

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT COURT NO. 20 ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE A. S. ADEPOJU
ON THE 14th DAY OF OCTOBER, 2020

BETWEEN:

FCT/HC/CV/2918/19

ADAMU ABDULRAHMAN-----APPLICANT

AND

- | | | |
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| 1. ECONOMIC AND FINANCIAL CRIMES COMMISSION
2. UNITED BANK FOR AFRICA (UBA)
3. GUARANTY TRUST BANK (GTB) | } | RESPONDENTS |
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Appearance:-

Husaini Sani for the Applicant.

1st Respondent was not represented by Counsel.

T.B. Maiyaki for the 2nd Respondent.

Chukwudi Prince Oli for the 3rd Respondent.

RULING

By a motion on notice brought pursuant to the provision of Section 1(1) and 44 of the Constitution of the Federal Republic of Nigeria, Order 1 Rule 1 and Order XI of the Fundamental Rights (Enforcement Procedure) Rules 2009, Article 14 and 21 of the African Charter on Human and People's Rights, the applicant sought for the following reliefs (a) an order restraining the Economic and Financial Crimes Commission (EFCC) from arresting, detaining, threatening with arrest, harassment and or arrest, and detention of the applicant pending the determination of this application.

(b) A declaration that the directive and or instruction by the 1st Respondent to the 2nd and 3rd Respondents on or about the 17th day of July, 2019 to place the Applicant's Account Number 2117215104 and 0220279607 on "NO DEBIT STATUS" which action has the effect of freezing the said Accounts operated by the Applicant is unconstitutional, unconscionable gross abuse of the applicant's fundamental right, illegal, arbitrary, wrongful, null and void.

(c) A declaration that the action of the 2nd and 3rd Respondents jointly and severally in placing the Applicant's Account Number 2117215104 (UBA) and 0220279607 (GTB) on "No Debit Status" thereby effectively freezing the Applicant's said Accounts is wrongful, gross abuse of the Applicant's fundamental right, illegal, unconstitutional, arbitrary, null and void and of no legal effect whatsoever.

(d) An order quashing the purported instruction or directive of the 1st Respondent to the 2nd and 3rd Respondents, freezing the Applicant's Account Number 2117215104 (UBA) and 0220279607 (GTB) on "No Debit Status".

(e) An order defreezing the Applicant's Account Number 2117215104 (UBA) and 0220279607 (GTB), being kept by the 2nd and 3rd Respondents, respectively.

(f) An order of injunction restraining the Respondents whether by themselves, their agents, servants and or privies from further interference in any manner whatsoever or howsoever with the normal operations of the Applicant's Account Number 2117215104 (UBA) and 0220279607 (GTB).

(g) The sum of **N5, 074,000.00 (Five Million, Seventy-Four Thousand Naira)** jointly and severally against the Respondents' being special damages

occasioned by the Respondents' blockage of the Applicant's account with the bank.

(h) The sum of **N15, 000,000.00 (Fifteen Million Naira)** being general damages against the Respondents; occasioned by the Respondent's act of blockage and or seizure of the Applicant's said accounts.

(i) Costs of prosecuting this case.

THE GROUNDS UPON WHICH THE ORDERS AND RELIEF ARE SOUGHT ARE:-

- (1) That both section 44 of the 1999 constitution (as amended), Article 14 and 21 of the African Charter on Human and People's Right deals with the fundamental and inalienable right to ownership of property.
- (2) That the right to own property according to the provisions of the said section of the laws may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws, to which the Respondents have bastardized with reckless impunity.
- (3) That a bank does not have the right to block the account of its customers on the request of a third party, without recourse to the court.

