

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 57 KUJE ABUJA
THIS 9TH DAY OF JULY 2025
BEFORE HIS LORDSHIP: HON. JUSTICE ODUNAYO O. BAMODU, mni

SUIT NO. FCT/HC/CV/5552/2024

BETWEEN

SALAU AYODELE MOSES.....CLAIMANT

AND

1. FIRST BANK OF NIGERIA PLC)
2. LIVING TRUST MORTGAGE BANK PLC)
3. INSPECTOR GENERAL OF POLICE)
4. COP X-SQUAD SECTION FORCE CID).....RESPONDENTS

REPRESENTATION

M. A. Bello Esq, for the Claimant.
Lawrence Adeshina Esq, for the 2nd Defendant.

JUDGMENT

INTRODUCTION

The Claimant by a Writ of Summons dated and filed on 17th December 2024 sought the following reliefs:

1. An order of this Honourable Court directing the 1st Defendant and its servants, agents and privies to lift the restriction placed on the Claimant's First Bank Account Number 2018453971 domiciled and operated with the 1st Defendant.
2. An order of perpetual injunction restraining the Defendants whether by themselves, their agents, privies or servants from interfering with the account number 2018453971 belonging to the Claimant and domiciled and operated with the 1st Defendant without due process of law.

3. A declaration that Section 89 of the Evidence Act 2011 does not empower a Magistrate to issue a Banker's order and/or order of freezing Bank accounts.
4. A declaration that a Magistrate Court lacks the powers to make banker's order and/or order of freezing bank accounts pursuant to non-existent/repealed section 7 of the Banker's Order Act 1847 (42 VICO11).
5. An order of this Honourable Court declaring the order of the Chief Magistrate Court of Nasarawa State Per Hon. V. V Manga Esq. In the case No. CMC/MG/CR/2724/2023 between IGP v. FIRST BANK PLC & 3 OTHERS made on the 15th May 2023 as non (sic) and void having being delivered without jurisdiction to freeze Bank account of the Claimant.
6. An order of this Honourable Court mandating the Defendants jointly or severally to pay to the Claimant the sum of N10,000,000 (Ten Million Naira) as general damages for the unlawful freezing of the account number 2018453971 belonging to the Claimant domiciled and operated with the 1st Defendant.
7. An order of this Honourable Court mandating the Defendants jointly and severally to pay to the Claimant the sum of N5,000,000 (Five Million Naira) as punitive, compensatory and exemplary damages for the psychological trauma and hardship suffered by the Claimant for the unlawful freezing of his account number 2018453971 domiciled and operated with the 1st Defendant.
8. An order awarding the cost of N5,000,000 against the Defendants jointly as the cost of this suit.
9. And for such order(s) or further orders as this Honourable Court may deem fit to grant in this circumstance.

The Claimant's writ was filed along with a Statement of Claim adopting the same reliefs, a witness statement on oath of the Claimant, a list of documents to be relied on (with the frontloaded copies of proposed exhibits), list of witnesses, and a pre-action counselling certificate.

The 1st Defendant entered a conditional appearance on the 17th of February 2025 and filed its statement of defence on the same date.

The 2nd Defendant also filed its statement of defence, dated the same day, on the 17th of February 2025.

The 3rd and 4th Defendants neither filed a memorandum of appearance nor a statement of defence.

The Claimant further filed a reply to the 2nd Defendant's statement of defence on the 24th of February 2025.

CASE OF THE PARTIES

The Claimant's case is that he resides at 11B Zone C, Ushafa, Bwari Area Council, Abuja-FCT, and works as a civil servant with the Veterinary Council of Nigeria at its head office at Plot 434 Zambezi Crescent, off Aguiyi Irosi (sic) Street, Maitama, Abuja.

The Claimant maintains a First Bank account number 2018453971 with the 1st Defendant.

