared by Muntaka-Coomassie, J.S.C. thus:

The appellant’s claim is in connection with the breach of his fundamental rights to his liberty by the respondents. The onus is on him to show that he was unlawfully arrested and detained i.e. that his fundamental right has been violated. If this is proved, by virtue of the provision of Section 35(6)

of the 1999 Constitution Federal Republic of Nigeria, the complainant is entitled to compensation and apology, where no specific amount is claimed. Where a specific amount is claimed, it is for the Court to consider the claim and in its opinion, the amount that would be justified to compensate the victim of the breach. In this respect, the common law principles on the award of damages do not apply to matter brought under the enforcement of the Fundamental Human Rights procedure as submitted by the learned counsel to the 3rd respondent. The procedure for the enforcement of the Fundamental Human Right was specifically promulgated to protect the Nigerians' fundamental rights from abuse and violation by authorities and persons. When a breach of the right is proved, the victim is entitled to compensation even if no specific amount is claimed."

Relief (j) is for exemplary damages in the sum of N200 Million.

On exemplary damages, the Supreme Court in **Allied Bank of Nigeria V. Akubueze (1997) 6 NWLR (pt.509) 1** stated thus:

"Exemplary damages properly so called may be awarded in actions in tort but only in three categories; these are:

- i. In the case of oppressive, arbitrary or unconstitutional action by the servants of the government.*
- ii. Where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.*
- iii. Where there is an express and authorization by statute."*

See also **Guardian Newspaper V. Ajeh (2005) 12 NWLR (pt.938) pg. 205 at 215** where it was held that:

"Punitive or exemplary damages are damages on an increased scale, awarded to the Plaintiff over and above what will barely compensate him for his loss where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud or wanton and wicked conduct on the part of the defendant and are intended to solace the plaintiff for mental anguish and punish the defendant."

The essence of this kind of damages which is usually on an increased scale is not only to compensate but also to punish the Respondent and deter others especially where they acted willfully and maliciously.

In this case, the actions of respondent is clearly based on the instructions of a law enforcement agency. Their adherence to the directive I found to be wrong, but their actions cannot be said to be malicious or arbitrary and neither can their conduct be said to be calculated to make a gain or profit for themselves.

Relief (j) is thus not availing.

Relief (I) for order of perpetual injunction restraining the Respondent whether by themselves, their agents, privies, or servants from further breach of Applicant's fundamental rights including ownership of property and human dignity is clearly ambiguous.

It appears to me that this **order of injunction** against any future possible placing of restrictions on Applicants' account and violation of his human dignity is at large and too wide thereby creating unnecessary obstacles for the Banks in properly carrying out their duties as and when necessary particularly where acts of criminal infractions are perpetrated using Accounts in Banks and the Bank must act immediately to protect funds of innocent customers.

In the circumstances, the fundamental rights of any citizen must be protected and our courts of law and justice serve as a necessary bulwark against the violation of these rights. However, a court of law cannot be seen to shield anybody from investigations, where fraud or underhand dealings are discovered. The only caveat is that the investigations must be carried out as allowed by law.

Let me here borrow and apply the instructive principle made in the case of **Jimoh V. A.G. Fed. (1998)1 HRLRA 513** where it was instructively stated that a court must as a rule, limit itself to the circumstances of a particular case or a case placed before it in granting orders of injunction. Thus a court cannot be moved to make an order of perpetual injunction or blanket injunction against any future lawful activities of any financial institution. If the applicants again has restrictions placed on his account without a Court Order or he is arrested for no just cause, the courts are always open and justice will be dispensed without fear or favour, affection or ill will. The relief on **perpetual injunction** fails.

Finally **Relief (m)** on cost. There is no provision for the award of cost under the **FREP Rules** but under the provision of **Order xv Rule 4 of the FREP Rules** where in the course of any human rights proceedings, any situation arises for which there appears to be no adequate provision in the Rules, the Civil Procedure Rules of the Court for the time being shall apply. Now under **Order 56 Rule 1(3) of the Rules of Court**, the Court has the discretion to make an order for cost as allowed under the principles stated in the order. The order is essentially discretionary guided by the dictates of the facts of each case. Again, having considered the totality of the facts of this case, I incline to the view that an award of cost should enure in the circumstances. I am obligated to take into consideration the imperative of indemnifying the Applicant for the expenses to which he has been subjected to, in addition to offering some compensation for the time and effort expended prosecuting this action, which would have been unnecessary if the Respondent had simply disregard the unlawful directive to freeze the account of Applicant.

On the whole and for the avoidance of doubt, the application has considerable merit and I hereby make the following Orders:

1. **IT IS HEREBY DECLARED** that the acts of Respondent in freezing, curtailing or placing restriction on Applicant's Guaranty Trust Bank Account No: 0028158933 based on undisclosed investigations for offences under the ICPC Act 2000 without an Order of a competent Court of law and granting audience to Applicant constitutes a gross violation of Applicant's Rights to fair hearing and ownership of property as guaranteed under Sections 36 and 44 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).
2. **IT IS HEREBY DECLARED** that the Applicant has a right to property/money in his Account with Guaranty Trust Bank and that the right cannot be interfered with except as allowed by law and the constitution.
3. **IT IS ORDERED** that the Respondent shall forthwith unfreeze and/or remove the restriction placed on the Applicant's Guaranty Trust Bank Account No: 0028158933 without any further delay.
4. I award the sum of **N3, 500, 000** being general damages for the unlawful and illegal freezing and/or placing of restriction on the Applications Guaranty

Trust Bank Account No: 0028158933 since September 2023 thus subjecting Claimant to hardship and economic ruination.

5. I award cost of this action assessed at N200, 000 payable by Defendant to the Applicant.

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Hon. Justice A.I. Kutigi

Appearances:

1. *Chief S.T. Yenge Esq., for the Applicant.*
2. *Martins Ekpa, Esq., for the Respondent.*