



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



SUIT NO: FCT/HC/CV/0417/17

BETWEEN:

MOHAMMED ABUBAKAR AUDU.....PLAINTIFF/RESPONDENT

AND

STANDARD CHARTERED BANK LTD.....DEFENDANT/APPLICANT

RULING

By way of a brief introduction, the Plaintiff/Respondent endorsed the following claims on his Writ of Summons taken against the Defendant/Applicant on the 3rd day of December, 2017:

- (a) A declaration that the placing of the Plaintiff's Account No: 0001395596, 0001409343, 0001395644, 44033085900 and 5001409355 on restriction by the Defendant is wrongful.**
- (b) A declaration that the failure or refusal of the Defendant to allow the Plaintiff to access/withdraw from its account No. 0001395596, 0001409343 and**

- 5001409355 constitutes a breach of contract to the Plaintiff and is therefore wrongful.**
- (c) A declaration that the debit of the sum of N150, 000.00 from the Plaintiff's account No. 0001395596 by the Defendant and without paying it over to the Plaintiff or reversing the debited sum of N150, 000.00 is wrongful and illegal.**
- (d) An Order directing the Defendant to remove the restriction placed on account No. 0001395596, 0001409343, 0001395644, 44033085900 and 5001409355 by the Defendant and allow the Plaintiff unrestricted access to the accounts.**
- (e) An Order directing the Defendant to pay over or release to the Plaintiff the (principal) sum of N150,000.00 from account No. 0001395596, being the value of the cheque presented by the Plaintiff to the Defendant for payment on 17/10/2017 and which the Defendant wrongfully debited from the Plaintiff's account without paying to the Plaintiff or reversing the debited amount in the Plaintiff's account.**
- (f) An Order directing the Defendant to pay/release to the Plaintiff the (principal) sum of €3000 (Three Thousand Great Britain Pounds) from account No. 0001409343,**

- being the value of the cheque presented by the Plaintiff to the Defendant for payment on 17/10/2017 and which the Defendant wrongfully refused to pay to the Plaintiff.
- (g) An Order directing to remit/pay to the Plaintiff the principal sum of \$10,000.00 (Ten Thousand US Dollars) from account No. 5001409355, being the value of the oversea remittance applied for on the 17/10/2017 by the Plaintiff to the Defendant to be remitted/transferred from account No. 5001409355 to account No. 0001395644 and which the Defendant wrongfully refused to honour.**
- (h) An Order directing the Defendant to pay to the Plaintiff the sum of N100,000,000. 00 being damages for the wrongfully act or conduct of the Defendant.**
- (i) An Order directing the Defendant to pay 10% interest on the Judgment sum from the date of Judgment till liquidation.**

Upon the receipt of the originating process, the Defendant/Applicant filed a Motion on Notice for the dismissal of this action on the grounds set out on the face of the application, to wit:

- (1) This suit as presently constituted amounts to an abuse of Court process.**
- (2) The Respondent intends by this suit to indirectly obtain an interpretation/variation and/or discharge of an Order of a Court of coordinate jurisdiction, the Federal High Court Lagos, Judicial Division which was granted on 29th September, 2017 per Honourable (Mr) Justice M. B. Idris in Suit No. FHC/L/CS/88/2017: Unity Bank Plc Vs Dean Shanger Projects Limited & 8 Ors, a suit which is still pending before the Federal High Court, Lagos.**

There is a supporting affidavit to the motion to which three documents were annexed. Learned counsel also filed a written address in support of the motion. In opposing this application, the Plaintiff/Respondent filed a counter affidavit of 26-paragraphs and a written address. The Defendant/Applicant also filed two separate further affidavits with one annexure attached to the respective further affidavits.

