

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT KUBWA, ABUJA
ON TUESDAY, THE 13TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE K. N.
OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/0923/18

BETWEEN:

1. MR. ONUOHA KINGSLEY UZOCHUKWU } ----- PLAINTIFFS
2. RUDMARK INTERNATIONAL LIMITED }

AND

ECONOMIC AND FINANCIAL }
CRIMES COMMISSION }
DIAMOND BANK PLC } ----- DEFENDANTS
GUARANTY TRUST BANK PLC }
HAJIA HABIBA BELLO }

RULING ON PRELIMINARY OBJECTION

Upon receipt of the Originating Process by the Plaintiffs the 2nd Respondent filed this Preliminary Objection for the Court to:

“Strike out the Suit of Plaintiffs for want of jurisdiction”.

The Preliminary Objection is supported by an Affidavit of 7 paragraphs deposed to by Lakansi Opeyemi. He attached 2 documents which are letters from Economic and Financial Crimes Commission (EFCC) dated 28/8/17 showing that there are ongoing investigation activities on the Accounts of the 1st and 2nd Applicants addressed to the 2nd Respondent.

The letters were for the 2nd Respondent to place a Post No Debit status on those Accounts. The 2nd Respondent placed Post No Debit on the Accounts for 72 hours after which they lifted same.

The 2nd Respondent are challenging the Originating Process based on the fact that they are 2 Applicants seeking for enforcement of their Rights. That such application is supposed to be filed separately not jointly. That the 2 Applicants cannot maintain joint action under the FREP Rules as such Right is individual and not collective.

Again, that the Relief sought which borders on re-opening of the Accounts of the Applicants is not within CAP 4 of the 1999 Constitution as amended and Africa Charter on Human and People's Right and therefore cannot be maintained under the FREP Proceedings. That being the case the Suit of the Applicants is incompetent and that Court therefore lacks the jurisdiction to entertain same.

In the Written Address they raised one Issue for determination which is:

“Whether having regard to the parties and the Reliefs claimed by the Applicants the Suit can be

commenced by way of application for enforcement of Fundamental Rights”.

They submitted as follows: that more than one person cannot bring application to enforce their Fundamental Right jointly. They referred to **S. 46 (1) 1999 Constitution and Order 4 Rule 1 FREP 2009.**

That the above provision contemplates that only one person can seek enforcement of his Right at a time by virtue of the use of the word “any” in the provision of the above cited laws. That this application by 2 persons is therefore incompetent. They cited the case of:

Kporharor & Anor V. Yedi & ors (2017) LPELR – 42418 (CA)

That the main claim in the application was not on Fundamental Right Enforcement and breach of such Right but on the de-freezing of the Account. That such claim is ancillary and unfounded under Rights under the FREP. That for application under FREP to succeed the claim to violation of Right must be the main claim and not ancillary claim as in this case.

The 2nd Defendant also submitted that condition precedence for the exercise of the Court’s jurisdiction when an application is brought under FREP, is that the enforcement of Fundamental Right should be the main claim. That since that is not so in this case the Court should dismiss same with cost of Five Hundred Thousand Naira (₦500, 000.00) the case as it is incompetent and Court has no jurisdiction to entertain same. They cited the case of:

**WAEC V. Akinkumi
(2008) 9 NWLR (PT. 1091) 167 @ 169**

In a stiff and swift Counter Affidavit of 4 paragraphs, the Applicants challenged the Preliminary Objection. That the application of the 2nd Defendant is full of falsehood as the said 2nd Defendant had frozen the Accounts of the Applicants since 2017 till date.

That the document EXH A & B attached by the 2nd Defendant was for Post No Bill and arrest of anyone who attempts to transact on the said Accounts. That African Charter on Human and People's Right allows and guarantees group Rights. That even the FREP Rules allows and encourages anyone acting on his own or on behalf of any person or group or class of persons Right even in public interest.

That the principal Relief is for the enforcement of the Applicants' Right which is within the said FREP and African charter on Human and People's Right. That the African charter on Human and People's Right guarantees even Social Economic, Educational and Health Right of persons.