The Claimant's application for a loan of N1,000,000.00 was approved by the 2nd Defendant through an offer letter dated 9th of June 2021 (Exhibit P1) and which the Claimant accepted on 15th of June 2021. The loan amount of N1,000,000.00 was paid into the Claimant's First Bank account number 2018453971 on the 23rd of June 2021; with the terms of tenor of repayment of 24 months maturing on 23rd June 2023. The sum of N55,912.32 being the monthly repayment schedule of principal sum and interest commencing on 23rd July, 2021, which obligation he has fulfilled; and by April 2023 has paid the total of N923,700 to the 2nd Defendant.

On 8th November 2023 he was transferred by his employers from Abuja to Ibadan (letter Exhibit P2) and he informed the manager of the 2nd Defendant about the transfer including that his family remained in Abuja and that he visited from time to time.

Sometime in 2023 one ASP Taiye Faith from the office of the 4th Defendant called him, calling him a thief and a criminal because the 2nd Defendant had lodged a complaint that he obtained a loan from them and ran away. He explained that he was only transferred as a civil servant and could not run away for a balance of less than N500,000 and he was keeping to the schedule of repayment. He heard nothing on the matter again until shortly after he noticed that his First Bank account number 2018453971 was frozen by the

1st Defendant. On inquiry, the 1st Defendant informed him they acted on the instruction of the Nigeria police, the 3rd and 4th Defendants. His account remained frozen despite all his efforts and he was unable to perform any financial obligations, including repayment of the loan to the 2nd Defendant. He sought another source to pay N200,000 on 3rd April 2024 (Exhibit P7) bringing the total payment on the loan to N1,123,700 with the remaining balance of N234,894.18 due for both principal and interest.

When he could not get his account unfrozen, he instructed his lawyers who wrote to inquire from the 1st Defendant why this was so (Exhibit P3). The 1st Defendant on 23rd November 2024 replied by email that his account was frozen on the order of the Magistrate's court Nasarawa State in a matter between the IGP and First Bank and three others (Exhibit P4). Notice of the matter was not served on him or his two guarantors and neither was he informed of any matter by the 1st, 2nd and 4th Defendants. That the actions of the Defendants have caused unnecessary financial hardship to him and his family and subjected him to borrowing to solve his financial problems.

The Claimant further stated that he regularly made payment and did not cease repayment. He paid N50,000 on 31st October 2022; N190,000 on 19th April 2023; N210,000 on 29th April 2023; and N200,000 on 3rd April 2024. That the 2nd Defendant knows that he is a civil servant and is aware of his office address and had sent correspondence to him at the address (Exhibit P5). The Claimant provided two guarantors to the 2nd Defendant (Exhibits P6A and P6B) whom it failed to contact instead of misleading the 3rd and 4th Defendants to locate his whereabouts, despite also having his phone numbers. The Claimant tendered Exhibit P8 to show that his cumulative total indebtedness was N1,358,594.18 instead of N2,241,476.88 claimed by the 2nd Defendant and has offset a total of N921,000 as at 3rd April 2024 with a balance of N400,000 before the freezing order of 15th May 2023 prior to expiry of loan tenure on 23rd June 2023. That the freeze on his account as primary source of repayment prevented him from completing repayment by the tenure expiry date.

Under cross-examination, the Claimant stated that he never at any time applied to any court to have the freezing order set aside and the same is still in force.

That the scheduled monthly repayment plan was N55,912.82 and he was not paying the exact amount and that he was aware non-compliance attracts interest, but not aware of the interest rate of 12%. That he had no document informing the 2nd Defendant that he was transferred to Ibadan. He made repayment mainly through his First Bank salary account and sometimes, not regularly and not up to a year, through his GTB account. He was not aware that his guarantor informed the 2nd Defendant to report his absence from his residence. That he reached out to the 2nd Defendant when the police called him on the phone but he did not have any document regarding this. That he has evidence that it was the 2nd Defendant that placed a post-no-debit on his account. He is still indebted to the 2nd Defendant and has never requested for a loan restructuring.