In support of the application is a 12 paragraph affidavit deposed to by the Adamu Abdulrahman, the applicant wherein he averred to the following facts:

That sometime on the 7th day of July 2019, he attempted to withdraw some money from his bank accounts with number **2117215104 (UBA)** and but was unable to do so and a message popped out from the ATM machine that the accounts have been restricted. He lodged a complaint to both the 2nd & 3rd Respondent, and was informed that the accounts

have been placed on “No Debit Status” (that, he can only transfer funds but cannot withdraw money from the accounts on the authority of the Economic and Financial Crime Commission, the 1st Respondent in this case. He was shocked because he had never been summoned by the 1st respondent as to any inquiry or investigation. The freezing of the accounts have foists immeasurable and unrepairable harm on him.

He has been unable to partake on the government support of medium and small scale entrepreneur through its wider social intervention schemes, because his bank account and verification number cannot be furnished. He has also been unable to apply for the N-power and Central Bank of Nigeria's grants for start up business because of the restriction on his accounts.

In the accompanying written address, the learned counsel to the applicant formulated four (4) issues for determination by the court;

They are:

- (1) Whether the Economic and Financial Crime Commission has the power under the law to issue a direct order to bank to freeze a customer's account without recourse to courts.
- (2) Whether bank have right to block/freeze a customer's account without a court order.
- (3) Whether the 2nd & 3rd Respondents are not liable for breach of contract to the applicant.
- (4) Whether the 2nd & 3rd Respondents are not liable for negligence and breach of duty of care to the applicant.
- (5) Whether the applicant is entitled to the reliefs sought in this application.

The arguments in respect of the issues formulated are as contained in the written address, needless repeating them as they form part of the record of the court. Suffice to say that the written address was adopted by Hussein Sanni Esq. as its oral argument in court.

In defence the 1st respondent filed a 12 paragraph counter-affidavit of one Isaac Goong, an Investigating Officer with the Counter-Terrorist and General Investigation Unit of the 1st respondent. And in paragraph 5(i)-(iv) of the counter affidavit he stated that the 1st respondent received a petition against the applicant dated 27/05/2017 bordering on Criminal Breach of Trust and Obtaining Money Under False Pretence. The petition is attached as Exhibit A. And that pursuant to the petition, the need arose for the applicant's account to be analysed by the investigation team (Counter-Terrorist and General Investigation Unit) based on various amount of monies in the alleged suspicious transaction between the applicant and the petitioner.

That the applicant was invited severally via phone calls and he failed and refused or neglected to respond to the invitation extended to him since June 2019. And consequently the Investigation team required the applicant's bankers to place a restriction on the respective accounts of the applicant in their respective banks for a period in accordance with the Money Laundering (Prohibition) Act 2011 as amended. That the applicant shielded the fact before this court that he was under Criminal Investigation which necessitated the investigation team of the 1st respondent to place a restriction on the applicant's account, in accordance with the provisions of the law in order to preserve further flow of funds from innocent individuals into the said account for the period under review as provided by the Money Laundering (Prohibition) Act 2011 (as amended) and to also carefully peruse through the

transactions that took place through the said accounts with a view to determining the extent of involvement of the applicant as alleged in the petition against him and two others.

The 2nd respondent filed a 7 paragraph counter-affidavit deposed to by one Kingsley Ugwueke who averred that the post no debit placed on the applicant's account was done pursuant to the directive of the 1st respondent. That the 2nd respondent being a financial institution is legally obligated to obey the directive of the 1st respondent. The 2nd respondent denied freezing the account of the applicant. That the action was done in good faith and was not a breach of its duty of care.

Similarly the 3rd respondent also filed a 4 paragraph counter affidavit of one Habila Danladi, who averred that the 3rd respondent also complied with the written request from the 1st respondent on the 8/7/2019 to place a no debit on the applicant's account. And that the post no debit was lifted within 72 hours as required by the Money Laundering (Prohibition) Act 2011. He attached one Exhibit to the counter affidavit. The applicant filed a further affidavit in reply to the 3rd respondent's counter affidavit. The counsel to the respondents filed written arguments in support of their counter affidavits and raised issues for determinations.

