

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 15<sup>TH</sup> DAY OF JULY, 2020  
BEFORE: HON. JUSTICE M. A. NASIR  
COURT NO: 10  
SUIT NO: CV/583/2019

**BETWEEN:**

MIRIAM MOSES VENTURES LTD ----- PLAINTIFF

**AND**

FIRST CITY MONUMENT BANK PLC ----- DEFENDANT

**RULING**

This suit was filed by way of Originating Summons procedure on the 12/12/2019. The claimant is seeking this Court for the determination of the following questions:

*“1. Whether by the combined provisions of Section 6(6) and 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 1 and 2, of the Administration of Criminal Justice Act (ACJA) or any other law validly operating within the Federal Republic of*

*Nigeria, the defendant can validly freeze, block or in any other manner restrict or deny the claimant access to her bank accounts with account number:*

*(a) FCMB account No. 089111636762001*

*(b) First Inland Bank Account No. 241430000235101*

*(c) First Inland Bank Account No. 241440000003802*

*From August, 2010 to date or to any other period and which accounts claimant maintains with the defendant without a Court order or any instructions from the claimant to do so.*

*If the answer to question 1 above is in the negative,*

*2. Then whether the claimant whose two bank accounts aforesaid were blocked and access to them totally denied them since August, 2010 till date without a Court order is entitled to both general and exemplary damages against the defendant for such reckless and unlawful act.*

*If the answer to question 1 is in the negative and question 2 in the affirmative, then the claimant claims the following reliefs:*

*1. A declaration that the freezing, blocking and/or denial of total access to claimant to her three bank accounts.*

*(a) FCMB Account No. 089111636762001 with credit balance of Forty Five Million, Six Hundred and Twenty Eight Thousand, Nine Hundred and Fifty Three Naira, Eleven Kobo (N45,628,953.11)*

*(b) First Inland Bank Account No. 241430000235101 with credit balance of Three Hundred and Forty Million, One Hundred and Seventy Nine Thousand, Nine Hundred Naira (N340,179,900.00) and*

*(c) First Inland Bank Account No. 241440000003802*

*Which claimant maintains with the defendants without a Court order or any instructions from the claimant to do so from August, 2010 to date is illegal, unconstitutional and constitute a flagrant breach of the*

*claimants right to fair hearing and banker customer contract between the claimant and the defendant.*

*2. A mandatory order of this Court directing the defendant to immediately unfreeze, unblock and remove any restriction of access on the claimant to her bank accounts aforesaid forthwith.*

*3. An order of this Court directing the defendant to avail the claimant a full statement of her accounts from inception to date.*

*4. An order of this Court directing the defendant to restore and pay back into claimants FCMB Account No. 089111636762001 the sum of Forty Five Million, Six Hundred and Twenty Eight Thousand, Nine Hundred and Fifty Three Naira, Eleven Kobo (N45,628,953.11)*

*5. An order of this Court directing the defendant to restore and pay back into claimants First Inland Bank Account No. 241430000235101 the sum of Three Hundred and Forty Million, One Hundred and Seventy*

*Nine Thousand, Nine Hundred Naira  
(N340,179,900.00).*

*6. An injunction restraining the defendant either by themselves, privies or agents howsoever from further blocking, freezing or in any other manner denying the claimant access to her accounts without a valid Court order.*

*7. The sum of N100 Million against the defendants as exemplary damages for their illegal, and reckless blocking, freezing and depriving the claimant of access to her account since August, 2010 to date.*

*8. The sum of N50 Million as general damages.*

*9. 10% interest on all the judgment sums from the date of judgment until the date they are liquidated.*

*10. Omnibus prayer.”*

In support is an affidavit of 25 paragraphs. Attached thereto are Exhibits AA1 – AA7. Also in support is a written address duly adopted by Igwe Ugochukwu Esq. The

applicants also filed a further affidavit of 13 paragraphs and a Reply address.

In opposition the defendant filed a counter affidavit of 20 paragraphs dated 17/3/2020. Attached are Exhibits FCMB 1 - FCMB 4(a,b,c). Learned counsel to the defendant **Bola Olotu Esq** adopted his written address in opposition.

Now Originating Summons Procedure is a means of commencement of action adopted in cases where facts are not in dispute or there is no likelihood of their being in dispute, and when the principal question in issue is or is likely to be one directed at the Constitution of a written law or any instrument, or of any deed, Will, contract or other document, or other question of law, or in a circumstance where there is likely to be any dispute at the facts. See Order 2 Rule 3(1) of the Rules of this Court, 2018, **Dapianlong & ors vs. Dariye & anor (2007) 4 SC (part 111) page 118 at 167, Doherty vs. Doherty (1969) NMLR page**

24, Alamiyeseigha vs. Igoniwari & ors (2007) LPELR - 8220(CA).

Whether there exist contentious issues in a case to warrant the filing of pleadings and make the commencement of the suit by way of originating summons inappropriate does not depend on whether the parties say it is or is not. The matter must be left for to the judge to use his good sense of justice, guided by the applicable rules of the game, to weigh all the materials placed before him with a view to determining whether the matter is really contentious or non contentious. It is a decision for the Court and the Court will reach such a decision based on the processes filed by the parties. See Aliyu & ors vs. Intercontinental Bank Plc & anor (2013) LPELR - 20716 (CA).