The Defendant/Applicant Motion on Notice is no doubt a notice of preliminary objection challenging the jurisdiction of the Court, even though, it was not so christened. If that be the case, it is now trite Law that once the jurisdiction of the Court is call to question, the only option opened to the Court is to dispose the application one

way or the other before any further step is taken in the proceeding. I refer to the case of **GALADIMA V. TAMBAI & ORS (2000) 11 (PT.677) 15** where the Supreme Court has this to say:

“An attack or question as to jurisdiction cannot be properly glossed over by any Court once it is raised by the Defendant or the Respondent. The procedure by which such a fundamental issue is raised may not be in consonance with the stipulated Rules of Court for questioning a decision of the Court, nevertheless, that will never be allowed to defeat the right to question the jurisdictional defect. To do so is unwittingly to postpone the doom’s day. See OWONIBOYS TECHNICAL SERVICES LTD. V. JOHN HOLT LTD (1991) 6 NWLR (PT.199) 550, EZOMO V. OYAKHIME (1985) 1 NWLR (PT.2) 195, STATE V. ONAGORUWA (1992) 2 NWLR (PT.221) 33, MADUKOLU V. NKEMDILIM (1962) 1 ALL NLR (PT.4) 57 AND OKAFOR V. A-G, ANAMBRA STATE (1991) 6 NWLR (PT.200) 659.”

The Apex Court went further to warn as captured below:

“It is necessary to caution that whenever there is a challenge to jurisdiction, the Court should

expeditiously attend to it in limine, particularly, if the case is at trial stage and even if the case is at appeal stage, as is the case in the appeal in hand.”

Arising from the foregoing, the Court did the needful by taking the objection of the Defendant/Applicant which this Ruling is predicated upon. I have read the processes put forward by parties in this application, and it would appear to me that the main ground for the presentation of this objection is the existence of a subsisting Order of Mareva Injunction made by the Federal High Court in Lagos in Suit No. FCT/L/CS/88/17: between Unity Bank Plc and Dean Shanger Projects Limited & 7 Others. For the records, the Plaintiff/Respondent herein is the 3rd Defendant, while the Defendant/Applicant is the 19th Bank listed on the face of the Order. The Order stated inter alia as follows:

- (1) An Order of Mareva Injunction restraining the 1st , 2nd, 3rd and 4th Defendants, by themselves, directors, agents, officers, servant, privies, assigns, proxy, companies or otherwise any other person, natural or artificial, however called from giving any instruction, demanding and/or making any withdrawal from 1st, 2nd , 3rd and 4th Defendants’ account in the Bank listed as Re: 1 to 20 on the face of the motion paper and or any other Financial**

Institution, pending the hearing and determination of the substantive suit.

- (2) An Order directing the aforementioned Banks listed as in Re: 1 to 20 on the face of the motion paper and/or any other Financial Institutions to sequestrate within three (3) days of the receipt and or service of this Order any and or all the sum of money and negotiable instruments standing to the credit of the 1st, 2nd, 3rd and 4th Defendants, their servants, agents, privies, nominees whether natural or artificial up to the outstanding indebtedness of the 1st , 2nd , 3rd and 4th Defendants to the Plaintiff/Applicant in the sum of N5, 416, 192, 722. 81 owed by the 1st Defendant to the Plaintiff as at 31st October, 2016 and keep same in an interest yielding account in the name of the Chief Registrar of this Honourable Court as trustee of same, pending the determination of this suit. The respective Banks listed above shall file and/or cause to be filed an affidavit of compliance within three (3) days of the service of this Order on the respective Banks listed above disclosing the amount standing to the credit of the 1st , 2nd , 3rd and 4th Defendants upon receipt and/or service of this Order**

of this Honourable Court, the sum sequestered in the name of the Chief Registrar of the Court.

- (3) An Order of Mareva Injunction restraining the 1st , 2nd, 3rd and 4th Defendants, their agents, directors, servants, privies or assigns from disposing, selling, transferring or alienating any of their moveable and/or immovable assets, money, shares, stock and other negotiable instruments, pending the hearing and determination of the substantive suit.**

Pleadings in support of the Plaintiff/Respondent's substantive claims reveal that the Plaintiff presented certain instrument to the Defendant Bank which instruments were dishonoured on the basis of the Mareva Injunction set out above. The Defendant has contended at paragraphs 4 to 7 of the application for dismissal as follows:

