

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 WUSE ZONE 2 ABUJA

**BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THE 21ST DAY OF SEPTEMBER, 2020**

SUIT NO: FCT/HC/CV/1943/18

BETWEEN:

ERNEST AKPEVWE UNUAJOHWOFIA-----APPLICANT

AND

FIRST CITY MONUMENT BANK -----RESPONDENT

APPEARANCES:-

O.H. OKENE Esq. appears for the Applicant.

CHIDI EZENWAFOR Esq. appears with OBINNA ALUMONA.....for the Respondent.

RULING

In a motion on notice brought pursuant to the provisions of Order 2 Rules (1) (2) (3) (4) & (5) of the Fundamental Right Enforcement Procedure Rules 2009, Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria as amended and under the inherent jurisdiction of this Honourable Court.

The applicant seek for the following reliefs:

- (1) A declaration that the act of freezing the First City Monument Bank account of the applicant with account number 0776361012 on the 23rd day of April 2018 without an order of Court is illegal and a violation of the applicant's right against compulsory acquisition of his right over or interest over moveable and immoveable property in any part of Nigeria without following due process of the law under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).
- (2) An order of this Honourable Court directing the respondent and its servants, agents or privies to defreeze the applicant's First City Monument Bank account 0776361012 and operated in the name of the applicant which was frozen by the respondent on the 23rd April 2018.
- (3) An award of the sum of N5,000,000 (Five Million Naira) as general damages for the psychological trauma and loss of income suffered by the applicant since 23rd of April 2018 till (sic) and thereby making him indebted to third parties and also unable to take care of his basic needs due to illegal freezing of his bank account by the respondent.

- (4) An order of this Honourable Court restraining the respondent, its agents, servants or privies from interfering with the applicant's right to effectively make use of his First City Monument Bank account with account number 0776361012.
- (5) And for such Order(s) or Further Orders as this Honourable Court may deem fit to grant in the circumstance.

In compliance with Order 1 Rule 3 of the Fundamental Rights Enforcement Procedure Rules, the applicant filed the statement in support of the application with an 18 paragraphs affidavit deposed to by the applicant with four exhibits attached.

The applicant also filed a further and better affidavit. I have also noted the written address filed by the learned counsel to the applicant, which was adopted as oral submission in court.

In response, the respondent filed an 18 paragraph counter-affidavit accompanied with two exhibits and a written address. And in receipt of further affidavit by the applicant, the respondent filed a reply on point of law, new issues were raised in a further and better affidavit filed along with the counsel written address. The counsel to the parties adopted their respective written addresses.

The case of the applicant was that lien was placed on his account by the respondent since 23rd April 2018. He contacted the respondent through their help-line upon discovery that his account was blocked when he went to withdraw money using the Automated Teller Machine. There was no positive response from the respondent. He consequently briefed his counsel who wrote Exhibit AA1 dated 26th of April, 2018.

The respondent did not respond to his counsel's letter. He made further enquiries by calling the help line again where he was told that his means of identification could not be ascertained and was asked to go to any of the respondent's branches to update his account. He complied by filling an account update form attaching his driver's licence and addressed to the Branch Manager of the respondent at Wuse 2. The account update form is attached to this application as Exhibit AA2. That despite the filling of the update form, the respondent have refused to lift the lien on his account. He was cash-trapped as a result of the respondent's action, he alleged that there was no court order authorizing the freezing of his account. He urged the court to grant his relief as sought in the statement in support of the application.

In response, the respondent filed an 18 paragraph counter-affidavit of one Martin Anusionwu, the Internal Control Officer with the respondent. The deponent in paragraph 6 & 7 of the counter-affidavit averred that the said account was blocked on the 23rd of April 2018 following a fraud alert and investigation activities by the Nigerian Police Force. That pursuant to the

blocking of the said account, the respondent received on the 26th of April 2018, a demand letter from the law office of Messer O.H. Okene & Co. that the account be unblocked. That the account was blocked pursuant to an order of court served on the bank on the 23rd of April 2018 served alongside a request by the Nigerian Police for assistance in its fraud investigative activities involving the said account. And that the applicant is aware of the on-going fraud investigation involving his bank account hence his refusal to visit any of the banks' branches nationwide and has refused to submit himself to the police for investigation.