Also that the money in the Accounts are what its life can be lived on. That freezing such accounts prevents Applicants from living their lives and achieving their Economical, Social, Educational and Health goals and that of their members. That freezing the accounts without Court Order has adversely affects those Rights.

That all the above facts makes the Suit of the Plaintiffs competent and hence gives the Court the requisite jurisdiction to entertain same.

In the Written Address the Applicants submitted not raising any Issue for determination but responded on points of law to the Issues raised by the 2nd Respondent in the Preliminary Objection.

They submitted that more than one person can apply for enforcement of FREP Rights. He referred to the provision of **paragraph 3 (e) – preamble to the FREP 2009** where it was provided that an Applicant or Applicants under FREP can include anyone acting on his own, on behalf of other persons or group or class of persons or the interest of its members.

On freezing of the Account:

He submitted that it infringes on the Rights of the Applicants as regards economic emancipation action. He referred to **Article 15 African Charter** which is impari materia with **CAP 4 1999 Constitution as amended**. That the freezing of the accounts amount to degrading and inhuman treatment of the Applicants.

That the 2nd Defendant seeking for the case to be transferred as a Writ is only a ploy to waste and delay the Suit and prolong the freezing of the said Accounts.

Again the Applicants submitted that the 2nd Respondents acted ultra vires its powers. That they never acted or sought for Court Order before they froze the Accounts. That makes the action of the 2nd Respondent illegal, unlawful, null and void. He referred to the case of:

Williams V. Sanusi
(1961) 2 SCNLR 129

That the Respondent cannot be allowed to benefit from its illegality and fraudulent transaction. That the usurpation of the power of the Court by the 2nd Defendant amounts to illegality. He urged Court to discountenance the argument of the 2nd Defendant. That the Court should not allow the 2nd Defendant to continue with the illegality of freezing the Accounts of the Applicants without Court Order. That the Court should declare that action illegal, null and void. He referred to the cases of:

**George & ors V. Dominion Flour Mills
(1963) ANLR 70 @ 72**

**Qua Vidas & Restaurant Ltd V. Nigeria Maritime
(1992) 7 SCNJ (PT. 1) 172 @ 179 – 180**

That since the 2nd Defendant acted illegally on the instruction of the 1st Defendant without ensuring that there is a Court Order, the same 2nd Defendant cannot therefore talk about incompetency of the Suit of the Plaintiffs and the jurisdiction of the Court to entertain the Suit since it has benefited in the illegal and unlawful act of freezing the Accounts of the Applicants. They urged Court to dismiss the Preliminary Objection.

In conclusion they submitted that the Applicants have right to file the action, the Court has jurisdiction to entertain the action. That 2nd Respondent acted ultra vires and their action null, void ab initio and they cannot be allowed to benefit from the illegality.

COURT:

Having summarized the Preliminary Objection and Counter to the Preliminary Objection by the 2nd Respondent and the Applicants respectively, can it be said that this Court has no jurisdiction to entertain the Suit and that the Suit lacks competency since it is on de-freezing of Accounts which is the main claim and not covered under CAP 4 and under FREP Rules?

To start with the jurisdiction of the Court is based on the claim and cause of action by the Plaintiff or Applicant or Claimant if you may.

In this case as already stated, the Applicants are challenging the freezing of their Accounts by the 2nd Respondent. The 2nd Respondent had stated that the freezing was for less than 72 hours and based on EXH A & B – letter by the 1st Respondent. The Applicants had said the freezing having not been heralded with a Court Order is illegal, unlawful, null and void.

The 2nd Defendant had stated that the claim of de-freezing of the Accounts is not covered under the FREP and the Rights under CAP 4 of the 1999 Constitution as amended and that the claim of enforcement is ancillary not the main claim. That the Court should therefore not entertain same as it lacks jurisdiction.

Going by the preamble paragraph 3 (e) of the FREP:

“The Court shall encourage and welcome public litigations in human interest rights field and no human rights case may be dismissed or struck out for want of locus standi in particular human right activists

advocate or group as well as non-governmental organizations may institute human rights application on behalf of any potential Applicant”.