- 4. On 2nd January, 2018, Utseoritselaju Oloba, an officer in the Legal Department of the Applicant, informed our Firm of the following facts which I believe to be true because she has no reason to misrepresent them to me:**

- (a) On 28 February, 2017, the Applicant was served with an Exparte Mareva Injunction of the High**

Court Lagos, Judicial Division (the FHC Lagos) dated 2nd February, 2017 made in Suit No. FHC/L/CS/88/2017: Unity Bank Plc Vs Dean Shanger Projects Limited & 8 Ors (the “Lagos Suit”) the Mareva Injunction restrained the Applicant and other Banks from honouring any instruments to withdraw funds from certain accounts including the Respondent’s accounts which are domiciled with the Applicant. Now shown to me and marked as exhibit R01 is a copy of the Exparte Mareva Injunction Order that was served on the Applicant.

- (b) The said Mareva Injunction was granted on the basis of an Exparte application by the Plaintiff, Unity Bank Plc. At the proceedings of 2nd February, 2017 wherein the Order was made, the Defendants, including the Respondent were absent because they were not entitled to receive notice of the Exparte proceeding.**
- (c) In compliance with the Mareva Order of the FHC Lagos, the Applicant placed a restriction on the Respondent’s account domiciled with the Applicant.**

- (d) The 8th Defendant (FBN Trustees Nigeria Limited) in the Lagos Suit subsequently filed a Notice of Preliminary Objection dated 17th May, 2017 seeking to set aside all the proceedings that were conducted without notice to the 8th Defendant.**
- (e) In its Ruling delivered on 29th September, 2017 in respect of the Notice of Preliminary Objection, the FHC Lagos set aside the proceedings that were conducted without notice to the 8th Defendant in the Lagos Suit. Now shown to me and marked as exhibit R02 is a copy of the Order of 29th September, 2017.**
- (f) At the time of the making of the Order of 29th September, 2017 several other proceedings had taken place.**

5. I am aware that a contention arose among the parties to the suit as FHC Lagos, regarding whether the Order of 29th September, 2017, setting aside the proceedings that were conducted without notice, affects the Mareva Injunction which was made and granted Exparte. In this regard, I am aware that the counsel who represented the Plaintiff in the FHC Lagos suit wrote a letter dated 27th October, 2017 to

the counsel who represented the Applicant before the FHC Lagos, clarifying that the Order of 29th September, 2017 does not vacate the Mareva Order of 2nd February, 2017 because at the proceedings of 17 October, 2017, His Lordship before whom the Lagos suit is pending at stated that the Order has not been vacated. Now shown to me and marked as exhibit R03 is a copy of the letter dated 27th October, 2017.

6. Paragraph 8 of exhibit R03 specifically states that the Respondent herein and others had filed several applications to discharge the Mareva Order before the FHC Lagos, but same were heard on the merit and dismissed accordingly by the FHC Lagos.

7. By virtue of my professional training and a perusal of exhibit R02, I verily believe that the Order of the FHC Lagos dated 29th September, 2017 only relates to all proceedings in respect of which notice to other parties was required, and in respect of which notice was not given to the 8th Defendant in that suit, and does not extend to, or affect an Order made pursuant to the Exparte application for Mareva Injunction as no notice was required to be given of the said application.

However, the Plaintiff/Respondent had join issue with the Applicant when it stated at paragraphs 7 to 16 as follows:

- (a) That on the 2nd day of February, 2017, the Federal High Court sitting in Lagos, made an Order of Mareva Injunction in Suit No. FHC/L/CS/88/2017: between Unity Bank Plc Vs Deans Hanger Projects & Ors, against the accounts maintained by the Respondent in the said suit.**
- (b) That by virtue of the said Mareva Injunction, the Respondent was restrained from the operation of his accounts Nos. 0001409343, GBP, 0001395596, NGN, 0001395644, USD, 44033085900 USD and 5001409355 USD maintained with the Applicant.**
- (c) That proceedings commenced in the said suit, during which one of the parties to the suit, FBN Trustees brought a Preliminary Objection.**
- (d) That upon hearing the said Preliminary Objection the Court by its Ruling delivered on the 29th day of September, 2017 among other things, made an Order “setting aside all proceedings hitherto conducted” in the said No. FHC/L/CS/88/2017, and directed that the said suit be commenced de novo for the Plaintiff’s failure to**

“comply with the conditions precedent to the Court’s exercise of jurisdiction.