The copies of the court order dated 23rd April 2018 and letter from the Nigerian Police dated 23rd April 2018 are attached and marked as Exhibits A & B. The court order is from a Magistrate Court sitting in Modakeke Osun State. The respondent therefore urged the court to refuse the application.

The applicant filed a further affidavit in support of the motion on notice and a reply on point of law. In the further affidavit, the applicant stated in paragraph 10 that he had a legal Bitcoin transaction with one Aliu Seun Badmus. He denied defrauding the said Aliu Seun Badmus. He exhibited the chat between him and the said Aliu Seun Bamus as Exhibits BB2 & BB3 respectively. The learned counsel to the applicant in his reply on point of law referred to the court order which has on its face an offence of obtaining by false pretence. He argued that obtaining by false pretence is an offence that is contained in the Advance Fee Fraud and Other Related Offences Act 2006. He referred to Section 14 of the Advance Fraud and Other Related Offences Act which provides that "the Federal High Court or the High Court of the Federal Capital Territory and the High Court of the State shall have jurisdiction to try offences and impose penalties under this Act." He argued that the express mention of the Federal High Court and High Court of the State as courts with jurisdiction completely excludes Magistrate Courts from exercising jurisdiction in such matter not to talk of granting orders to freeze the bank account.

He submitted that the Magistrate Court order is ab-initio. He also argued that it is the duty of the Nigerian Financial Intelligence unit of Economic and Financial Crime Commission to investigate financial bitcoin transaction and not the police. He also referred to Section 19 of the EFCC Act which also clothes the Federal High Court and State High Courts with jurisdiction to determine financial crime. He submitted that no account is frozen during investigation without a valid order of interim attachment from a High Court under Section 28 of Economic and Financial Crime Act.

The learned counsel Messrs. O. H. Okene further contended that the Bankers Book Act of 1879 cited below the heading of the Magistrate Court Modakeke Ife is no longer applicable in Nigeria and recourse must be made to the local legislation in force in Nigeria. He submitted that the Bankers Book Act was

enacted in England in 1879 and therefore qualifies as a statute of General Application (SOGA).

That in Nigeria presently the enactment of Economic and Financial Crime Commission Act in 2002 and its subsequent amendment together with the Advance Fee Fraud and Other Related Offence Act 2006 and the Money Laundering Prohibition Act implies the inapplicability of the Bankers' Book Act of 1879 in Nigerian Courts. That even Section 7 of the Bankers' Book Act only requires inspection of Bank Books and documents relating to an account but does not authorize freezing of account. He further argued that the Magistrate Court (freezing and forfeiture of money in Banks) Rule 2017 is an English legislation which only applies to the United Kingdom and not the Nigerian Magistrate Courts. The learned counsel referred to the case of ***NZE BERNARD CHIGBU V. TOMINES NIG. LTD (2006) NWLR PT. 984 P. 189 Per NIKI TOBI JSC***, where the Inapplicability of received English Laws in Nigeria was explained by the Supreme Court Justice, thus ***"where a local statute is available and applies to a particular situation, courts of law have no jurisdiction to go all the way to England to search for an English Statute. This is because by the local statute, the law makers intend it to apply in the locality and not any English statute which is foreign and inapplicable. Much as I appreciate the colonial tie between England and Nigeria. It will seriously hamper and compromise our sovereignty if we continue to go on a borrowing 'spree' if I may say so unguardedly call it, to England for the laws of the country without any justifiable reason. Nigeria is Nigeria and England is England. Statutes of England cannot apply to Nigeria as a matter of course even the so-called statutes of general application."***

The learned counsel also stated that the combined effect of the provision of Section 251 (1) (d) and 3 of the constitution is that such civil and criminal aspect of all banking transaction are vested in the Federal High Court and or State High Courts. That the jurisdiction conferred on Magistrate Court does not extend to powers to grant freezing orders. He relied on the case of ***A.G. OF BENDEL STATE & 2 ORS V. ADENIYAN (1989) 9 SC 127***.