1ST DEFENDANT

The case of the 1st Defendant is that the Claimant is a customer of the 1st Defendant and maintains account number 2018453971. The 1st Defendant received a letter from the Nigeria Police on 17th May 2023 that the Claimant's account was being investigated for fraud, criminal conspiracy, criminal breach of trust, and cheating. The letter came with the Magistrate's court order of Nasarawa State by Hon. V.V Manga in case No. CMC/MG/CR/2724/2023 between IGP v. First Bank of Nigeria Plc & ors. The order instructed the 1st defendant to place a post-no-debit on the Claimant's account, produce documents relating to the account, and assist the police to arrest the Claimant. On 27th November 2023 the 1st Defendant received a letter from the Claimant's solicitors asking the account to be unfrozen. The 1st Defendant replied on the same day by email informing the solicitors of the court order and suggesting that they apply to court to set aside the order, which they failed to do.

Under cross-examination, the 1st Defendant stated that they did not contact the Claimant when they received the letter from the 3rd and 4th Defendants. The Claimant's account is domiciled in First bank and can be operated from anywhere in Nigeria. The letter was addressed to First Bank of Nigeria, Abuja, FCT. Prior to the order there was no other court process served on the 1st Defendant. The 2nd Defendant's name was not on the court order.

2ND DEFENDANT

The 2nd Defendant's case is that the Claimant obtained a loan in the sum of N1,000,000 from the 2nd Defendant upon an offer letter on 9th of June 2021 setting out the terms of the loan. The offer letter also set out the repayment schedule for the principal and interest for a period of 24 months with a monthly instalment of N55,912.32 commencing from 23rd July 2021 to 23rd June 2023. The loan was disbursed to the Claimant on 23rd June 2021 (Exhibit DW2-1). The Claimant commenced repayment but did not comply with the repayment schedule of N55,912.32 monthly, made diminishing irregular payments which ceased in October 2022. The 2nd Defendant's debt recovery team visited the address provided by the Claimant but could not ascertain his whereabouts. The claimant did not inform the 2nd Defendant why he stopped repayment nor informed them of his transfer from Abuja. When all efforts to trace the Claimant proved abortive the 2nd Defendant sought the assistance of the Nigeria Police to help trace the Claimant (Exhibit DW2-2). The non payment by the Claimant compounded the indebtedness of the Claimant including accrual of additional 12% per annum. That the 2nd Defendant did not interfere with the investigation and duties of the 3rd Defendant. That the 2nd Defendant did not institute any proceedings to reclaim the loan, nor could lift the post-no-debit placed by the 1st Defendant. That at the time this suit was filed the Claimant's compounded total interest to the 2nd Defendant stood at N2,241,476.88.

Under cross-examination, the 2nd Defendant stated that as at the time they wrote the petition to the police, the Claimant had two months before the 24 months repayment duration would elapse and had paid N915,500 in repayment of the principal sum and interest of N1,341,907.16. The 2nd Defendant commissioned their external solicitors to help recover the loan. The claimant submitted both his residential and office addresses and produced two guarantors to the 2nd Defendant before the loan was approved. That when the Claimant absconded the 2nd Defendant contacted the guarantors by visiting them.

SUBMISSION OF PARTIES

The 1st Defendant submits two issues for determination, namely:

- a. Whether the 1st Defendant was wrong, in law, in complying with the order of the court in case no. CMC/MG/CR/2724/2023 – IGP v. First Bank Plc & 3 Ors.

- b. Whether, from the pleadings and evidence adduced, the Claimant has established any case against the 1st Defendant to be entitled to the reliefs sought in this court.