Before I delve into the issues for determination raised by the respective parties, it is pertinent to state that this matter was brought as an application for the Enforcement of fundamental human rights pursuant to Sections 1(1) and 44 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Order 1 Rule 1 and Order XI of the Fundamental Rights (Enforcement Procedure) Rules 2009, Article 14 and 21 of the African Charter on Human and Peoples Right.

I agree with the counsel for the 3rd respondent that for a court to assume jurisdiction on an application brought pursuant to the Fundamental Right (enforcement procedure) rules, the reliefs sought by the applicant must be thoroughly examined. See the cases of **ADEKUNLE VS. A.G OGUN STATE (2014) LPELR-22569 (CA) Pages 42-43 Paragraphs E-G, JIMOH VS. JIMOH (2018) LPELR-43793 (CA) PG. 21-24 PARAGRAPHS C-F.**

The applicant in this instant case sought for an order restraining the Economic and Financial Crimes Commission (EFCC) from arresting, detaining, and threatening with arrest, harassment and or arrest and detention of the applicant pending the determination of this application amongst other things.

This is the 1st relief sought by the applicant on the face of his application.

It is trite that the enforcement of fundamental rights procedure is fought on affidavit evidence. The court must therefore examine the facts contained in the affidavit evidence and statement in support of the application whether such facts disclose reasonable course of action. On the mode of commencement of action on alleged breach of Fundamental Rights, Order 2 Rule (3) enjoins that an application shall be supported by a statement setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought and supported by an affidavit setting out the facts upon which the application is made. See the case of **GTB Vs. ADEDAMOLA 2019 5 NWLR (pt 1664) 30 @ 43 par E-F.** From the affidavit in support of the application before this court, I am unable to see my way through where

the applicant have deposed to facts in support of his reliefs for an Order restraining the Economic and Financial Crimes Commission (EFCC) from arresting, detaining, threatening with arrest, harassment and or his arrest and his detention in the affidavit in support.

My findings from the facts averred by the applicant is the allegation of illegal freezing or the placing of no debit on his account by the 2nd and 3rd respondents on the Order of the 1st respondent and without an Order of the Court. To that extent the 1st relief claimed by the Claimant/Applicant cannot stand because there was no fact in support of the relief sought. The relief is merely speculative and unsupported by facts and is hereby dismissed.

On whether the remaining claim can be sustained under the Fundamental Right Enforcement Procedure I answer this in the affirmative. The claim of the Applicant for illegal freezing of his account was sought pursuant to the provision of Section 1(1) and 44 of the Constitution of the Federal Republic of Nigeria, and the issue that call for determination is whether there was an infringement to the Fundamental Right of the Applicant by Respondents. The 3rd Respondent's Counsel argued in his written address that the Claimant's reliefs cannot be sustained under the Fundamental Right Enforcement Procedure Rule upon which the Honourable Court's jurisdiction is anchored. I do not subscribe to the view of learned Counsel to the 3rd defendant. It appears that from the statement accompanying the application that the main claim of the Applicant as earlier stated is for the Enforcement of his Fundamental Rights under Section 44 of the Constitution of the Federal Republic of Nigeria(1999) as amended.

Contrary to the views expressed by learned Counsel to the 3rd Respondent nowhere did the applicant seek for a relief as a result of breach of Contracts between him and the Respondents in his claim. And as rightly pointed out by learned Counsel to the Applicant, a claim under Common law can properly be found in an action for the Enforcements of Fundamental Right.

To the narrow issue for determination, as rightly put by the 1st and 3rd Respondents which is whether a prima-facie case has been established against the Respondents and whether the applicant is entitled to reliefs sought in respect of his alleged breach of Fundamental Rights under the provisions of Section 1(1) and particularly Section 44 of the Federal Republic of Nigeria as Amended.