Lastly the counsel contended that the court order is a public document and the only form of secondary evidence that is admissible is a certified true copy. He referred to Section 104 of the Evidence Act 2011 (as amended). That the court order was not certified as it was not issued nor signed by the registrar of the court. The name or stamp of the registrar is not on the court order. He argued

that Exhibit A, the court order does not satisfy the requirement of Section 104 (1) of the Evidence Act.

That the name of the officer presenting the application for the order on behalf of the Inspector of General of Police was not stated on the application nor his title contrary to the requirements of the provision of Section 104(1) of the Evidence Act. That the respondent cannot place something on nothing and expect it to stay. He further argued that the affidavit of the person whom the Nigerian Police alleged was defrauded makes the freezing of the applicant's account questionable.

That from the totality of the facts contained in the applicant's further affidavit, it is obvious that the respondent did not follow due process in the freezing of the applicant's First City Monument Bank account, and urged the court to grant the reliefs sought by the applicant.

The defendant/respondent's on the other hand contended that as a responsible institution blocked/freeze the account in obedience to the court order served on him on 23rd April 2018, and that it is not the practice of the bank upon receipt of court order provided on police investigation activities to contact the customer in person before complying with same. The learned counsel Mr. Chidi Ezenwafor in his written submission argued that obedience to court order is fundamental and a duty which every citizen or institution owes to the nation. That even where an order is made in error, a party is duty bound to obey same until it is reversed or set aside on appeal as disobedience of such order in the interim amount to contempt. He argued that it is not the law that upon receipt of a court order from a constituted authority like the Nigerian Police Force that the respondent should first investigate and authenticate same before obeying the order. He cited the case of **ATTORNEY GENERAL OF ANAMBRA STATE V. ATTORNEY GENERAL OF THE FEDERATION (2005) ALL NLR 90** where the Supreme Court held: ***"it is the unqualified obligation of every person against or in respect of whom an order is made by a court to obey it unless and until that order is discharged and this is more so, where the person affected by the order believes it to be irregular or void. in so far as the order exists, it must be obeyed to the letter."*** He urged the court to resist the attempt by the applicant to subvert his investigation under the guise of enforcing his fundamental rights.

I decided to quote the above authority, and my view on the interpretation thereof is that the service of an invalid order in the case referred to above is

more personal to the person who is served unlike in a situation where the person in whom the order is served is in a contractual or fiduciary relationship to 3rd party who is to be affected by the order. This engenders a duty of care on the part of the person who is served with the order.

Furthermore, I disagree with the position of the learned counsel to the respondent that it would amount to disobedience of the order of the court if the defendant failed to act on such an invalid order. In my view it is better to err on side of caution. Both the banking organization and the Nigerian Police Force have lawyers in their employs to advise them on the consequence of their actions.

I have given a calm consideration to the facts that led to the institution of this action, the counter-affidavit, the further and better counter affidavit filed by the defendant/respondent and the further and better affidavit of the applicant. I wish to start by saying that it is trite that there is a contractual relationship between a bank and its customer. See the case of **UNITED BANK FOR AFRICAN PLC V. YARO BAKEYAWA YAHUZA (2014) LPELR 23976 CA. Similarly in the case of OSAWAYE V. NATIONAL BANK OF NIGERIA LTD (1974) NCCR 474**, the court held: “the relationship between a bank and customer is one of debtor and creditor with the additional feature that banker is only liable to repay the customers on payment being demanded.