- (e) That on 11th day of October, 2017 the Respondent delivered a copy of the Order setting aside the Mareva Injunction to the Applicant and demanded that the Applicant should comply with the Order by lifting the restriction on the Respondent’s account and to allow him unrestricted access to his account.**
- (f) That on the 18th day of October, 2017, the Respondent presented the following instruments payable to himself at the Applicant’s Maitama Branch office at Abuja:**
- (1) A cheque of N150, 000, 000. 00 dated 17th October, 2017 and;**
 - (2) A cheque of €3000 (Three Thousand Pounds) dated 17th October, 2017.**
- (g) That also on the said 18th day of October, 2017 the Respondent presented an Oversea Remittance Application Form in the sum of Ten Thousand Dollars (\$10, 000. 00) dated 17th October, 2017 to be transferred into his account No. 0001395644. The said instruments were dishonoured by the Applicant upon presentation by the Respondent.**

- (h) That the Applicant wrongfully and unlawfully debited the sum of N150, 000. 00 from the Plaintiff's account No. 0001395596 without paying same over to the Respondent or reversing the debited amount to reflect credit amount in the Plaintiff's account.**
- (i) That by the Banker/Customer relationship existing between the Applicant and the Respondent, the Applicant had a duty to honour all the instruments issued by the Respondent above.**
- (j) That upon the Applicant's failure to honour the said instruments given by the Respondent above, the Respondent instituted the present suit bordering on breach of Banker/Customer relationship by the Applicant.**
- (k) That this suit is not an abuse of the process of the Court, same having parties issues and reliefs different from Suit No. FHC/L/CS/88/2017 pending at the Federal High Court Lagos.**

After a thorough scrutiny of the case of parties, and arguments canvassed in support, I form the view that this application was misconceived. The Order to set aside the proceeding alluded to by

parties for want of jurisdiction was made on the ground that the 8th Defendant (before the Federal High Court) was not served with hearing notice. The Federal High Court set aside its proceedings on the ground that failure to serve hearing notice vitiates the proceedings in issue. That proceeding is quite different from the one that led to the making of the Order of Mareva Injunction which placed restrictions on the Plaintiff/Applicant's funds with the Defendant/Applicant. As rightly submitted by the learned counsel for the Plaintiff, the Order was made *ex parte* and couldn't have been set aside for failure to serve hearing notice as notice is not required.

Similarly, the Plaintiff/Respondent at paragraph 11 of his counter affidavit stated that he served the Defendant/Applicant with an Order setting aside the Order of Mareva Injunction, but he failed to exhibit a copy of the purported Order setting aside the Mareva Injunction. If that be the case, the deposition is merely a bare assertion with no probative value. What that means is that the disputed Order of Mareva Injunction of the Federal High Court Lagos State is still subsisting and in that wise, the Plaintiff/Respondent cannot in good conscience present this suit during the pendency of the principal action before the Federal High Court Lagos State.

Arising from the foregoing, I must say that the objection taken by the Defendant/Applicant is meritorious. To say the least, this is a reckless action by the Plaintiff/Respondent and indeed an abuse of the process of the Court. The contention of the Plaintiff/Respondent that the Defendant/Applicant is in breach of demurer, having not file statement of defence is of no moment as the Defendant/Applicant vide this application is challenging the substantive jurisdiction of the Court. The authorities cited by the Defendant/Applicant's counsel sufficiently dealt with this point, and I need say no more.

In the final analysis, I find merit in this preliminary objection filed on behalf of the Defendant/Applicant, and it is accordingly upheld. Consequently, Plaintiff's Suit No. FCT/HC/CV/0417/2017 is hereby struck out, been a clear abuse of the process of Court.

SIGNED
HON.JUSTICE H.B. YUSUF
(PRESIDING JUDGE)
18/09/2020