On the first issue, S.M Jimmy Esq. submits that it is trite that an order of court remains inviolate until discharged or set aside, citing *SUNDAY & ORS v. MBATA & ANOR* (2022) LPELR-58621 (CA), and *MOBIL OIL NIG LTD v. ASSAN* (1995) 8 NWLR Pt.412 p.129, and *GTB PLC v. HENSTEEL ENGINEERING CONSTRUCTION LTD & ANOR* (2024) LPELR-61909 (CA). Learned counsel submits further that the Supreme Court in the case of *A.G ANAMBRA STATE v. A.G FRN & ORS* (2005) 13 (SC) at (C) (sic) emphasised the obligation to obey a court order, and argues that the 1st Defendant only complied with the order of the Chief Magistrate's court of Nasarawa State.

On the second issue, learned counsel submits that S.133 of the Evidence Act, 2011, including the cases of *CBN v ARIBO* (2018) 4 NWLR Pt.1608, 130 at 166 B-D; and *UNIVERSAL TRUST BANK NIG LTD v. AJAGBULE* (2006) 2 NWLR Pt.965, 447 at 475 D; and *OMISORE v. AREGBESOLA* (2015) 15 NWLR Pt.1482. 205 at 272-273 G-D provides and held, respectively, that he who asserts must prove. Counsel submits further that a critical look at the reliefs sought and the Claimant's pleadings against the insufficient evidence adduced show that reliefs 'a' and 'b' are not grantable, and cites *NEPA v. AUWAL* (2015) 5 NWLR Pt.1241, 574 at 595 D-E.

Learned counsel went on to say that the court order the Defendant obeyed has not been set aside, and this court lacks jurisdiction, since this is neither an appeal nor judicial review, to set same aside nor power to direct the 1st Defendant to lift the post-no debit.

Learned counsel submits that the remaining reliefs are not grantable for lacking in proof of evidence, and particularly that the various types of damages sought by the Claimant lack justification on sound principle of law. Counsel refers the court to the cases of *GE INT'L OPERATIONS NIG LTD v. Q. OIL & GAS SERVICES LTD* (2016) 10 NWLR Pt.1520, 304 at 332 D-E, *ADENIRAN v. ALAO* (1992) 2 NWLR Pt.223, 272, and *KABO AIR LTD v. MOHAMMED* (2015) 5 NWLR Pt.1451, 38 at 78-79 H-A.

Learned counsel urges the court to dismiss the Claimant's case against the 1st Defendant with substantial cost for being an abuse of court process.

2ND DEFENDANT

The 2nd Defendant submits four issues for determination, namely:

1. Whether the Claimant has successfully established a reasonable cause of action against the 2nd Defendant.
2. Whether the 2nd Defendant can be held jointly and severally liable for the restriction placed on the Claimant's account domiciled in the 1st Defendant.
3. Whether the Claimant, being in breach of a subsisting contract, is entitled to the reliefs sought in this suit.
4. Whether the court can rely on evidence tainted by falsehood.

The crust of the argument canvassed for the first issue is that the 2nd Defendant was never a party to the restriction placed on the Claimant's account and can therefore not be held liable either severally or jointly for same. Learned counsel cites several cases in support of the Claimant's lack of reasonable cause of action against the 2nd Defendant, namely *MILITARY ADMINISTRATOR OF BENUE STATE & ORS v. CAPTAIN CLEMENT ABAYILO* 2021 FWLR Pt.45, 602 at 615, and *THOMAS v. OLUFOSOYE* (1989) 1 NWLR Pt.18, 669, defining cause of action as factual situation entitling to relief; *AGBOTI v. BALOGUN & ORS* (2020) LPELR-49904 (CA); *OSHODI v. EYIFUNMI* (2000) 13 NWLR pt.648, 298; *KALA v. POTISKUM* (1998) 3 NWLR Pt.450, 1; and *HYELADZIRA v. OMONIJO & ANOR* (2024) LPELR-62213 (CA), to the effect that the court order, which does not include the 2nd Defendant, speaks for itself.