There is no obligation on the part of the banker or debtor to seek out his creditor, the customer and pay him, obligation is only to pay the customers or some persons nominated by the customer when the customer makes a demand or gives a direction for payment. There is therefore an implied duty that a banker in dealing with the account of its customer must exercise utmost diligence, skill otherwise the customer can take the banker up in breach of duty of care. See **WEMA BANK PLC V. ALHAJI IDOWU F..... SOLARIN OSILARU (2008) 10 NWLR PG 170** where the court asked, what is the duty of care owed by a bank to its customer? And stated thus; “**A bank has a duty to exercise reasonable care and skill including interpreting ascertaining and acting in accordance with the instruction of the customers.**” see also the case of **AGBANALO V. UNION BANK OF NIGERIA (2000) 4 SC PT 1 243.**

In the case STB LTD V. ANUMNU (2008) 14 NWLR PG. 154, the court per Adekeye JCA held; “A bank has a duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regard to the

operation with its contract and its customers. This duty extend to the whole range of banking business within the contract.

This duty applies to interpreting, ascertaining and acting in accordance with the instructions of the customer.” See the case of TOM TOTAL NIGERIA LTD V. SKYE BANK (2017) LPELR- CA/L/456/2007.”

It is not uncommon these days that banks place lien on their customers' account, while acting on instruction of prosecuting agencies based on order of the court to investigate such account. This is not out of place however such orders from the courts must be valid and from a court of competent jurisdiction. The banks must verify such order before taking any step on the customers' account.

After all the duty of bank is to its customer first, negligence may arise where the bank breaches the implied duty to observe the standard expected of a reasonable banker in respect of dealings with the customer's account, and the onus of proof that it is not negligent lies on the bank.

In the case at hand, the defendant/respondent admitted to have placed a lien on the account of the plaintiff/applicant when acting on Exhibit A, a court order issued by a Magistrate Court in Modakeke Ile-Ife and Exhibit B, a letter from the Nigerian Police. This court order is void coming from a court that has no jurisdiction to issue the said order. Furthermore, the said order being a public document is also void for non-certification in accordance with the provision of Section 104 of the Evidence Act 2011. I agree entirely with the submissions of learned counsel to the plaintiff/applicant that the action of the defendant/respondent based on an invalid court Order is illegal.

It is a violation of the Applicant's right against compulsorily acquisition of his right over or interest over moveable and immoveable property in any part of Nigeria without due process of the law under Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Consequently, it is hereby ordered that the respondent, its servant, agents or privies defreeze the Applicant's First City Monument Bank Account 0776361012 and operated in the name of the applicant which was frozen by the respondent on the 23rd day of April 2018 and I so hold. On award of damages, in fundamental rights action, damages automatically accrues once the respondent is adjudged to have violated the fundamental rights of the applicant. See the case of ***SKYE BANK V. NJOKU & ORS (2016) LPELR 40447***

(CA). The court will however take into consideration the following factors on the quantum of damages to be awarded;

- (1) The frequency of the type of violation in recent times.
- (2) The continually depreciating value of the Naira.
- (3) The motivation of the violation
- (4) Status of the applicant.
- (5) The undeserved embarrassment meted out to the applicant including pecuniary losses and
- (6) The conduct of the parties generally particularly the respondent.

See the case of **INSPECTOR GENERAL OF POLICE & ORS V. IKP..... & ANOR (2015) LPELR 40630 CA**. The essence of award for damages for breaching fundamental rights is to reasonably compensate the applicant and not an avenue for gold mine. The respondent in this instant case appears to have acted recklessly on an invalid court order in freezing the account of its customer, the applicant. They ought to have been more meticulous and circumspect in dealing with their customers' account. They cannot be absolved of paying compensation to the applicant. I have taken into consideration all the factors stated in the authorities above; no doubt the applicant must have suffered some pecuniary losses such as filing of the instant action, payment of fees to his counsel and some psychological stress when he discovered that the account was frozen.

In the circumstance of this case, I hereby award the sum of **One Million Five Hundred Thousand Naira (N1.5M)** as general damages in favour of the applicant. I however refrain from making a restraining order on the account of the applicant if there is a valid court order and in the exercise of the lawful duty of the prosecuting agency to so investigate the said account.

SIGNED

**HON. JUDGE
21/9/2020**