Both the 2nd and 3rd Respondents are unanimous in their defence that they acted on the directive of the 1st respondent by placing a no debit on the plaintiff's account due to the investigation activities on the account. According to the 2nd Respondent the claimant's account was temporarily placed on post no debit. The direction of the 1st respondent according to the 2nd Respondent was made pursuant to Section 38 (1) of the Economic And Financial Crimes Commission and Section 21 of the Money Laundering (Prohibition) Act 2011 and that the 2nd Respondent is legally obligated to obey the directive . The learned Senior Counsel to the 2nd Respondent argued that the act of the 2nd Respondent in placing a no debit on the account of the Applicant is an exception to the provision of Section 44 of the 1999 Constitution of Nigeria as Amended. The learned silk relied on the provision of Section 44(2)(k) of the 1999 Constitution of Nigeria as Amended which provides "nothing in Sub-section(1) of this Section should be construed as affecting any general law, relating to the temporary taking of possession of property is for the

purpose of any general law relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry”.

My understanding of the provision of Section 44(2)(k) relied on by the Senior Counsel to the 2nd Respondent is that a compulsory acquisition of a citizen's property, must be in the public interest and in accordance with the appropriate law. The provisions of Section 38(1) of the Economic And Financial Crimes Commission Act 2004 and Section 21 of the Money Laundering (Prohibition) Act 2011 do not confer on the Respondents the right to place a no debit on the account of their customers. To put this issue in proper perspective, I hereby reproduce the Section 38(1) of the EFCC Act 2014 and Section 21 of the Money Laundering (Prohibition) Act 2011 as hereunder i.e. Section 38(1) is, the commission shall seek and receive information from any person, authority, Corporation or Company without let or hindrance in respect of offences it is empowered to enforce under this Act. While Section 21 of Money Laundering (Prohibition) Act the Director of Investigation or an officer of the Ministry, Commission or Agency duly authorised in their behalf may demand, obtain and inspect the books and records of Financial institution or designated non-Financial Institutions to confirm compliance with the provision of the Act” it is glaring that the 1st and 2nd defendants cannot hide under the above provision to place a no debit restriction on the account of the Applicant. The 3rd Respondent's also claimed that he relied on the provision of Section 6(5)(b) of the Money Laundering Act while acting on the instruction received from the 1st respondent. The provision states “Notwithstanding the provision of paragraph (a) of the sub-Section, the Chairman of the Commission, the Governor of the Central Bank or their authorised representatives shall place a stop Order

not exceeding 72 hours on any account or transaction if it is discovered in the course of their duties that such account or transaction is suspected to be involved in any Crime". The whole purpose of this Section is to enable the Economic And Financial Crimes Commission investigate an account suspected to harbour proceeds of Crimes. The provision in my view enables the Chairman of the Commission, the Governor of the Central Bank or their authorised representatives place a stop-order on the account for a period not exceeding 72 hours even if there is no Court Order and exigencies dictates that the account should be freeze. In fact, the provision of Section 6 of the Money Laundering (Prohibition) Act 2011 is titled "Special surveillances on certain transactions" Section 6(1) of the Money Laundering (Prohibition) Act deals with the following Situations (a) where a transaction involves a frequency which is unjustifiable or unreasonable (b) is surrounded by conditions of unusual or unjustified complexity (c) or appears to have no economic justification or lawful objectives or(d) in the opinion of the Financial Institution or designated non-financial Institution involve terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, that transaction shall be deemed to be suspicious and the Financial Institution shall seek information from the customer as to the organisation and destination of the fund, the aim of the transaction and the identity of beneficiary" This provision is meant to put the banks on guard concerning the funds that come into their customers account that are suspicious and for them alert the Economic And Financial Crimes Commission in that respect. The provision of Section 6(2) (3) of the Money Laundering Prohibition Act entail the procedure to follow by the Financial & non Financial Institutions, in case of suspicious transaction in their customers account before the Chairman of the Economic And Financial Crimes Commission or Governor of Central Bank of Nigeria authorizes a

temporary stop Order on an account for 72 hours. The entire provisions of Section 6 of the Money Laundering Prohibition Act dwelt on Crime of Money Laundry and other Financial Crimes stated in the said Section.