On the second issue, learned counsel submits that the 2nd Defendant cannot be held liable for the actions of the other Defendants, particularly the 3rd and 4th Defendants who acted under their statutory duty to investigate allegations of crime. Counsel cites S. 4 of the Police Act, 2020, and the cases of *NWANGWU v. DURU* (2002) 2 NWLR Pt.751, 265; *HASSAN v. EFCC* (2014) 1 NWLR Pt.1389, 607; *AL MUSTAPHA v. STATE* (2013) 17 NWLR Pt.1383, 350; *IFEANYI CHUKWU OSONDU LTD v. SOLEH BONEH LTD* (2000) 5 NWLR Pt.656, 322; and *NSITF v. IYEN & ORS* (2014) LPELR-22438 (CA).

With respect to the third issue, learned counsel argues that the Claimant being in breach of the terms of the loan agreement and absconding without notice cannot under equity benefit from his own wrong. Counsel cites *EDUN*

v. FRN (2019) 12 NWLR Pt.1689. 326; SERIKI v. ARE (1999) 3 NWLR Pt.595, 469; BROWN v. ADEBANJO (1986) 1 NWLR Pt.16, 383; NWOSU v. APP (2020) 16 NWLR Pt.1749, 28; and C&CB CO. LTD v. E.H & U.D (2019) 5 NWLR Pt.1666, 484.

And finally, on the fourth issue, learned counsel submits that Claimant's statements on oath, particularly paragraph 6 when juxtaposed against Exh.DW2, are false, and can therefore be accorded no evidential weight, citing in support JIBECO NIG LTD v. FBN PLC (2023) 1 NWLR Pt.864, 39; AWETO v. FRN (2022) 4 NWLR Pt.1819, 69; and KSJSC v. TOLANI (2019) 7 NWLR Pt.1671, 382.

On his part, the Claimant submits three issues for determination, thus:

1. Whether the ex parte order granted by the Nasarawa Chief Magistrate Court on the 15th May, 2023 in a (sic) case Number CMC/MG/CR/2724/2023 between IGP v. First Bank Plc and 3 others is competent?
2. Whether in the circumstances of this matter, the 2nd Defendant has not set the law in motion against the Claimant to warrant the 2nd Defendant to be ordered to pay damages to the claimant.
3. Whether by the totality of the evidence adduced in this matter, the acts of the Defendants have not caused hardship financially to the claimant to warrant he defendants to be ordered to pay compensatory damages to the claimant.

On the first issue, A.M Bello Esq. submits that magistrate's courts have no jurisdiction, which is exclusive to the Federal High Court and State High Courts by virtue of the Constitution and relevant statutes, to issue restricting orders on bank accounts. Learned counsel then cites, inter alia, FIDELITY BANK PLC v. MONYE (2012) LPELR-14720 (CA) to the effect that only the Federal High Court has jurisdiction in matters involving banks and other financial institutions.

On the second issue, learned counsel submits that the police are not debt collectors and that the 2nd Defendant knowingly presented a contractual matter to the police as a criminal matter and are therefore liable to pay damages to the Claimant, citing AFRICAN BANK (NIG) PLC v. ONYUMA (2004) 2 NWLR Pt.585, 654; JIM-JAJA v. COP (2011) 2 NWLR Pt.1231, 375

at 392 B-D; JOHNSON v. LUFADJEU (2002) 8 NWLR Pt.768, 203; BALOGUN v. AMUBIKAN (1989) 3 NWLR Pt.107, 18 at 27; and OSCHOLI v. AJIBOYE-OBADINA & ANOR. (2025) LPELR-80419 (CA).

Learned counsel also submits that parties are bound by their contract and that nothing in the terms of agreement between the Claimant and the 2nd Defendant restricts the Claimant from paying above the stipulated monthly scheduled amount. That the averment of Claimant's indebtedness of N2,241,476.88 was not supported by evidence and should therefore be deemed abandoned and struck out. Counsel cited in support, AWOJUGBAGBE LIGHT INDUSTRY v. CHINUKWE (1995) 5 NWLR Pt.390, 379; OLAREWAJU v. BAMIGBOYE (1987) 3 NWLR Pt.60, 353; OLUBODUN & ORS v. LAWAL (2008) 6 SCNJ 269, 14; and KAYDEE VENTURES LTD v. MINISTER, FCT (2010) 7 NWLR Pt.1192, 171.