Now from the affidavit in support of the originating summons, the defendant who is the alter ego and Managing Director of the claimant averred that he maintained Account numbers 241430000235101 and 241440000003802 with

former First Inland Bank Plc, and one bank account with First City Monument Bank (FCMB) with Account Number 089111636762001. And that being the sole signatory he tried to withdraw some money but could not access the three accounts. He was informed that the accounts were frozen on the directions and instructions of the Economic and Financial Crimes Commission (EFCC). These averments were denied and the defendants maintained that the claimant did not maintain Account number 241440000003802 as at August 2010 with the defendant being a distinct and separate entity and financial institution from First Inland Bank Plc. That the only account maintained by the claimant as at August 2010 was account number 089111636762001. That the claimants account number 089111636762001 maintained with the defendant was garnished by an order of High Court of Justice Kaduna State in settlement of a judgment debt. The garnishee order nisi and the order absolute were attached in support. This



assertion was further denied in the claimants further affidavit. The defendants generally denied the fact that the claimants First Inland Bank account number 241430000235101 had a credit balance of N340,179,900 (Three Hundred and Forty Million, One Hundred and Seventy Nine Thousand, Nine Hundred Naira).

Order 2 Rule 3(1) and (2) of the Rules of Court 2018 have made provisions with regard to when an action can be commenced vide an Originating Summons. A consideration of the provisions of these Rules vis - a - vis the facts/reliefs sought by the claimant is germane to the determination of this application.

Order 2 Rule 3(1) and (2) of the Rules of Court provides thus:

*“3(1) Any person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination*

*of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.*

*(2) Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.”*

Upon a calm consideration of the import of these rules of Court, it is apparent that the Originating Summons is required to commence an action where:

- (1) The main issue is or is likely to be one for construction of a written law or instrument or deed or will or contract or question of law.
- (2) There is no likelihood of substantial dispute of law.

- (3) A person claims interest under a deed, will or other written instrument and seeks for a declaration of his right thereto.

By the provisions, it is deducible that the procedure is usable where the action or reliefs sought centre on construction of an instrument, deed, will, enactment, document and in which there is no likelihood of substantial dispute as to law. A proper perusal of the averments in the affidavit in support of the originating summons and reliefs claimed can it be said the action seeks for interpretation of an enactment, instrument, deed, document, will or question of law? The obvious answer is that it does not.

In order to determine this action, the Court undoubtedly would need to wade through and sieve the facts/evidence of both parties to determine the absence of liability or presence of one with regard to the defendant and thereafter make the appropriate declaration or order/s. These in my respectful view are exercises which the Court

can only properly and validly embark upon in a trial conducted on pleadings where both parties would appropriately ventilate their respective cases and documents/evidence subjected to rules of admissibility under the Evidence Act, 2011.

In actions commenced by originating summons, only affidavit evidence is employed. But where there is likely to be substantial dispute of facts, or, where the relief or reliefs sought by a claimant are declaratory in nature, the action must be brought by writ of summons, the facts being in dispute. The reason simply is because justice demands that where the complaint of a claimant makes allegations against a defendant, there ought to be oral evidence. This would provide opportunity for the defendant to cross-examine witnesses testifying against him and in turn for him to testify in his own defence. See *Famfa Oil Limited v. Attorney-General of the Federation (2003) 18 NWLR (Pt. 852) 453 at 467; Inakoju v. Adeleke (2007) 2 MISC 1; FGN*

*v. Zebra Energy (Nig.) Limited (2003) 1 MJSC 3. See Etim v. PDP & ORS (2016) LPELR-40129 (CA)*

When a suit is commenced by an originating summons instead of writ of summons, the appropriate order to be made by the court is to direct the suit to proceed with the filing of pleadings for proper determination of the issues before the court. See *P.D.P. v. Abubakar (supra), Analogu v. Analogu (1997) 9 NWLR (Pt. 519) 49; National Bank of Nigeria v. Alakiji (1978) 2 LRN 78; Emezi v. Osuagwu (2005) ALL FWLR (Pt. 259) 1891, (2005) 12 NWLR (Pt. 939) 340.* The proceeding herein is not one that can be determined within the narrow confines of affidavit evidence.

The procedure of Originating Summons is meant to be invoked in a friendly action between parties who are substantially ad idem on the fact and who, without the need for pleadings, merely want, for example a directive of the Court on the point of law involved. See *Ali & anor vs.*

Dandogari (2013) LPELR - 21919 (CA). Order 2 Rule 3 (3)

provides that:

*“The Court shall not be bound to determine any such question of construction if in its opinion it ought not to be determined on originating summons but may make any such orders as it deems fit.”*

It follows therefore that where facts are in dispute, an originating summons procedure will not avail a plaintiff, so he must come by way of a Writ of Summons. See Incorporated Trustees of all Farmers Association of Nigeria & anor vs. Akpan & ors (2018) LPELR - 44342 (CA). However, when a suit is wrongly commenced by way of Originating Summons the proper order to make is to order pleadings and not to pronounce on the merit of the case. See Akomas vs. Orji & ors (2018) LPELR - 44418 (CA), Ogundeyi & anor vs. Ogbohni (2019) LPELR - 47941 (CA), Balogun vs. APC & anor (2019) LPELR - 46962 (CA). The justice of this case demands the settling of pleadings.

Parties are thus advised to file and exchange pleadings for trial as per the rules of this Court.

Signed  
Honourable Judge

**Appearances:**

Igwe Ugochukwu Esq – for the plaintiff

Bola Olotu Esq – for the defendant