In the case at hand, the 1st Respondent in the affidavit of Isaac Goong at paragraph 5 states that it received a petition dated 27/05/2019 against the Applicant bordering on Criminal breach of Trust and obtaining money under false pretence. The Certified True Copy of the petition was annexed to the Counter Affidavit as Exhibit 'A'. In the said petition certain amounts of money were allegedly paid into the account of the Applicant and some other person named herein in respect of an investment proposal by a named person in the petition. This complaint has nothing to do with money laundering and neither did the bank raise any alert or suspicion with respect to the transactions in the account of the applicant to warrant the invocation of the provision of Section 6(5) (b) of the Money Laundering Prohibition Act by the 1st Respondent for a temporary suspension of the transaction on the account. The nature of the allegation in the petition against the Applicant did not warrant the stoppage of transaction into the account by mere writing of letter to the bank by the 1st Respondent. The 1st Respondent ought to have in compliance with Section 34(1) of the Economic And Financial Crimes Commission Act, applied to the Court *ex parte* for power to issue an Order as specified in Form B of the schedule to the Act. Furthermore it is evident that the provision of Sections 34(1) of the Economic And Financial Crimes Commission Act 2004 have whittled down the power of the Chairman of the Economic And Financial Crimes Commission to give direct instructions to the bank to freeze a suspicious account of a customer without an Order of the Court. Even in Money Laundering and other related offences stated in Section 6(a)-(d) of the Act 2011.

Therefore before freezing a customer's account or placing any form of restriction, the bank must be satisfied that there is an Order of the Court. The bank owes its customer the duty of loyalty and confidentiality in the banker-customer relationship. The Court Order exhibit 2 dated 9th December, 2019 being paraded by the 3rd Respondent in its further counter affidavit to the applicant's Motion is an afterthought and is discountenanced.

The issue for determination in this case has been laid to rest by the Court of Appeal in the celebrated case of GTB PLC. VS. ADEDAMOLA(2019) 5NWLR pt. 1664 at 30 @33. Where the Court of Appeal held "The Judiciary has the onerous duty of preserving the rule of law, wherever there is brazen violation of the rights of a citizen the courts in the discharge of their responsibility to the society must rise to the occasion, speak from and condemn the arrogant display of Power by an arm of government, our financial Institutions must not be complacent, reticent and toothless in the face of a brazen and reckless violence to the rights of their customer. Wherever there is a specific provision regulating the procedure of doing a particular act, that procedure must be followed".

It is therefore an utter disregard to the provision of Section 44 of the 1999 Constitution of Nigeria as amended which guarantee the rights of an individual to own property in this Country when the 1st Respondent directed the 2nd and 3rd Respondents to place a no-debit restriction on the account of the Applicant without an Order of Court. The act is illegal, arbitrary, null and void. The Applicant's claim for a breach of his fundamental Rights against the 1st , 2nd and 3rd Respondents succeed. Consequently the purported instruction and directive of the 1st Respondent to the 2nd and 3rd Respondents freezing the Applicant's

account Number 2117215104(UBA) and 0220279607(GTB) on no debit status is quashed and the said accounts defreezes accordingly.

Furthermore, the Respondents either by themselves, agents, servants and or privies are restrained from further interference into the normal operation of the Applicant's bank accounts save and except by an Order of the Court.

The Applicant's Claim for =N=5,074000(Five Million Seventy-four Thousand) Naira only jointly and severally against the Respondents being special damages occasioned by the Respondents' blockage of the Applicant's account is not supported by any evidence. The claims is dismissed accordingly.

However, the sum of =N=5,000,000.00(Five Million naira) is awarded as general damages, jointly and severally against 1st,2nd and 3rd Respondents while the sum of =N=50,000.00(Fifty Thousand) Naira is awarded as cost.

Signed

Hon. Justice A.S. Adepaju