Learned counsel submits further that the 2nd Defendant did not provide any evidence of visit and contact to the residence and office of the Claimant or to his guarantors and that the court cannot speculate to accept it as true. Counsel refers the court to the cases of OHUE v. NEPA (1998) 7 NWLR Pt.557, 187; OGUNANZEE v. STATE (1998) 5 NWLR Pt.551, 521; ANIMASHAUN v. UCH (1996) 10 NWLR Pt.476, 65; ADEFULU v. OKULAJA (1996) 9 NWLR Pt.475, 668; OKESOTO v. TOTAL NIGERIA PLC (2010) LPELR-4716 (CA); and ONUEGBU & ORS v. GOVERNMENT OF IMO STATE & ORS (2024) LPELR-62620.

Finally, learned counsel submits that general damages does not need to be pleaded or proved, with reference, inter alia, to MRS ABOSEDE DAUDA v LAGOS BUILDING INVETSMET CO. LTD & 3 ORS (2012) ALL FWLR Pt.625, 380; DIRECT ON PC LTD v. BINKAM (NIG) LTD (2016) 3 NWLR Pt.1498, 50 at 69. And that costs follow events and a successful party is entitled to be awarded one, citing EZENNAKA v. COP CROSS RIVER STATE (sic).

1ST DEFENDANT'S REPLY TO CLAIMANT'S ADDRESS

The 1st Defendant further filed a reply to the Claimant's address on points of law.

Preliminarily, I have carefully perused the submission of learned counsel in this further reply. Learned counsel attempts to reargue his earlier

submission that the present case is neither an appeal nor a judicial review. I am not persuaded that the reply argues any new point of law as the issues have been thoroughly canvassed, particularly in the 1st Defendant's final written address. For this reason, the 1st Defendant's Reply filed on the 4th of June 2025 is discountenanced and hereby struck out.

DECISION

The catalyst for the claim of the Claimant against the Defendants is the order granted by the Chief Magistrate's Court, Nasarawa State placing a post-nobit on the claimant's account with the 1st Defendant, a fact that was not challenged by any of the parties.

It is important therefore to first determine the nature or competence of this order as a necessity for determining the other issues raised in this case.

Arguing against the submission of the Claimant that the said order is incompetent, the 1st Defendant argues that this case is neither an appeal on the order or a judicial review, therefore this court lacks the jurisdiction to make any pronouncement on the same.

On the issue of jurisdictional competence of this court, learned counsel, with due respect, seems not to appreciate the distinction between when an order is attacked on the basis of lack of jurisdiction to make it, and when it is on the rightness or wrongness of it.

In the first instance it can be set aside without much ado. In the second instance, it can only be impugned by the process of an appeal or in certain circumstances, a judicial review. See the case of **ENGR. GOODNEWS AGBI & ANOR v. CHIEF AUDU OGBEH & ORS (2003) LPELR-10321 (CA)** at p. 39 C-D where the Court of Appeal held that *"...when the judgement of an inferior court is produced before a High Court in order to prove a fact in issue in a civil case, the latter court is entitled to look at the proceedings and judgment in order to determine whether or not the inferior court has jurisdiction to entertain the matter covered by the proceedings and judgment. If the inferior court had no jurisdiction to have entertained the matter, its judgment thereupon must be pronounced a nullity by the latter court."*

What is of concern to the court, however, is whether the Claimant has sufficiently proved the existence of this order to enable the court to determine its competence.

There is no doubt that the order is a pivotal fact in issue.