The preamble went further to state that application in that regard may include action in one own interest; in the interest of another person or persons action as a group or members of a group or class of person and in their interest, action in public interest and in the interest of vulnerable and the weak and the destitute.

The above need no further elucidation. That is what the Court considered and determined in the case of:

Iteogu V. Legal Practition Disciplinary Committee (2009) 17 NWLR (PT. 1171) 476

Without more the application by the 1st and 2nd Applicants is properly brought in this case. The Court had in several other cases after Iteogu’s case (Supra) reiterated and expanded the interpretation of the paragraph 3 (e) of preamble to the FREP by including that class action can be taken in the interest of the weak, vulnerable and the less privilege because those ones are also protected by under the same CAP 4 and the FREP 2009. Where such action is taken it covers all the persons affected.

So the bottom line is that the present action is proper before this Court. So the submission of the 2nd Respondent on that ground is therefore DISMISSED. More than one person can bring an action once the interest is the same and claims same.

On the claim of the Applicants as pertains to the claim on enforcement being ancillary and not the main claim. It is the humble view of this Court that the claim on Fundamental Right is not ancillary. It is the main claim.

To start with, every man has a right to own a property – material, visible, moveable and immovable. The money in the bank account of any citizen of Nigeria is his property. Such citizen has a right to same based on Banker/Customer Relationship also. Such right to own moveable property like money can only be tempered with by a procedure permitted by law.

So where in an action is brought and challenging the violation of such right to own property is raised, the Court has the jurisdiction to entertain such matter. There is a locus standi on the part of the parties who have instituted the action. So this Court hold.

It is imperative to point out that a company being a juristic person though unnatural person has the same right to challenge the violation of its right. So the institution of this action on violation based on the freezing of the 2nd Applicant's Accounts is competent and this Court has the jurisdiction to entertain same. It is a different thing whether such claim will succeed.

At this stage, the issue is not whether there is a merit on the Suit of the Applicants. It is on whether the Applicants' case is competent. This Court holds that the Suit is competent as the Applicants as citizens – persons have right to challenge the violation of their Fundamental Rights to own property. That action is the main claim not

ancillary as the 2nd Respondent wants this Court to believe.

In the Suit, the Applicants had asked the Court to restrain by an Injunctive Order, the 1st Respondent from violating their Rights as it pertains to this case which is on the allegation of freezing his accounts at the said banks. They have also asked Court to Order for the de-freezing of the Accounts. All those Reliefs are what the Court has the right and competence to entertain and the Applicants have the right to seek redress in a Court of competent jurisdiction. After all they cannot resort to self help as the Court is the last hope of common man.

Freezing the Accounts pertains to the property of the Applicants. They have a right to own property. Any action pertaining or affecting their property is covered under CAP 4 of the 1999 Constitution as amended and the right thereof. Any limitation because of such action affects their social and economical liberty all of which are embedded and subsumed in their personal liberty and their right to own moveable property.

Also the action of the Respondents affects their human dignity in that they may not be able perform their expected functions for their family, customers, company, business partners and associate.

The principal claim is not re-opening of the Accounts. It is on violation of the dignity of their persons, personal liberty and threat to violate their human dignity, fear of torture and inhuman treatment by the 1st Respondent as clearly stated in the face of the application. The re-opening of the Accounts is ancillary claim.

From all the above, the Preliminary Objection is unmeritorious. It is a ploy to waste the time of the Court and to prolong the Hearing of the main application.

The 2nd Defendant/Respondent knows that the Court has the jurisdiction to entertain this Suit since the Applicants have the locus standi to file the Suit. More than one person can file application for enforcement of their Fundamental Rights.

That being the case this Court hereby DISMISSES the Preliminary Objection for lacking in merit and waste of time.

This is the Ruling of this Court.

Delivered today the ____ day of _____ 2020 by me.

**K.N. OGBONNAYA
HON. JUDGE**