The existence of the order is not contested. Exhibit P4, email from the 1st defendant to the Claimant gave the particulars of the court order as follows:

“The freeze on your client’s account was placed pursuant to the order of the Chief Magistrate Court of Nasarawa State per Hon. V.V. Manga Esq in Case No.: CMC/MG/CR/2724/2023 – IGP v First Bank Plc & 3 ors. The order which was made on 15 May 2023, was procured and served on the Bank by the Commissioner of Police, X-Squad Section, Force Criminal Intelligence & Investment Department, Area 10, Abuja to aid its investigation of alleged crime(s) in which your client’s account number featured.”

This much was admitted in the 1st Defendant’s testimony before the court.

Notwithstanding, are these sufficient as proof of the order of the court? To answer this question reference is made to the case of THE HON. ATTORNEY GENERAL OF ANAMBRA STATE & ORS v. ERNEST EZEME & ORS (2014) LPELR-24342 (CA) pp18-21 E-E, where the Court of Appeal held that contents of the judgment of a court can be proved only by primary or secondary evidence by virtue of Section 128 of the Evidence Act

Section 85 of the Evidence Act provides that “The contents of documents may be proved either by primary or by secondary evidence.”

Section 89 of the Evidence Act provides that “Secondary evidence may be given of the existence, condition or contents of a document when - ... (e) the original is a public document within the meaning of section 102.”

And Section 90 (1) (c) provides further that: “The secondary evidence admissible in respect to the original documents referred to in the several paragraphs of section 89 is as follows - ...(c) in paragraph (e) or (f) a certified copy of the document, but no other secondary evidence is admissible.”

Section 102 of the Evidence Act, on the other hand, provides that: “The following documents are public documents – (a) documents forming the official acts and records of the official acts of (i) the sovereign authority; (ii)

official bodies and tribunals; or (iii) public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; and (b) public records kept in Nigeria of private document.”

All the above provisions have been reproduced to enable me determine the existence of the court order as proved in this case.

It is my view that on the authority of the foregoing provisions, all the oral and documentary testimonies purporting to prove the order of the Chief Magistrate’s Court of Nasarawa State offend against the provisions of the Evidence Act as above stated. As a corollary therefore they are hereby held as inadmissible and are expunged from the records.

A look at the reliefs sought by the Claimant would show that they are inexorably attached to the declaration of the court one way or the other on the competence of the order of the Chief Magistrate’s Court. The rug having been pulled from under the same, the reliefs are bound to fail.

However, from the totality of the evidence before this court, it would appear that but for the proper documentary evidence which the Claimant failed to produce, his case might otherwise have succeeded. In this circumstance, would it be right for the court to make an order of dismissal of the suit or it would accord with the interest of justice to non-suit the Claimant?

Generally where satisfactory evidence is not given entitling neither the Claimant nor the Defendant to the judgment of the court, the court may non-suit the Claimant.

Order 62 r.1 of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 accords the court the authority to adopt a procedure or make an order that accords with substantial justice.

In view of this, the parties were invited on the 9th of July 2025 to address the court on the propriety of ordering a non-suit in this case.

The 2nd Defendant made their submission vide a written address dated and filed on the same date, 4th of July 2025. In the main learned counsel submits that the Claimant’s claim lacked merit and is uncorroborated with credible evidence, and so should be dismissed rather than non-suited, citing *FLASH FIXED ODDS LTD v. AKATUGBA* (2001) 9 NWLR Pt.717, 46.

Learned counsel argues further that the entire suit of the Claimant was based on the order of Honourable V.V Manga Esq, and that the Claimant failed to prove any liability against the 2nd Defendant in line with the cause of action of the suit. (EFCC v. AKINGBOLA (2015) 14 NWLR Pt.1478, 1).

Counsel then submits that where a Claimant failed to establish his case, the proper order to make by the court is a dismissal, citing YUSUF v. CO-OP. BANK LTD (1994) 7 NWLR Pt.359, 676; and ADAMU v. NIGERIAN AIRFORCE (2022) 5 NWLR Pt.1822, 159.

Mr. A.M Bello for the Claimant addressed the court orally. Learned counsel submits that the Claimant has placed sufficient evidence before the court to entitle him to sustain his claim. Learned counsel argues that the Claimant is not bound to lead evidence to prove all averments in his pleadings provided he has led enough evidence to sustain his claim, citing BALOGUN v. E.C.P NIG. LTD (2007) 1 NWLR Pt.1028, 584 at600 F-G.

Learned counsel further submits that the 1st Defendant by paragraph 8 of its Statement of Defense attached and admitted the existence of the Chief Magistrate's freezing order, and that pleading and any document attached to it are one, and are therefore admitted and need no proof. Learned counsel cites the case of IZUKWU v. UKACHUKWU (2004) 17 NWLR Pt.902 at 227, and urges the court to give judgment in favour of the Claimant rather than non-suit the claim.

I have carefully considered the submissions of parties which I have subsumed in the following.

In the case of **CLEMENT C. EBOKAM v. EKWENIBE & SONS TRADING COMPANY LTD (1999) LPELR-993 (SC)** the trial court refused to give judgment for any of the parties but rather struck out the matter, on the ground of failure to provide record of proceedings of an arbitration award. When the matter was eventually appealed to the Supreme Court, it held that the order had the same effect as an order of non-suit (p.21 D). And at p.23 G that ***"...non-suit is a final order giving the parties involved two options of either to appeal against the order or start the action all over again."***

In **AHWEDJO EFETIROROJE & ORS v. HIS HIGHNESS ONOME OKPALEFE II (THE OSUIVIE OF AGBARHO) & ORS (1991) LPELR-1024 (SC)** the Supreme Court held at p.22 B-F ***"It is well settled law that where a Plaintiff***

has failed to prove his claim against the Defendant, after trial on the merits the court is entitled to dismiss the action... The effect of the dismissal of the action will depend upon the nature of the claim against the defendant, and the nature of the pleadings on which the issues were tried...

The expression "Non-suit" is used in civil proceedings to describe the judgment of the court in a variety of circumstances. Generally, it is the exercise of discretion to relieve the plaintiff who has not totally failed to prove his claim, but where it would be unjust and inequitable to dismiss the action... The intention is to enable the plaintiff to relitigate the claim at subsequent proceedings. The rationale for the exercise of the discretion by the judge is that the defendant suffers no wrong from the opportunity given to the plaintiff to prove his case a second time."

At p.29 E-F the SC restated the principle for ordering a non-suit as follows
"...an order of non-suit is to be made in the following situations -

(a) where the plaintiff has not failed in toto or entirely to prove his case; and

(b) where the defendant is not in any event entitled to the court's judgment; and

(c) where no wrong or injustice to the defendant would be caused by such order."

Also in **CHIEF FESTUS SUNMOLA YESUFU v. AFRICAN CONTINENTAL BANK LTD (1980) LPELR-3521 (SC)** it was held at p.19 A-B *"It is the law that a non-suit order should not be made unless two elements are present in the aborted trial, namely: (a) it must appear on the record of the case taken as a whole that the plaintiffs have not failed in toto, and (b) that in any case, the defendant would not be entitled to the judgement of the court"*

In the circumstances of this case, there is no contention about the order of the Chief Magistrate's Court; the Defendants admitted the existence of the order. The Defendants as a matter of fact, rested their defence on the same as entitling them to the judgment of the court, if the claimant fails. It would therefore be unjust and inequitable to dismiss the claimant's claim when the

order he rests his case on appears to be subsisting save for his failure to sufficiently prove the same as required by law.

On the issue of cost, the Supreme Court upheld the decision of the trial court that each party should bear their own cost where they had the opportunity of tendering the judgment of court they both relied on but failed to do (ROBERT OSAYI v. OGUDE IZOZO (1969) LPELR-25538 (SC).

Following from the foregoing, the Claimant is hereby non-suited.

I make no orders for costs.

This is the Judgment of the Court.

HON. JUSTICE O. O. BAMODU, mni
(Presiding Judge)